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

IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC
REFORMS & ANR.

... PETITIONERS

Versus

UNION OF INDIA & ORS.

... RESPONDENTS

COUNTER AFFIDAVIT ON BEHALF OF ELECTION COMMISSION
OF INDIA (RESPONDENT NO. 3)

I, Vijay Kumar Pandey, S/o Late Shri D.N. Pandey, aged 40 years, Director (Law), Election Commission of India, having office at Nirvachan Sadan, Ashoka Road, New Delhi-110001, do hereby solemnly affirm and state as under:

1. I am the Director (Law) of the Election Commission of India and as such am well acquainted with the facts and circumstances of the case and competent to affirm the present Counter Affidavit on behalf of Respondent No. 3 (hereinafter known as "the Answering Respondent").
2. I state that I have read and understood the contents of the List of Dates and Writ Petition and the reply thereto is as under.
3. At the outset, I deny all the averments, submissions, contentions as well as the allegations contained in the present Writ Petition to the extent they relate to the Answering Respondent, save and

except those that are expressly and specifically admitted hereinafter.

PRELIMINARY SUBMISSIONS:

4. At the outset, the Answering Respondent craves leave of this Hon'ble Court to make preliminary submissions relevant to the subject matter of the present Writ Petition as under:

4.1 The Answering Respondent submits that the present Writ Petition under reply has been filed before this Hon'ble Court under Article 32 of the Constitution of India, seeking the following reliefs:

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

- a) *Issue a writ of declaration or any other appropriate Writ declaring (i) Section 135 of the Finance Act 2017 and the corresponding amendment carried out in Section 31 of the Reserve Bank of India Act, 1934, (ii) Section 137 of the Finance Act, 2017, and the corresponding amendment carried out in Section 29C of the Representation of the People Act, 1951 (iii) Section 11 of the Finance Act, 2017 and the corresponding amendment carried out in section 13A, the Income Tax Act, 1961 (iv) Section 154 of the Finance Act, 2017 and the corresponding amendment carried out in Section 182 of the Companies Act, 2013 and, (v) Section 236 of Finance Act, 2016 and the*

corresponding amendment carried out in Section 2(1)(j)(vi) of the Foreign Regulations Contribution Act, 2010 as being unconstitutional, illegal and void.

- b) Issue Writ of mandamus or any other appropriate writ directing that no political parties would accept any donation in cash.*
- c) Pass any other further order as this Hon'ble Court may deem fit and proper in the interest of justice."*

4.2 It is submitted that being a Constitutional Authority, the Answering Respondent does not propose to take any contentious issues or to join any submission on merits, etc., as these are matters between contending parties. The Answering Respondent would, however, like to explain broadly, the position of Law on the subject, besides placing its position on record.

4.3 At the outset, the Answering Respondent submits that the Election Commission of India (i.e. the Answering Respondent) has been relentlessly working towards curbing the abuse of money power during elections, for which purpose, the Answering Respondent has time and again issued several instructions in the past to candidates as well as to political parties for furnishing the correct information relating to donations received and expenditure expended by the Political Parties, and has further proposed certain Electoral Reforms for the purpose of bringing about more transparency and fairness in the electoral process of this country.

In this regard, it may be relevant to refer to the Judgment of this Hon'ble Court in the case of *Common Cause Vs. Union Of India & Ors.* 1996 (2) SCC 752, wherein it was laid down that:

"7. The expression "conduct of election" in Article 324 of the Constitution of India is wide enough to include in its sweep, the power of the Election Commission to issue - in the process of the conduct of elections - directions to the effect that the political parties shall submit to the Commission for its scrutiny, the details of the expenditure incurred or authorized by the political parties in connection with the election of their respective candidates."

4.4 Pursuant to the aforementioned direction of this Hon'ble Court in the case of *Common Cause Vs. Union Of India & Ors. (Supra)*, the Answering Respondent herein prescribed a pro-forma vide its letters dated 27.12.2001, 22.03.2004 and 13.01.2009, in which the political parties were required to submit the statement of their election expenditure relating to each election to the Lok Sabha or any State Legislative Assembly. The statements filed by the parties were, thereafter, put up on the website of the Answering Respondent (i.e. the Election Commission of India). Subsequently, the Answering Respondent issued a communication being Letter No. 76/EE/2012-PPEMS dated 21.01.2013 to all political parties informing them that it had modified the aforementioned pro-forma.

True copy of the Letter No. 76/EE/2012-PPEMS dated 21.01.2013 is annexed herewith and marked as ANNEXURE-

C/1 at Pages to .

- 4.5 The Answering Respondent further submits that all political parties (regional or national) are expected to observe transparency as well as accountability with respect to the funds raised as well as expenditure incurred by them, both during elections and otherwise, particularly when concerns have been expressed in various quarters about the same effecting the level playing field vis-à-vis the purity of elections. Accordingly, the Answering Respondent (i.e. Election Commission of India) formulated draft guidelines for the purpose of having transparency and accountability with regard to the funds of political parties and in the matters related to expenditure incurred during elections. It is relevant to mention that the said draft guidelines were circulated to all the recognized political parties on 26.02.2014 for their comments/ suggestions/inputs.

- 4.6 Consequently, after having received suggestions from various recognized political parties and in the interest of purity of the election process, the Answering Respondent issued detailed guidelines under Article 324 of the Constitution of India in the interest of transparency in the matter of financial matters of political parties. It is relevant to mention that the said guidelines have already been forwarded by the Answering Respondent to all the recognized political parties (national and regional) for adherence of the same vide its Letter No. 76/PPEMS/Transparency/2013 dated 29.08.2014, wherein it has also been specified that the said guidelines would be applicable from 01.10.2014.

It is pertinent to point out herein that the Answering Respondent, vide the aforementioned letter dated 29.08.2014, directed/ mandated that the recognized political parties shall file all reports, namely, the contribution reports in Form 24A, the Audited Annual Accounts and the Election Expenditure Statements with the Answering Respondent whereas the unrecognized political parties shall file the same with the Chief Electoral Officers (CEO) of the respective states in the prescribed time and manner.

True copy of the Letter No. 76/PPEMS/Transparency/2013 dated 29.08.2014 including the guidelines is annexed herewith and marked as ANNEXURE-C/2 at Pages to .

5. The Answering Respondent submits that the Petitioners in the present Writ Petition have sought that a writ of declaration or any other writ be issued declaring:-
 - a. Section 135 of the Finance Act, 2017 and the corresponding amendment carried out in Section 31 of the Reserve Bank of India Act, 1934,
 - b. Section 137 of the Finance Act, 2017 and the corresponding amendment carried out in Section 29C of the Representation of the People Act, 1951,
 - c. Section 11 of the Finance Act, 2017 and the corresponding amendment carried out in Section 13A of the Income Tax Act, 1961,

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d. Section 154 of the Finance Act, 2017 and the corresponding amendment carried out in Section 182 of Companies Act, 2013, and

e. Section 236 of Finance Act, 2016 and the corresponding amendment carried out in Section 2(1)(j)(vi) of the Foreign Regulations Contribution Act, 2010,

as being unconstitutional, illegal and void.

5.1 In this regard, it is pertinent to point out herein that the Answering Respondent vide its Letter No. 3/ER/LET/ECI/FUNC/JUD/SDR/VOL-I/2017 dated 15.03.2017 had informed the Ministry of Law and Justice that it had reviewed the various provisions relating to funding of political parties and candidates. The Answering Respondent, further, proposed that certain amendments may be made in the Income Tax, 1961 and relevant provisions of the Representation of the People Act, 1951.

Thereafter, the Answering Respondent, vide its Letter No. 56/PPEMS/Transparency/2017 dated 26.05.2017, had informed the Ministry of Law and Justice that certain provisions of the Finance Act, 2017 and the corresponding amendments carried out in the Income Tax Act, the Representation of the People Act, 1951 and the Companies Act, 2013 will have serious repercussions/impact on the transparency aspect of political finance/funding of political parties.

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True copy of the Letter No. 3/ER/LET/ECI/FUNC/JUD/SDR/VOL-I/2017 dated 15.03.2017 issued by the Election Commission of India is annexed herewith and marked as ANNEXURE-C/3 at Pages to .

True copy of the Letter No. 56/PPEMS/Transparency/2017 dated 26.05.2017 issued by the Election Commission of India is annexed herewith and marked as ANNEXURE-C/4 at Pages to .

6. Section 135 of the Finance Act, 2017 and the corresponding amendment carried out in Section 31 of the Reserve Bank of India Act, 1934

Section 135 of the Finance Act, 2017 reads as follows:

"Section 135. In the Reserve Bank of India Act, 1934, in section 31, after sub-section (2), the following sub-section shall be inserted, namely:—

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

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

6.1 The Answering Respondent submits that in as much as the aforesaid amendment to Section 135 of the Finance Act, 2017 and the corresponding amendment carried out in Section 31 of

the Reserve Bank of India Act, 1934 is concerned, the amendment is related to the Reserve Bank of India and, thus, the Answering Respondent (i.e. the Election Commission of India) is in no position to comment on this particular amendment.

7. Section 137 of the Finance Act, 2017 and the corresponding amendment carried out in Section 29C of the Representation of the People Act, 1951

Section 137 of the Finance Act, 2017 reads as follows:

"Section 137. *In the Representation of the People Act, 1951, in section 29C, in sub-section (1), the following shall be inserted, namely:—*

'Provided that nothing contained in this sub-section shall apply to the contributions received by way of an electoral bond.

Explanation:—For the purposes of this sub-section, "electoral bond" means a bond referred to in the Explanation to sub-section (3) of section 31 of the Reserve Bank of India Act, 1934.'

7.1 In this regard, it may be relevant to refer to the provisions of Section 29C of the Representation of the People Act, 1951, which now reads as follows:

"Section 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) 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.

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7.2 The Answering Respondent submits that it had informed the Ministry of Law and Justice, vide para 2 of its aforementioned letter dated 26.05.2017, that by insertion of proviso to Section 29C of the Representation of the People Act, 1951 vide Section 137 of the Finance Act, 2017, it is evident that any donation received by a political party through an electoral bond has been taken out of the ambit of reporting under the Contribution Report as prescribed under Section 29C of the Representation of the People Act, 1951.

7.3 The Answering Respondent further informed the Ministry of Law and Justice, vide the abovementioned letter dated 26.05.2017, that in a situation where contributions received through Electoral Bonds are not reported, on perusal of the Contribution Reports of the political parties, it cannot be ascertained whether the political party has taken any donation in violation of provisions under Section 29-B of the Representation of the People Act, 1951, which prohibits the political parties from taking donations from Government Companies and Foreign sources.

8. **Section 11 of the Finance Act, 2017 and the corresponding amendment carried out in Section 13A of the Income Tax Act, 1961**

Section 11 of the Finance Act, 2017 reads as follows:

"Section 11. In section 13A of the Income-tax Act, with effect from the 1st day of April, 2018,—

(1) in the first proviso,—

(i) in clause (b),—

(A) after the words "such voluntary contribution", the words "other than contribution by way of electoral bond" shall be inserted;

(B) the word "and" occurring at the end shall be omitted;

(ii) in clause (c), the word "; and" shall be inserted at the end;

(iii) after clause (c), the following clause shall be inserted, namely:—

'(d) no donation exceeding two thousand rupees is received by such political party otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bond.

Explanation.—For the purposes of this proviso, "electoral bond" means a bond referred to in the Explanation to sub-section (3) of section 31 of the Reserve Bank of India Act, 1934 (2 of 1934).'

(II) after the second proviso, the following proviso shall be inserted, namely:—

"Provided also that such political party furnishes a return of income for the previous year in accordance with the provisions of

sub-section (4B) of section 139 on or before the due date under that section."

8.1 Thus, Section 13A of the Income Tax Act, 1961 now reads as under:

"S. 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 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;*
- (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 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 that 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)."

8.2 It is pertinent to point out herein that the Answering Respondent (i.e. the Election Commission of India) had written to the Ministry of Law and Justice on 15.03.2017, stating that it had been observed that many political parties had been reporting a major

portion of the donations received as being less than the prescribed limit of Rs. 20,000 for which details regarding name, address & PAN of the donors were not being maintained. Therefore, in the interest of transparency of funding of political parties, the Election Commission of India proposed the following amendments to the existing laws:

(i) **Amendments to Income Tax Act.**

Existing provisions of IT Act	Proposed changes
Sections 13A of the Income-tax Act, 1961 confers tax exemption to political parties for Income from house property income by way of voluntary contribution income from capital gains and income from other sources. Political parties registered with the Election Commission of India are exempt from paying Income Tax under Section 13A of Income Tax Act, 1961 as along as the political parties comply with the provision to section 13A, that is, if they file their Income Tax Return every Assessment Year along with their audited accounts, Income/Expenditure details and balance sheet.	To only grant income tax exemption, u/s 13A in respect of voluntary contributions, as under: i) 100% exemption in respect of voluntary contributions received by political parties through cheque/e-transfer; ii) In respect of voluntary contributions in cash, their tax exemption may be restricted to an amount of Rs. 20 Crores or 20% of the total contributions received by a political party, whichever is less; and iii) No exemption for anonymous/cash donations above Rs. 2000 (Rs. Two Thousand Only).

donations by political parties still remains at Rs. 20,000/- in Section 29C of the Representation of the People Act, 1951. The Answering Respondent, thus, informed the Ministry of Law and Justice that the Representation of the People Act, 1951 needed to be amended to reduce the limit of anonymous/ cash donations to Rs. 2,000/- so as to bring the Income Tax Act, 1961 and the Representation of the People Act, 1951 in consonance with each other.

9. Section 154 of the Finance Act, 2017 and the corresponding amendment carried out in Section 182 of the Companies Act, 2013

Section 154 of the Finance Act, 2017 reads as follows:

"Section 154. *In the Companies Act, 2013, in section 182—*

(i) in sub-section (1),—

(a) first proviso shall be omitted;

(b) in the second proviso,—

(A) the word "further" shall be omitted;

(B) the words "and the acceptance" shall be omitted;

(ii) for sub-section (3), the following shall be substituted, namely:—

"(3) Every company shall disclose in its profit and loss account the total amount contributed by it under this

section during the financial year to which the account relates.

(3A) Notwithstanding anything contained in sub-section (1), the contribution under this section shall not be made except by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account:

Provided that a company may make contribution through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties."

9.1 Thus, Section 182 of the Companies Act, 2013 now reads as under:

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 no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making of the contribution authorised by it.

(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 to affect 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 the total amount contributed by it under this section during the financial year to which the account relates.

(3A) Notwithstanding anything contained in sub-section (1), the contribution under this section shall not be made except by an account payee cheque drawn on a bank or an account payee

bank draft or use of electronic clearing system through a bank account:

Provided that a company may make contribution through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.

(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.

9.2 In this regard, the Answering Respondent informed the Ministry of Law of Justice, vide para 4 to 6 of its aforementioned Letter dated 26.05.2017. The Commission reiterates its stand in this regard.

10. Section 236 of the Finance Act, 2016 and the corresponding amendment carried out in Section 2(1)(j)(vi) of the Foreign Contribution Regulation Act, 2010

Section 236 of the Finance Act, 2016 reads as follows:

"Section 236. In the Foreign Contribution (Regulation) Act, 2010, in section 2, in sub-section (1), in clause (j), in sub-clause (vi), the following proviso shall be inserted and shall be deemed of have been inserted with effect from ¹[the 5th August, 1976], namely:—

"Provided that where the nominal value of share capital is within the limits specified for foreign investment under the Foreign Exchange Management Act, 1999 (42 of 1999), or the rules or regulations made thereunder, then, notwithstanding the nominal value of share capital of a company being more than one-half of such value at the time of making the contribution, such company shall not be a foreign source;"

- 10.1 The Answering Respondent submits that insofar as the changes made in the Foreign Regulation Contribution Act, 2010 through the Finance Act, 2016 is concerned, the said amendment allows donations to be received from foreign companies having majority stake in Indian companies, provided that they follow the FEMA guidelines pertaining to foreign investment in the sector in which they operate. This is a change from the existing law barred donations from all foreign sources as defined under the Foreign Contribution Regulation Act. This would allow unchecked foreign funding of political parties in India which could lead to Indian policies being influenced by foreign companies.
11. Insofar as prayer (b) of the above Writ Petition is concerned, wherein the Petitioner has sought issuance of a writ of mandamus or any other appropriate writ directing that no political

parties would accept any donation in cash, it is pertinent to point out herein that Section 13A of the Income Tax Act, 1961 has been amended by Section 11 of the Finance Act, 2017 and a new clause (d) has been inserted in the 1st proviso to the said Section 13A, which provides that:

"(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."

12. The Answering Respondent submits that having felt the strong need for transparency in the matter of collection of funds by the political parties and also about the manner in which those funds are expended by them, the Answering Respondent has time and again proposed various electoral reforms to make the election process in India more transparent.
13. The Answering Respondent submits that having felt the pressing need for ensuring transparency and accountability in the financial management of political parties, the Election Commission of India (i.e. the Answering Respondent) proposed certain Electoral Reforms in July 2004, when it sent a set of 22 proposals on Electoral Reforms to the Government, which was referred to the Department Related Parliamentary Standing Committee (RS) on Personnel, Public Grievances, Law and Justice for examination by the Chairman, Rajya Sabha in the year 2005. It is relevant to mention that the said 22 proposals were divided into two parts.

The first part of the aforementioned proposals contain certain urgent proposals set out by the Election Commission of India for electoral reforms in the areas that were not taken up by it in the past and which the Election Commission of India considered to be necessary in the interest of purity and fairness of elections in public interest.

13.1 It is submitted that the Proposal No. 9 of the Election Commission of India in the first part dealt with compulsory maintenance of accounts by political parties and audit thereof. The relevant extract of the aforesaid Proposal No. 9 reads as under:

"9. Compulsory maintenance of accounts by political parties and audit thereof by agencies specified by the Election Commission

The Commission considers that the political parties have a responsibility to maintain proper accounts of their income and expenditure and get them audited by agencies specified by the Commission annually. While making this proposal in 1998, the Commission had mentioned that there was strong need for transparency in the matter of collection of funds by the political parties and also about the manner in which those funds are expended by them. Although in an amendment made last year, vide the Election and Other Related Laws (Amendment) Act, 2003, a provision has been made regarding preparation of a report of contributions received by political parties in excess of Rs.20,000/-, this is not sufficient for ensuring transparency and

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accountability in the financial management of political parties. Therefore, the political parties must be required to publish their accounts (at least abridged version) annually for information and scrutiny of the general public and all concerned, for which purpose the maintenance of such accounts and their auditing to ensure their accuracy is a pre-requisite. The Commission reiterates these proposals with the modification that the auditing may be done by any firm of auditors approved by the Comptroller and Auditor General.

The audited accounts should be available for information of the public."

True copy of the relevant extracts of the Proposed Electoral Reforms published by the Election Commission of India in July 2004 is annexed herewith and marked as ANNEXURE-C/5 at pages to

14. The Answering Respondent further submits that Political Parties are major stakeholders in a democracy and they should be accountable to the public. The Answering Respondent in order to ensure transparency and empower people to make informed decisions about electing their representatives, sent a set of 47 proposals (encapsulated in 10 chapters) on Electoral Reforms to the Government of India in December 2016, wherein Chapter VII provided for 'Reforms relating to Political Parties'. It is submitted that the Proposal No. 3 of the said Chapter VII deals with the issue of "Compulsory maintenance of accounts by political

parties". The relevant extract of the aforesaid Proposal No. 3 reads as under:

"3. COMPULSORY MAINTENANCE OF ACCOUNTS BY POLITICAL PARTIES

Reason for proposed amendment

Political parties are major stakeholders in a democracy and they should be accountable to the public. This will ensure transparency and empower people to make informed decisions about electing their representatives.

Proposed Reform

Sections 29C, 29D, 29E, as recommended by the Law Commission in Report 255, should be inserted in The Representation of the People Act, 1951.

Recommendation by the Law Commission

Law Commission of India report on Electoral Reforms, Report No. 255 (March 12, 2015) endorsing the view of the Election Commission stated that:

"5. Section 29C of the RPA has to be deleted. In its place, a new section 29C has to be inserted mandating political parties to maintain audited accounts, along the line of the 170th Report's recommended section 78A:

"29C. Maintenance, audit, publication of accounts by political parties

- (1) Each recognised political party shall maintain accounts clearly and fully disclosing all the amounts received by it and clearly and fully disclosing the expenditure incurred by it. The account shall be maintained according to the financial year. Within six months of the close of each financial year, each recognised political party shall submit to the Election Commission, its accounts, duly audited by a qualified and practicing chartered accountant from a panel of such accountants maintained for the purpose by the Comptroller and Auditor General.
- (2) The Election Commission shall make publicly available, on its website, the audited accounts submitted by all political parties under sub-section (1).
- (3) The Election Commission shall also keep these accounts on file for three years after their submission and shall make them available for public inspection on the payment of a prescribed fee."

6. The existing section 29C of the RPA has to be modified and recast as section 29D to first, include aggregate contributions from a single donor amounting to Rs. 20,000 within its scope; second, require parties to disclose the names, addresses and PAN card numbers (if applicable) of donors along with the amount of each donations; third, require parties to disclose such particulars even for contributions less than Rs. 20,000 if such contributions exceed Rs. 20 crore of the party's total contributions or twenty per cent of total contributions,

whichever is lesser. Consequential amendments will need to be made to the Election Rules and the IT Act. The proposed section 29D reads as:

"29D. Declaration of contribution 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, including an aggregate of contributions 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, including an aggregate of contributions in excess of twenty thousand rupees received by such political party from any company, other than a Government company, in that financial year.

(2) Notwithstanding anything contained in sub-section (1), the treasurer of a political party or any other person authorised by the political party in this behalf shall, in the report referred to in sub-section (1), disclose the particulars of such contributions received from a person or company, other than a Government company, even if the contributions are below twenty thousand rupees, in case

such contributions exceeds twenty crore rupees, or twenty per cent of total contributions, whichever is lesser, as received by the political party in that financial year.

Illustration: A political party, 'P', receives a total of hundred crore rupees, in cash or cheque, in a financial year. Out of this amount, fifty crore rupees are received from undisclosed sources, by way of contributions less than twenty thousand rupees (in cash or multiple cheques). P shall be liable to disclose the particulars of all donors beyond twenty crores, even if they have contributed less than twenty thousand rupees each.

- (3) The report under sub-section (1) shall be in such form as may be prescribed.
- (4) 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.

Explanation: For the avoidance of doubt, it is hereby clarified that the term "particulars" mentioned in this section shall include the amount donated; the names and addresses, and PAN card number if applicable, of such person or company referred to in this section."

7. A new section 29E to be inserted in the RPA requiring the ECI to make publicly available, on its website, all the contribution reports submitted by all political parties under section 29D. Section 29E shall read as:

"29E. Disclosure of contribution reports submitted by political parties.-

- (1) The Election Commission shall make publicly available, on its website, the contribution reports submitted by all political parties under section 29D.*
- (2) The Election Commission shall also keep these reports on file for three years after their submission and shall make them available for public inspection on the payment of a prescribed fee."*

14.1 It is further submitted that the Proposal No. 4 of the said Chapter VII deals with the issue of "Accounting and Auditing Report of Political Parties". The relevant extract of the aforesaid Proposal No. 4 reads as under:

"4. ACCOUNTING AND AUDITING REPORT OF POLITICAL PARTIES

Reason for proposed amendment

Accounting and auditing standards would help political parties to maintain uniformity in presentation of financial statements, proper disclosure and transparency of their accounts.

Proposed amendment

On the request of Election Commission, the Institute of Chartered Accountants of India made certain recommendations in February 2010 under its "Guidance Note on Accounting & Auditing of Political Parties" to the Election Commission for improving the system of accounting followed by political parties in India. Important recommendations of ICAI include:

- a) Political parties should maintain their books of account on accrual basis;
- b) Elements of financial statements basically comprising income, expenses, assets and liabilities;
- c) Principles for recognition of income, expenses, assets and liabilities;
- d) Political parties, irrespective of the fact that no part of the activities is commercial, industrial or business in nature that all political parties should follow Accounting Standards;
- e) A Political Party should not recognise a contingent liability on the face of financial statements, but it should make the following disclosures, for each class of contingent liability, in the notes to financial statements;
- f) Books of account format was provided;
- g) Schedule 13 of the Guidance Note states that collection from issuance of coupons/ sale of publications should be classified and disclosed.

The ECI issued transparency guidelines under Article 324 of the Constitution of India bearing No. 76/PPEMS/Transparency/2013 dated 29/08/2014 with effect from 01/10/2014 stating that the accounts maintained by the treasurer of the political party shall conform to the "Guidance Note on Accounting and Auditing of political parties" issued by the ICAI. Although Election Commission in its guidelines date 29/08/2014 required political parties to conform to the "Guidance Note on Accounting & Auditing of Political Parties" by ICAI, the Guidance Note should be mandated by an act of the legislature as presently these guidelines are mere recommendations".

- 14.2 It is further submitted that the Proposal No. 5 of the said Chapter VII deals with the issue of "Form 24A under Rule 85B of the Conduct of Election Rules, 1961". The relevant extract of the aforesaid Proposal No. 5 reads as under:

"5. FORM 24A UNDER RULE 85B OF THE CONDUCT OF ELECTION RULES, 1961.

Reason for proposed amendment

The present Form 24A does not incorporate the contributions amounting to a sum below Rs. 20,000/-. Form 24A needs to be amended by including a column for mentioning the total contributions received is amounts less than Rs. 20,000/-. This will be in the interest of transparency.

Proposed amendment

Form 24A should be amended for including the clause as mentioned above. Proposed new Form 24A is enclosed."

14.3 It is further submitted that the Proposal No. 6 of the said Chapter VII deals with the issue of "Prohibition on Anonymous Donations". The relevant extract of the aforesaid Proposal No. 6 reads as under:

"6. PROHIBITION ON ANONYMOUS DONATIONS

Reason for Proposed Amendment

Although section 29C of The Representation of the People Act, 1951 requires the political parties to declare their donations, however such declaration is mandated only for contributions above Rs 20,000.

Proposed amendment

Anonymous contributions above or equal to the amount of Rupees two thousand should be prohibited.

Recommendations by the Law Commission

Law Commission of India report on Electoral Reforms, Report No. 255 (March 12, 2015):

"Finally, separate provisions should be inserted, along the lines of the comparative practice discussed above, requiring: (a) All parties to submit the names and addresses of all their donors (regardless of the amounts or source of funding) for contributions greater than Rs. 20,000 through a new section 29D, RPA. A

maximum of up to Rs. 20 crore or 20% of the party's entire collection, whichever is lower, can be anonymous;"

True copy of the relevant extracts of the Proposed Electoral Reforms published by the Election Commission of India in December 2016 is annexed herewith and marked as ANNEXURE-C/6 at pages to .

15. A perusal of the aforementioned Electoral Reforms clearly reveals that the Answering Respondent has taken appropriate action to get the political parties to maintain proper accounts of their income and expenditure, and that to make the same available for perusal of the general public in order to bring about transparency and accountability with regard to the political parties and the electoral process.
16. It is evident from a perusal of the aforementioned letters/communications and proposals that the Answering Respondent has time and again voiced the importance of declaration of donation received by the political parties and also about the manner in which those funds are expended by them, for better transparency and accountability in the election process.
17. The Answering Respondent craves leave of this Hon'ble Court to file further additional affidavit, if so required or deemed fit besides making detailed submissions at the time of hearing.
18. Hence, it is prayed that this Hon'ble Court may be pleased to record the above position in so far as Answering Respondent

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(i.e. Respondent No. 3) is concerned and pass such order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and, thus, render justice.

V. U. Pandey.

DEPONENT

विजय कुमार पाण्डेय
Vijay Kumar Pandey
निदेशक/Director
भारत निर्वाचन आयोग
Election Commission of India
बडौदा रोड-110001/New Delhi-110001

VERIFICATION

I, deponent do hereby verify that the contents of this affidavit are true and correct to the best of my knowledge no part of it is false and nothing material has been concealed thereof.

Verified at New Delhi, on this 25th day of March, 2019.

V. U. Pandey.

DEPONENT

विजय कुमार पाण्डेय
Vijay Kumar Pandey
निदेशक/Director
भारत निर्वाचन आयोग
Election Commission of India
बडौदा रोड-110001/New Delhi-110001

