SYNOPSIS

The Petitioner No. 1 in the present Writ Petition is the Communist Party of India (Marxist), a National political party registered with the Election Commission of India which currently forms the state governments in Kerala and Tripura and is represented by nine members in the House of the People and by seven members in the Council of States. The Petitioner No. 2 herein is the General Secretary of the Petitioner No. 1 and at the time of the passing of the Finance Act, 2017, was a sitting member of the Council of States.

This Writ Petition under Article 32 of the Constitution of India seeks to invoke the fundamental rights under Article 14 and Article 19(1)(a) with reference to the statutory provisions regulating funding of political parties in India which have become contradictory to the principles of reasonableness, transparency, and accountability. The Petitioners herein seek directions from this Court to strike down amendments made through the Finance Act, 2017 and the Notification dated 02.01.2018 issued in pursuance of the amendments by the Ministry of Finance, the cumulative effect of which is that political parties are entitled to receive unlimited donations from individuals and corporations, including loss-making and foreign corporations, without having to record or report the sources of such funding. It is submitted that these

amendments jeopardize the very foundation of Indian democracy.

The introduction of "electoral bonds" by the Finance Act by which details of donations made to political parties are not reported or recorded by the parties and whose purchasers' identity remains hidden from the public realm is the creation of an obscure funding system which is unchecked by any authority. The requirement of disclosure of such bonds, and the names and addresses of their contributors in the account statement of political parties is omitted by the amendment to the Representation of the People Act, 1951.

The system of corporate donations has been made correspondingly secretive by removing the requirement of disclosure of the names of political parties to whom contributions have been made by amendment to the Companies Act, 2013. In effect, at both ends of the transaction, neither the contributor nor the recipient of the funds is required to disclose the identity of the other. The inevitable consequence of these amendments is the destruction of the principle underlying Article 19(1)(a) and the concept of democratic institutions functioning for the interests of the people. Quid pro quo arrangements, not unknown to Indian polity, will only be strengthened.

Corporate influences are further strengthened by the amendment to the Companies Act, 2013 which removes the ceiling on the amount permissible for donation by a company and allows a company to be eligible as a contributor regardless of whether it has been making profits or losses.

The system contemplated by the amendments has been given effect by the issuance of the "Electoral Bond Scheme, 2018" introduced by Notification dated 02.01.2018 by the Respondent No. 1. The intention of the Respondent No. 1 in introducing the Scheme has been stated by the Minister of Finance to be to introduce transparency and reduce the usage of "black money" in the financing of political parties. It is submitted that neither of these objectives is achieved by the provisions of the Scheme. Firstly, the provisions of the Scheme are arbitrary, vague, and in violation of the fundamental right to information in their implementation of the impugned amendments. Secondly, the Scheme mandates compliance of the purchasers of bonds with the "Know Your Customer" norms specified by the Reserve Bank of India. It is submitted that the rational effect of this provision is that contributors using unaccounted cash to donate to political parties will not be incentivized to forego their reserves of "black money" and will continue to donate the same to political parties, remaining unaffected by the introduction of

Electoral Bonds and rendering the exercise ineffective in this respect.

The Petitioners submit that the confluence of uncapped corporate resources funding political parties can only lead to private corporate interests taking precedence over the needs and rights of the people of the State in policy considerations. The interest of competitiveness in the market to ensure meritorious distribution of government contracts is also betrayed, and the amendments essentially usher in a system of governance determined by the victors of corporate bidding wars and lobby groups.

The dangers of such overextension of influence are escalated by the anonymity afforded to corporate donors and political recipients. When political parties cannot be made to reveal the source of their funding – in direct violation of the Supreme Court's judgment in *C. Narayanaswamy v C. K. Jaffer Sharief* (1994) Supp (3) SCC 170 – and corporations cannot be made to reveal the recipients of their donations, the right of citizens to know essential information about the political scenario of the country is violated, in terms of the Supreme Court's decisions in a plethora of judgments aimed at increasing the ambit of freedom under Article 19(1)(a) and improving the wealth of information available to the public (as in *Secretary, Ministry of Information & Broadcasting v Cricket Association of*

Bengal (1995) 2 SCC 161, *State of U.P. v Raj Narain* (1975) 4 SCC 428, *Union of India Vs. Association for Democratic Reforms & Another* (2002) 5 SCC 294, *People's Union for Civil Liberties & Anr. v Union of India & Anr.* (2003) 4 SCC 399, *Common Cause A Registered Society v Union of India & Ors.* (1996) 2 SCC 752.

The manner adopted in passing the Finance Act, 2017 is symbolic of its arbitrary and unconstitutional provisions. The Act was introduced as a Money Bill in the Lok Sabha, and passed by it after rejecting five amendments proposed by the Rajya Sabha, despite being completely lacking in the character of a Money Bill and is liable to be struck down on this ground as well. The subversion of fundamental principles of our democratic state has been ushered in through an unconstitutional procedure in order to escape the scrutiny of the Rajya Sabha.

Thus the Petitioners seek directions to hold as arbitrary, illegal, and unconstitutional the following provisions in the Finance Act, 2017:

1. Section 137 in Chapter VI, Part IV, of the Finance Act, 2017 and the corresponding amendment in Section 29C of the Representation of the People Act, 1951, which is reproduced herein:

Section 29C of the Representation of the People Act, 1951

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.

2. Section 154 in Chapter VI, Part-XII, the Finance Act, 2017 and the corresponding amendment in Section 182 of the Companies Act, 2013 which is reproduced herein:

Section 182 of the Companies Act, 2013

Section 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 (43 of 1951).

3. Section 11 in Chapter III, of the Finance Act, 2017 and the corresponding amendment in Section 13A of the Income Tax Act, 1961, which is reproduced herein:

Section 13A of the Income Tax Act, 1961

13A. Special provision relating to incomes of political parties.

Any income of a political party which is chargeable under the head "Income from house property" or" Income from other sources" or any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party:

Provided that-

(a) such political party keeps and maintains such books of account and other documents as would enable the

Assessing Officer to properly deduce its income therefrom;

(b) in respect of each such voluntary contribution other than contribution by way of electoral bond in excess of ten thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution;

(c) the accounts of such political party are audited by an accountant as defined in the Explanation below sub-section (2) of section 288; and

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

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

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

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

4. Section 135 in Chapter VI, Part-III, of the Finance Act, 2017 and the corresponding amendment in Section 31 of the Reserve Bank of India Act, 1934, which is reproduced herein:

Section 31 in the Reserve Bank of India Act, 1934.

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.

LIST OF DATES

DATE	PARTICULARS
31.03.2002	The Report of the National Commission to Review the Working of the Constitution recommends reforms in relation to the expenditure and incomes of political parties including mandatory maintenance of audited accounts.
29.08.2014	The Election Commission of India releases its report entitled "*Guidelines On Transparency And Accountability In Party Funds And Election Expenditure Matter*"

	recommending stronger compliance with accounting and reporting requirements.
12.03.2015	The 20th Law Commission releases its Report No. 255 highlighting the lack of accountability and awareness in political funding.
23.03.2015	The Election Commission releases a report entitled *"Background Paper on Political Finance and Law Commission Recommendations"* with reference to the Law Commission's Report No. 255.
December 2016	The Election Commission releases its report entitled "Proposed Electoral Reforms" emphasizing the need to improve transparency and accountability in political funding through reforms and amendments to inter alia the Representation of the People Act, 1951 and the Income Tax Act, 1961.
01.02.2017	The Finance Bill, 2017 is introduced as a Money Bill (Bill No. 12 of 2017) in the Lok Sabha.
March 2017	Members of the Rajya Sabha express their

	reservations regarding the Finance Bill, 2017 and its potential to increase unlawful funding of political parties and propose certain amendments.
31.03.2017	The Finance Act, 2017 receives the assent of the President and is passed without amendments in the form as passed by the Lok Sabha.
02.01.2018	The Ministry of Finance issues the "Electoral Bond Scheme" by notification in the Gazette of India (Extraordinary).
19.01.2018	Present petition filed.

IN THE HON'BLE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. 59 OF 2018

(A petition under Article 32 of the Constitution of India praying for a Writ of Mandamus or any other appropriate writs seeking issuance of directions to set aside provisions of the Finance Act, 2017 and the Electoral Bond Scheme, 2018)

IN THE MATTER OF:

1. **Communist Party of India (Marxist)**, Through its General Secretary, having office at Central Committee, A. K. Gopalan Bhawan, 27-29, Bhai Vir Singh Marg, New Delhi 110001.
2. **Sitaram Yechury**, S/o Late Shri S.S. Yechury, aged about 65 years, C/o A. K. Gopalan Bhawan, 27-29, Bhai Vir Singh Marg, New Delhi 110001. **... Petitioners**

VERSUS

1. **Union of India**, through Secretary, Ministry of Finance, North Block, Central Secretariat, New Delhi 110001.
2. **Secretary, Ministry of Law and Justice,** North Block, Central Secretariat, New Delhi 110001.
3. **Election Commission of India**, Nirvachan Sadan, Ashoka Road, New Delhi 110001. **... Respondents**

All respondents are contesting respondents

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION SEEKING DIRECTIONS TO SET ASIDE PROVISIONS UNDER THE FINANCE ACT, 2017 AND THE ELECTORAL BOND SCHEME, 2018

To,

The Hon'ble the Chief Justice of India

And His Companion Justices

of the Hon'ble Supreme Court of India.

The Writ Petition of the Petitioner above named

MOST RESPECTFULLY SHEWETH:

1. The present Writ Petition under Article 32 of the Constitution of India is being filed by the Petitioner to enforce fundamental rights, particularly the Right to Equality (Article 14) and the Right to Freedom (Article 19) guaranteed by the Constitution of India. The Petitioner No. 1 is the Communist Party of India (Marxist) and the Petitioner No. 2 is the General Secretary of the Petitioner No. 1.

ARRAY OF PARTIES

2. The Petitioner No. 1 is the Communist Party of India (Marxist), a National political party registered with the Election Commission of India, founded 7th November 1964. The Petitioner No. 1 currently forms the state

governments in Kerala and Tripura and is represented by nine members in the Lok Sabha and by seven members in the Rajya Sabha. Since its inception, the Petitioner No. 1 has concerned itself with voicing the struggles of the general population of the country and working for the interests of the people in Parliament and at the State level.

3. The Petitioner No. 2 is a citizen of India who has held the office of the General Secretary of the Petitioner No. 1 since April 2015 at A.K. Gopalan Bhawan, 27-29, Bhai Vir Singh Marg, New Delhi 110001. The Petitioner No. 2 has been a member of the Petitioner No. 1 since 1975 and was a member of the Rajya Sabha from 2005 till 2015 representing West Bengal. At the time of the passing of the Finance Act, 2017, the Petitioner No. 2 was a sitting member of the Rajya Sabha.

4. The Respondent No. 1 is the Union of India, represented by the Ministry of Finance, which is the appropriate ministry dealing with the regulation of funding to political parties and the safeguard of the fundamental rights of the citizens of India and the Ministry through which the Notification introducing Electoral Bonds has been issued on 2nd January, 2018.

5. The Respondent No. 2 is the Secretary, Ministry of Law and Justice, of the Union of India which is the appropriate ministry dealing with the constitutional procedure for enactment of laws and the safeguard of the fundamental rights of the citizens of India.

6. The Respondent No. 3 is the Election Commission of India, which is responsible for the superintendence, direction and control of the process for conduct of elections to Parliament and Legislature of every State and to the offices of President and Vice-President of India, as well as registration and supervision of political parties.

7. The Petitioners espouse the cause of safeguarding the fundamental rights of the citizens of India guaranteed under Article 14 and Article 19 of the Constitution.

8. All the Respondents referred to hereinabove are "State" within the meaning of Article 12 of the Constitution and hence amenable to writ jurisdiction under Article 32 of the Constitution.

FACTS OF THE CASE

9. The brief facts that give rise to the present Writ Petition are as follows:

10. The Petitioners are of the firm belief that the Constitution of India guarantees equality and the freedom of information for all persons. Therefore, they have moved

this Writ Petition under Article 32 of the Constitution of India, which seeks to invoke the fundamental rights essential for the functioning of a fair and free democracy, the right to equality guaranteed under Article 14 and the right to freedom of speech and expression guaranteed under Article 19. The Petition pertains to the amendments made through the Finance Act, 2017 and the Notification dated 02.01.2018 made under it ("**Electoral Bond Scheme, 2018**") which have the effect of encouraging corruption and lack of accountability in the financing of political parties by removing safeguards promoting transparency and fairness in opposition to the guidelines and recommendations of the Election Commission of India and the Law Commission of India.

11. The amendments being challenged in the present petition are:

1. Amendment to Section 29C of the Representation of the People Act, 1951 through Chapter VI, Part IV, Section 137 of the Finance Act, 2017.
2. Amendment to Section 182 of the Companies Act, 2013 through Chapter VI, Part-XII, Section 154, the Finance Act, 2017.

3. Amendment to Section 13A of the Income Tax Act, 1961 through Chapter III, Section 11 of the Finance Act, 2017.

4. Amendment to Section 31 of the Reserve Bank of India Act, 1934 through Chapter VI, Part-III, Section 135 of the Finance Act, 2017.

12. The Petition additionally challenges the Notification issued by the Ministry of Finance (Department of Economic Affairs) dated 02.01.2018 made under Section 31(3) of the Reserve Bank of India, 1934 by which the Central Government has sought to make the "Electoral Bond Scheme, 2018". A true typed copy of the Sections 11, 135, 137 and 154 of the Finance Act, 2017 is annexed herewith as **Annexure P-1** at pages **67** to **70**. A true typed copy of the Notification of the Ministry of Finance dated 2.01.2018 is annexed herewith as **Annexure P-2** at pages **71** to **76**.

13. It is submitted that the cumulative effect of the said amendments is the introduction of "Electoral Bonds" as vehicles for anonymous financial contributions to political parties, the details of which do not need to be recorded in their income statements and the relaxation of regulations of corporate contributions to political parties, allowing companies to make anonymous contributions of

unlimited amounts. This has been done by the amendments challenged in the present Petition and the subsequent notification of the Electoral Bond Scheme, 2018.

14. It is also submitted that the amendments made by the Finance Act, 2017 do not fall within the meaning of a "Money Bill" under Article 110 of the Constitution and the Act could not have been categorised as a Money Bill.

15. Section 29C of the Representation of the People Act, 1951 has been amended by Section 137 of the Finance Act, 2017, which is reproduced herein:

> ***"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."*

16. Section 13A of the Income Tax Act has been amended by Section 11 of the Finance Act, 2017, which is reproduced herein:

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

(I) 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.;

(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.".

17. Section 31 of the Reserve Bank of India Act, 1934 has been amended by Section 135 of the Finance Act, 2017 which is reproduced herein:

***"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.'."

INTRODUCTION OF ELECTORAL BONDS

18. It is submitted that an Electoral Bond has been introduced as an instrument in the nature of a promissory note or bearer bond which can be purchased

by any individual, HUF, company, firm, association of persons or body of individuals, or artificial judicial person who is a citizen of India or is established or incorporated in India in multiples of amounts specified in the Notification dated 02.01.2018 specifically for the purpose of contribution of funds to political parties. The amendments and Scheme remove the requirement placed on political parties to record and report the name, address, and other details of the donor making any donation to the party in excess of Rs. 20,000 by clause (1) of Section 29C of the Representation of the People Act, 1951 which 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.

19. It is submitted that the object of Section 29C was to make the process of donating to political parties transparent, whether such donation is made by an individual or by a company, by making such declaration necessary for availing the benefits of tax relief provided by the Income Tax Act and that the exception created for electoral bonds under Section 29C of the Representation of the People Act is expressly contrary to the purpose of the Section and the statute it resides within by allowing the exclusion of contributions received by way of electoral bond from the report of contributions in excess of twenty thousand rupees in each financial year for the purpose of availing tax relief under the Income Tax Act.

20. Section 13A of the Income Tax Act, 1961 has been amended by the Finance Act, 2017 to read 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 any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party:

Provided that-

(a) such political party keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom;

(b) in respect of each such voluntary contribution other than contribution by way of electoral bond in excess of ten thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution;

(c) the accounts of such political party are audited by an accountant as defined in the Explanation below sub-section (2) of section 288; and

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

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

Provided also that such political party furnishes a return of income for the previous year in accordance with the provisions of sub-section (4B) of section 139 on or before the due date under that section.

21. That a plain reading of Section 13A of the Income Tax Act makes it clear that in case of contributions made via electoral bond of amounts greater than ten thousand rupees, political parties are under no compulsion to maintain records of receipt of such contributions for the purpose of availing the benefit of exemption under Section 13A.

22. That the deliberate withholding through these amendments of the details of the name of the contributor,

the value of each contribution, and the identity of the recipient political party cannot be revealed to ordinary citizens although available with the issuing Bank in clear contravention of the right to know.

23. That political parties have been prone to non-compliance with the requirements of Representation of the People Act, the Income Tax Act, and the guidelines of the Election Commission, and the impugned amendments create an opaque system of political funding in direct contradiction of the recommendations of the Election Commission and the Law Commission. The Election Commission in its report entitled "Proposed Electoral Reforms" dated December 2016 has specifically dealt with the compulsory maintenance of accounts by political parties under Chapter VII – Reforms relating to Political Parties to combat the problem of rampant under-reporting of contributions received and the Law Commission in its Report No. 255 dated 12th March, 2015 had highlighted the various lacunae in the legal framework for disclosure of contributions to political parties. At point 2.28.7, the Report No. 255 noted that:

> *"Disclosure is at the heart of public supervision of political finance and requires strict implementation of the provisions of the RPA, the IT Act, the*

Company Act, and the ECI transparency guidelines, effective from 1st October 2014, bearing No. 76/PPEMS/ Transparency/2013 dated 29th August, 2014 and 19th November 2014, which need to be given statutory backing. This is especially important given the Commission's recommendations that the current absence of expenditure caps for parties and contributions remain unchanged."

At point 2.28.23, the Commission made the recommendation that Section 29C of the Representation of the People Act should be modified as a new section 29D to firstly, include aggregate contributions from a single donor amounting to Rs. 20,000 within its scope; secondly, to require political parties to disclose the names, addresses, and PAN card numbers (if applicable) of donors along with the amount of each donations; and thirdly, to require parties disclose such particulars for all contributions including those under Rs. 20,000 if such contributions exceed Rs. 20 crore of the party's total contributions or twenty percent of total contributions, whichever is lesser. The Report additionally recommended the addition of provisions to mandate political parties to maintain and submit to the Election Commission audited

accounts which clearly and fully disclose all the amounts received by it in a financial year. A True Copy of the Relevant Portion of the Law Commission Report No. 255 dated 12.03.2015 is annexed herewith as **Annexure P-3** at pages **77** to **90.** A True Copy of the Relevant Portion of the Election Commission Report released in December 2016 is annexed herewith as **Annexure P-4** at pages **91** to **101.**

24. That the impugned amendments do not fall under any of the grounds in Article 19(2), namely "the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence," which are the only permissible grounds for restriction of the right to freedom of information under Article 19(1)(a) of Part III the Constitution guaranteed to every citizen of India. It is submitted that the amendments directly violate the right to know which is an essential right of citizens in a functioning democracy emerging out of the right to freedom of speech and dissemination of information and are not protected by Article 19(2) and are thus liable to be struck down.

25. That citizens have a fundamental right to information regarding the flow of funds from corporations or individuals to political parties and the amendments are in the nature of active concealment from the public of the source of funds, which is antithetical to transparency in the functioning of democracy, while there is no restriction or penalty placed upon donors directly informing the political party of their choice of the fact of contribution. This knowledge can therefore be made available to the political party by the concerned contributor directly without any necessity to inform the general public, the Election Commission, or any statutory regulatory body or Court of law. The inevitable consequence of such a system which actively conceals the identity of contributors at the choice of the contributors and the political parties is a strengthening of corporate influence over governance. "Anonymous" contributors will receive benefits and advantages from the parties supported by them in an unaccountable system of *quid pro quo* while ordinary citizens are purposefully kept in the dark.

Lifting of Limitations on and Transparency of Contributions by Companies under the Companies Act, 2013

26. Section 182 of the Companies has been amended by Section 154 of the Finance Act, 2017 reproduced herein:

"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."."

27. Prior to the amendment to Section 182 of the Companies Act, 2013 by the Finance Act, 2017, Clause (1) of Section 182 prohibited a company from contributing to a political party, in any financial year, an amount in excess of seven and a half per cent of its average net profits during the three immediately preceding financial years. This provision therefore placed an essential safeguard in the form of a cap on the value of corporate contributions and additionally required any company making a contribution to a political party to have been a profitable and genuine business.

28. The removal of this provision imposes a two-fold harm. Firstly, removing the limit on contributions directly encourages greater funding by companies which will inevitably result in a corporate bidding war for the greatest influence over political parties, which would rationally skew in favour of the parties forming the government at the Centre or in States holding the interest of corporations. It also encourages, at the time of and prior to elections, a cacophonic increase in the scale of election propaganda and party campaigns, in which smaller or regional political parties are naturally unable

to compete fairly with the budgets of national-level parties.

29. Secondly, the qualifier for contributing companies having been removed, the amendment to the Act allows for any company under the Companies Act, 2013 to be used to facilitate contributions to political parties, whether or not it is engaged in bona fide and lawful business or is acting in the best interests of its shareholders.

30. Prior to Amendment by Section 182 of the Finance Act, 2017, Clause (3) of Section 182 of the Companies Act required every company making a contribution to a political party under the section to mandatorily disclose, in its profit and loss account, the amounts contributed and the parties to whom such amounts were contributed as a method of ensuring that shareholders of companies were informed and aware of the expenditure by the company. Upon amendments, neither the ordinary public nor shareholders of the company itself are permitted to know the identities or number of political parties to which companies are contributing.

31. The Law Commission in its Report No. 255 dated 12th March, 2015 at point 2.27.13 had considered possible reforms to Section 182 of the Companies Act, 2013 as it was prior to the stated amendments. The Commission

highlighted the fact that, firstly, the authorization of corporate contributions required only the approval of the Board of Directors of the company, excluding the shareholders from participating in the process as is mandated by the United Kingdom. In this regard the Commission recommended that the words "a meeting of the Board of Directors" in sub-clause (1) of Section 182 be replaced by the words "the Annual General Meeting", to mandate all proposals for political contributions by companies to be heard and approved by its shareholders. The amendment by the Finance Act, 2017 has not only ignored the recommendations on this point but has expressly taken a retrograde step in the direction of secrecy of corporate contributions.

32. In ***Kanwar Lal Gupta v AN Chawla & Ors*** **(1975) 3 SCC 646** in the context of limiting election expenditure by political parties and their candidates this Court noted that:

> *"10. The other objective of limiting expenditure is to eliminate, as far as possible, the influence of big money in the electoral process. If there were no limit on expenditure, political parties would go all out for collecting contributions and obviously the largest contributions would be from the rich and*

affluent who constitute but a fraction of the electorate. The pernicious influence of big money would then play a decisive role in controlling the democratic process in the country. This would inevitably lead to the worst form of political corruption and that in its wake is bound to produce other vices at all levels."

33. Corporate donations were banned by amendment to the Companies Act, 1956 by Parliament in 1968. However, in 1985 corporate donations not exceeding a certain limited amount were allowed to recommence on the basis of the justification that political parties require legal and transparent methods of raising capital in order to play a "legitimate role within the defined norms" in the functioning of democracy and the prohibition of lawful donations lead to a huge influx of unaccounted for cash being used for political donations. At point 2.27.12 of its Report No. 255 the Law Commission has pertinently noted that the profit-linked contribution of 7.5% was hardly a significant restriction for large companies. At point 2.28.5 the Report recommends that in order to effectively enforce the intended rationale of placing a cap on corporate contributions, the 7.5% value should be regularly re-examined to prevent it becoming a

meaningless limit. It is submitted that the removal of the very provision of a cap on contributions by the amendments in the Finance Act, 2017 provides an illegitimate and advantageous role to corporations in the functioning of democratic institutions and that the inevitable result of such excessive influence is the loss of any representative character in our public institutions.

34. The National Commission to Review the Working of the Constitution headed by Chief Justice M. N. Venkatachalliah in its report dated 31.03.2002 had noted that the complex issue of funding of political parties is in dire need of reform but that there are no panaceas. The Commission notes:

> *"4.35.1 The greater the contribution, the greater the risk of dependence, corruption and lack of probity in public life. The demand for transparency must be conceived as a democratic value in itself, a tool designed to avoid any wrongful influences of money in politics. If laws are intended to be effective with regard to transparency, they should be general in nature and enforced with respect to everyone, and not just political parties or candidates, but also to the*

donors as well. Otherwise, alternate or indirect ways to evade control will be devised."

At point 4.35.2 onward, the Commission has recommended that a single legislation be enacted to provide for regulating contributions to political parties, which brings transparency into political funding. Corporate donations could be permitted within higher prescribed limits to encourage lawful contributions, and contributions above a prescribed limit should be made contingent on the approval of shareholders. The Commission recommends that *"Political funding should be a separate head in the accounts and annual reports of the company. This will ensure transparency."* The Commission further recommended at point 4.35.3 that the law should contain provisions for making both donors and donees of political funds accountable, preferably through the establishment of electoral trusts, and at point 4.35.4 the Commission recommends that political parties should publish yearly audited accounts with full disclosures of contributions made. A True Copy of the Relevant Portion of the Commission report dated 31.03.2002 is annexed herewith as **Annexure P-5** at pages **102** to **105**.

Enacting of the Finance Act, 2017 as a Money Bill

35. Article 109 of the Constitution lays down a special procedure with respect to Money Bills and Article 110 of the Constitution lays down strict criteria as to the categorization of a Bill as a Money Bill.

36. Clause (1) of Article 110 defines what will constitute a Money Bill in the following terms:

> *" ... a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:-*
>
> ***(a)*** *the imposition, abolition, remission, alteration or regulation of any tax;*
>
> ***(b)*** *the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;*
>
> ***(c)*** *the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;*
>
> ***(d)*** *the appropriation of moneys out of the Consolidated Fund of India;*

(e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;

(f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or

(g) any matter incidental to any of the matters specified in sub-clauses (a) to (f)."

It is submitted that the provisions of the Finance Act, 2017 are resolutely unconnected with any of the matters listed in Article 110(1).

37. That Clause (2) of Article 110 holds that "a Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes". The mere inclusion of some provisions relating to the matters listed in Clause (1) of Article 110 cannot transform the character of a Bill from

an Ordinary or Financial Bill to a Money Bill. In the present case even those some provisions with link to Article 110(1) are absent.

38. That the effect of categorization as a Money Bill is to ease the passing and enacting of the legislation through the special procedure provided in Article 109. By virtue of Article 109, a Money Bill can be introduced only in the Lok Sabha. After being passed by the House, it is transmitted to the Rajya Sabha for recommendations. The Lok Sabha may accept or reject the recommendations. If the House rejects the recommendations, the Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Lok Sabha. The essential safeguard against excessive or arbitrary legislation in the form of a bicameral legislature and a rigorous scrutiny of any proposed legislation is excluded only when a Bill is deemed to contain only provisions relating to the matter listed in Article 110. For all other matters, the legislative procedure prescribed in Articles 107 and 108 is required to be strictly followed.

39. That the question of whether a statute violates the provisions of the Constitution is a question of illegality and thus open to judicial review by this Court.

40. That the Ministry of Finance through the Department of Economic Affairs issued Notification dated 02.01.2018 under Section 31(3) of the Reserve Bank of India Act, 1934 which clause was added to the section by the amendment in the Finance Act, 2018 in order to introduce a scheme for the implementation of the Electoral Bonds system for funding of political parties. The scheme is entitled the "Electoral Bond Scheme, 2018" (hereinafter referred to as "the Scheme") by which the Respondent No. 1 has sought to define "electoral bonds" and impose conditions upon their purchase, validity, and receipt.

41. Clause 2(a) of the Scheme defines an electoral bond as "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 the payee". Clause 7(4) of the Scheme provides that the information furnished by the buyer shall be treated as 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". It is submitted that the effect of the first part of Clause 7(4) is the removal of all transparency in political funding.

42. The words of the second part of Clause 7(4) are vague, undefined, and open to rampant abuse. The Scheme does not clarify what courts will be considered a "competent" court for the purposes of disclosure of information furnished. The Scheme further fails to specify the authority to whom such information can be submitted in case of "registration of criminal case by any law enforcement agency". The questions of whether the law enforcement agency will have the authority to demand such information; at what stage of the proceedings the law enforcement agency may place such request or demand with the issuing bank; whether such request or demand is to be considered by any other authority before compliance and disclosure remain unanswered. On a plain reading of the provisions, any law enforcement agency can be granted information about the purchaser of a specific electoral bond simply upon registering under any provision of any statute a criminal case which may or may not proceed to the stages of investigation, bringing of charges, or trial, which allows a monopoly in access to information about the contributors to political parties.

43. That Clause 7(4) of the Scheme provides that the information provided by the purchaser of the bonds will be treated as "confidential" by the authorised bank. The

Scheme contains no provisions as to the extent of confidentiality within the authorised bank. Neither the Scheme nor Section 31(3) of the Act provides for any mechanism to penalise the breach of such confidentiality or to redress grievances in case any purchaser is a victim of a breach of confidentiality. It is submitted that the Scheme cannot guarantee confidentiality in any meaningful terms in the absence of any provisions to protect such confidentiality.

44. That Clause 3(3) of the Scheme provides that "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." It is submitted that this provision excludes from the potential recipients of electoral bonds independent candidates and any political party formed after the publication of the Scheme which cannot have secured more than one per cent of the votes polled in the last general election to either the House of the People or any Legislative Assembly. It is submitted that independent candidates are subject to the same restrictions as candidates contesting as members of

political parties under Section 77 of the Representation of the People Act, 1951 by which they must comply with requirements to report and limit their election campaign expenditure. It is further submitted that newly formed political parties will face an automatic disadvantage in fundraising ability under the provisions of the Scheme.

45. Clause 4 of the Scheme makes the "Know Your Customer" norms specified by the Reserve Bank of India applicable to buyers of the bonds and gives the authorised bank the power to call for such documents. It is submitted that donors making cash donations who do not wish to submit KYC compliance documents will not consider Electoral Bonds to be a viable alternative method of making donations to political parties and the requirement of such compliance is in fact a deterrent for donors previously donating "black money" to use electoral bonds for such transfer. Therefore there is no reasonable relation between the object of the Scheme and the effect of the provisions.

46. Clause 2(b) of the Scheme defines the "authorised bank" to be the State Bank of India and Clause 2(c) of the Scheme lays down a definition for "issuing branch" which are to be the only branches of the State Bank of India where Electoral Bonds shall be available for purchase. It

is submitted that Section 31(3) of the Reserve Bank of India Act, 1934 under which the Notification introducing the Scheme has been issued gives the Central Government the limited power to "authorise any scheduled bank to issue electoral bonds". It is submitted that on a strict reading of Section 31(3) of the RBI Act, the Central Government has not delegated the power to authorise only particular branches of the authorised bank to issue electoral bonds.

47. In light of the aforesaid facts, the following issues have arisen:

1) Whether the impugned amendments are arbitrary and in violation of Article 14?

2) Whether the impugned amendments are unreasonable restrictions and violation of Article 21?

3) Whether the impugned amendments are outside the meaning of a "Money Bill" in Article 110 and thus constitutionally invalid?

4) Whether the impugned Notification implementing the Electoral Bond Scheme, 2018 is arbitrary and an unreasonable restriction of Articles 14 and 19 and thus constitutionally void?

5) Whether the impugned Notification suffers from excessive delegation?

48. That the Petitioner has not filed any other Petition before this Hon'ble Court or before any other Court seeking the same relief.

49. GROUNDS

A. That the amendments and notification stated are in direct violation of the principle of reasonableness and rationality and are antithetical to Article 14 of the Constitution as they seek to create an anonymous and secretive mechanism for increasing the wealth of political parties. The concept of equality includes the principle of anti-arbitrariness as explained by this Court in ***E.P. Royappa v State of Tamil Nadu & Anr.*** **(1974) 4 SCC 3**:

> *"85. ...The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined*

and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

That in ***Maneka Gandhi v Union of India*** **(1978) 1 SCC 248**, a seven-judge Bench of this Court reiterated the principles propounded in *Royappa*. Bhagwati, J. noted at paragraph 7 that:

"The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test

of reasonableness in order to be in conformity with Article 14."

In his concurring judgment, V. R. Krishna Iyer, J. in agreement with Bhagwati, J. says with reference to Article 14 at paragraph 94:

"That article has a pervasive processual potency and versatile quality, egalitarian in its soul and allergic to discriminatory diktats. Equality is the, antithesis of arbitrariness and ex cathedra ipse dixit is the ally of demagogic authoritarianism. Only knight-errants of 'executive excesses' - if we may use a current cliché - can fall in love with the dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it is that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law: 'Be you, ever so high, the law is above you'."

The arbitrary nature of the amendments lies in their unreasonable restrictions on the freedom to information regarding the identities of persons or corporations making contributions to political parties.

B. That in ***Shayara Bano v Union of India*** **(2017) 9 SCC 1** this Court at para 43 of the judgment by Nariman, J.

reiterated its power to strike down legislation which is unreasonable and arbitrary by expressly overruling the incongruous judgment in *State of AP v McDowell & Co.* (1996) 3 SCC 709 which had rejected an argument based on the arbitrariness principle under Article 14 and holding that the decisions of this Court in *Sunil Batra v Delhi Administration & Ors.* (1978) 4 SCC 494 and *Mithu v State of Punjab* (1983) 2 SCC 277 which held arbitrariness as a ground for striking down a legislative provision are binding upon the Court. In *Sunil Batra*, Krishna Iyer, J. explained this rule as follows:

> *"52. True, our Constitution has no "due process" clause of the VIII Amendment, but, in this branch of law, after R.C. Cooper v. Union of India, [(1970) 1 SCC 248] and Maneka Gandhi v. Union of India, [(1978) 1 SCC 248], the consequence is the same. For what is punitively outrageous, scandalizingly unusual or cruel and rehabilitatively counter-productive, is unarguably unreasonable and arbitrary and is shot down by Articles 14 and 19 and if inflicted with procedural unfairness, falls foul of Article 21."*

C. That through Section 236 of the Finance Act, 2016, the definition of a "foreign source" under Section 2(1)(j)(vi) of

the Foreign Contribution (Regulation) Act, 2010 was amended to allow a company having nominal value of share capital within the limits specified for foreign investment under the Foreign Exchange Management Act, 1999 to not be considered as a "foreign source" regardless of fulfilling the condition in Section 2(1)(j)(vi) of having more than one-half of such nominal value of its share capital being held by (A) the Government of a foreign country or territory; (B) the citizens of a foreign country or territory; (C) corporations incorporated in a foreign country or territory; (D) trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory; (E) a foreign company. The palpable effect of reading the impugned amendments with this pertinent change to the definition of a "foreign source" is that foreign corporations will now be allowed to make uncapped and anonymous donations to political parties within India. The harms inherent in allowing foreign money to influence the Indian electoral system were recognized by a Division Bench of the High Court of Delhi in ***Association for Democratic Reforms v. Union of India*** **209 (2014) DLT 609**, wherein the Court held that foreign companies could not donate funds to Indian political parties, while citing

Foreign Aid in International Politics by John D. Montgomery in the following terms:

> *"... Both foreign contribution and foreign aid can have different effects in diplomacy. It could serve to create a "national presence" by the foreign contributor. It has the potential of procuring international favours, and even influence or impose political ideology...".*

This potential to influence or impose political ideology is only strengthened by the impugned amendments in the Finance Act, 2017 by the twin accomplices of anonymity from the public and the lack of a cap on the monetary value of contributions.

D. That there is no reasonable nexus between the stated objective of the amendments to bring transparency to political funding and the direct consequences of application of the provisions. The problem of "black money" in our economy pervading the political system will not be tackled by the impugned amendments because there is no reasonably effective prohibition or penalty on the aggregate value of cash donations made or of the number of donations which can be made by any person. In fact, by removing the requirement previously present in Section 182 of the Companies Act, 2013 of companies

making, on average, profits over the three previous financial years, the amendments allow for fraudulent shell companies to be floated for the purpose of making donations to political parties, with no accountability placed on the owners of such companies, which consequence directly violates the stated objective of the amendments.

E. That the problem of "black money" is further unresolved by the Electoral Bond Scheme, 2018 and there is no reasonable relation between the purported benefit of the Scheme i.e. to reduce the usage of "black money" in financing political parties and the actual impact of the Scheme on such funding. Clause 4 of the Electoral Bond Scheme, 2018 which imposes upon purchasers of electoral bonds the requirement of compliance with KYC norms negates the purported benefit of electoral bonds in reducing the usage of "black money" in financing political parties. It is submitted that if KYC norms are to be complied with in order to purchase electoral bonds, the current entities who prefer to make donations of unaccounted cash to political parties are not incentivized to purchase such bonds. The Electoral Bonds will only be purchased by donors who are using "white money" to donate to political parties while contributors using "black

money" will continue to operate outside the legal framework to escape the requirement of compliance with KYC norms. Therefore there exists no rational relation between the intent of introducing the Scheme and the effect caused and the whole Scheme is rendered nugatory on this ground.

F. That the lack of transparency in the impugned amendments allows for an increase in pernicious quid pro quo arrangements between political parties and corporate contributors, who retain the right to disclose the fact of their contribution to the relevant political parties without any corresponding duty to reveal this information to the general public. The unavoidable and obvious consequence of such a system will be the passing on of benefits by parties forming the Government to those corporations who have funded them. Corruption in political life in India is a recognized reality and has been noted by this Court, notably in ***Dr. P. Nalla Thampy Terah v Union of India*** **(1985) Supp. SCC 189** where a five-judge Bench of this Court at paragraph 6 has stated that:

> *"There is a perceptible awareness amongst political observers, if not amongst active politicians, that one of the ways to ensure that elections are free and fair is to weed out the*

influence of big money which, to use an expression which has become a household word, is more black than white."

This Court went on to cite the decision of the Bombay High Court in ***Jayantilal Ranchhodas Koticha & Ors. v Tata Iron & Steel Co. Ltd.*** **AIR 1958 Bom 155** where at paragraph 1, the eminent Chagla, CJ has held as follows:

"On first impression it would appear that any attempt on the part of anyone to finance a political party is likely to contaminate the very springs of democracy. Democracy would be vitiated if results were to be arrived at not on their merits but because money played a part in the bringing about of those decisions. The form and trappings of democracy may continue, but the spirit underlying democratic institutions will disappear. History of democracy has proved that in other countries democracy has been smothered by big business and money bags playing an important part in the working of democratic institutions and it is the duty not only of politicians, not only of citizens, but even of a Court of law, to the extent that it has got the power, to prevent any influence

being exercised upon the voter which is an improper influence or which may be looked at from any point of view as a corrupt influence."

This Court went on to consider the report of the Santhanam Committee as reproduced herein, holding that the data referred to by it unequivocally shows that the influence of big money on the election process is regarded universally as an evil of great magnitude:

*"**9.** The Report of the Santhanam Committee on Prevention of Corruption 1962 Section 11, 'Social Climate', paragraph 11.5 says: "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 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 recognised that political parties cannot be run and elections be fought without large funds.*

But these funds should come openly from the supporters or sympathisers of the parties concerned."

G. That the structure of the impugned amendments by withholding the crucial information as to sources of funding for political parties from the most important stakeholder in the democratic system, that is, the people, is ripe for abuse by corporations and politicians who will be able to shield themselves from public scrutiny and charges of corruption while engaging in a fortified form of "crony capitalism". The harmful dependency of politicians upon corporate favour will only be emboldened as the anonymity is combined with uncapped donations, leading to political parties competing with each other to gain the most funds in order to better their positions, rather than companies competing with each other on the merits of their business abilities in the market. The position of the ordinary citizen, who has neither the funds nor the access to information to gain such an advantage is reduced to that of a bystander in their own democracy.

H. That the system of selective concealment of contributions which are uncapped and unrecorded with no penal incentives to follow disclosure requirements which is created by the impugned amendments has not been

contemplated by any functioning democracy in the world. In comparison, in the United States of America, contributions by individuals are capped and direct contributions to election campaigns by *inter alia* corporations, national banks, and foreign nationals are banned and the circumvention of some provisions is criminally punishable. In the United Kingdom, sources of contributions to political parties and to candidates are restricted to registered permissible sources, disclosures of donations are to be made on a quarterly basis and the party treasurer is criminally liable for failure to deliver statements of account in time. In Canada and in France only individuals are permitted to make contributions, which are capped by spending limits. In each of these countries, disclosure of details of sources of funds is essential. The Finance Act, 2017 is entirely unreasonable in its flouting of these basic principles of democratic functioning.

I. That the effect of the introduction of electoral bonds through the impugned amendments and the Scheme is an insidious attack on transparency and accountability in political funding with no justification.

J. That Article 19(1)(a) guarantees to every citizen of India the right to freedom of expression and thought, and

which has been interpreted by this Court as necessarily including a right to knowledge and information and that the impugned amendments and the Scheme do not constitute reasonable restrictions upon the right under any of the grounds under Article 19(2). In ***Secretary, Ministry of Information & Broadcasting v Cricket Association of Bengal*** **(1995) 2 SCC 161**, this Court explained the right under Article 19(1)(a) as follows:

> *"43.The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self- fulfilment. It enables people to contribute to debate on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavours of all sorts...*
>
> *44. This fundamental right can be limited only by reasonable restrictions under a law made for the purposes mentioned in Article 19(2)."*

This Court went on to link the essence of a democracy with the right to freedom of information:

> *"82. ...True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolised either by a partisan central authority or by private individuals or oligarchic organisation. This is particularly so in a country like ours where about 65 per cent of the population is illiterate and hardly 1 ½ per cent of the population has an access to the print media which is not subject to pre-censorship."*

K. That access to information and knowledge of the activities of political parties and their functionaries is essential for any citizen to meaningfully exercise their suffrage as provided by Article 326 of the Constitution and reinforced statutorily by Section 62 of the Representation of the

People Act, 1951 and this principle has been upheld by various decisions of this Court. In ***State of U.P. v Raj Narain* (1975) 4 SCC 428**, this Court has held that Article 19(1)(a) includes the right of citizens to know every public act and everything that is done in a public way, by their functionaries.

In its judgment in ***Union of India Vs. Association for Democratic Reforms & Another* (2002) 5 SCC 294** a three-judge Bench of this Court affirmed that Article 19(1)(a) necessarily and mandatorily includes the right of citizens to know relevant information about potential candidates for election in order to decide independently to cast their votes in favour of a candidate. Another three-judge Bench of this Court in ***People's Union for Civil Liberties & Anr. v Union of India & Anr.* (2003) 4 SCC 399** reaffirmed this interpretation of Article 19(1)(a) while holding that voters have the right to know about a candidate's qualifications and financial status. At paragraph 18 of the judgment, the Court states that: *"So, the foundation of a healthy democracy is to have well-informed citizens-voters."* The Court further held at paragraph 42 that fundamental rights do not have fixed contents, but are made vibrant by interpretation by this Court for the purpose of creating a "truly republic

democratic society" and that *"there can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures"* (at paragraph 78).

A three-judge Bench of this Court in ***C. Narayanaswamy v C. K. Jaffer Sharief*** **(1994) Supp (3) SCC 170** while considering expenses of candidates for elections, has held that:

> *"22. As the law stands in India today anybody including a smuggler, criminal or any other anti social element may spend any amount over the election of any candidate in whom such person is interest, for which no account is to be maintained or to be furnished ... It is true that with the rise in the costs of the mode of publicity for support of the candidate concerned, the individual candidates cannot fight the election without proper funds. At the same time it cannot be accepted that such funds should come from hidden sources which are not available for public scrutiny. ...if the call for "purity of elections" is not to be reduced to a lip service or a slogan, then the persons investing funds, in furtherance of the prospect of the election of a candidate must be identified and located. The*

candidate should not be allowed to plead ignorance about the persons, who have made contributions and investments for the success of the candidate concerned at the election."

L. That in its report dated 31.03.2002 of the National Commission to Review the Working of the Constitution headed by Chief Justice M. N. Venkatachalliah has noted that the complex issue of funding of political parties is in dire need of reform but that there are no panaceas. The Commission notes:

"4.35.1 The greater the contribution, the greater the risk of dependence, corruption and lack of probity in public life. The demand for transparency must be conceived as a democratic value in itself, a tool designed to avoid any wrongful influences of money in politics. If laws are intended to be effective with regard to transparency, they should be general in nature and enforced with respect to everyone, and not just political parties or candidates, but also to the donors as well. Otherwise, alternate or indirect ways to evade control will be devised."

At point 4.35.2 onward, the Commission has recommended that a single legislation be enacted to provide for regulating contributions to political parties, which brings transparency into political funding. Corporate donations could be permitted within higher prescribed limits to encourage lawful contributions, and contributions above a prescribed limit should be made contingent on the approval of shareholders. The Commission recommends that *"Political funding should be a separate head in the accounts and annual reports of the company. This will ensure transparency."* The Commission further recommended at point 4.35.3 that the law should contain provisions for making both donors and donees of political funds accountable, preferably through the establishment of electoral trusts, and at point 4.35.4 the Commission recommends that political parties should publish yearly audited accounts with full disclosures of contributions made. These recommendations have been echoed by the Election Commission and the Law Commission in its Report No. 255 but blatantly ignored by the impugned amendments and the Scheme.

M. That in ***Common Cause A Registered Society v Union of India & Ors.*** **(1996) 2 SCC 752**, this Court

considered the issue of flagrant violations of Section 13A of the Income Tax Act, 1961 by political parties in failing to file their income tax returns. This Court was pleased to issue directions to the political parties to submit accounts of their incomes to the Election Commission while highlighting the problem of lack of transparency in funding democracy as follows:

> *"17. The General Elections bring into motion the democratic polity in the country. When the elections are fought with unaccounted money the persons elected in the process can think of nothing except getting rich by amassing black money. They retain power with the help of black money and while in office collect more and more to spend the same in the next election to retain the seat of power. Unless the statutory provisions meant to bring transparency in the functioning of the democracy are strictly enforced and the election-funding is made transparent, the vicious circle cannot be broken and the corruption cannot be eliminated from the country."*

N. That the Finance Bill, 2017 was wrongly categorised as a Money Bill and is in fact outside the scope of the meaning

of a Money Bill as prescribed in Article 110 of the Constitution and is liable to struck down on this ground.

O. That the fundamental issue in all cases dealing with whether the determination under Article 110/ Article 199 that a bill is a money bill by the Speaker of Lok Sabha/ State Legislative Assembly is an issue of "procedural irregularities or illegality".

P. That in one of its earliest decisions in ***Babu Lal Parate v State of Bombay & Anr.*** **(1960) 1 SCR 605** a five-judge Constitution Bench of the Supreme Court speaking through S.K. Das, J. held as follows:

> "11. It is advisable, perhaps, to add a few more words about article 122(1) of the Constitution. Learned Counsel for the appellant has posed before us the question as to what would be the effect of that article if in any Bill completely unrelated to any of the matters referred to in Clauses (a) (e) of Article 3 an Amendment was to be proposed and accepted (for example) the name of the State. We do not thing that we need answer such a hypothetical question *except merely to say that if an amendment of such character that it is not really an amendment and is clearly violative of article 3, the question then will be not the validity of the proceedings in*

parliament but the violation of a constitutional provision...."

Q. That therefore the distinction between an irregularity and an illegality was conceived by this Court right from the inception and it was also envisaged that as distinct from an irregularity, in case of an illegality or a clear violation of a constitutional provision, a completely different set of consequences will follow.

R. That the above position was reiterated by the decision of a seven-judge Bench of this Court in *In Re Special Reference No. 1 of 1964* ***(In Re Keshav Singh)*** **(1965) 1 SCR 413 speaking through Gajendragadkar, C.J.** which held as follows:

> *"61. Similarly, Article 212(1) makes a provision which is relevant. It lays down that the validity of any proceedings in the legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. Article 212(2) confers immunity on the officers and members of the legislature in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order, in the legislature from being subject to the jurisdiction of any court in respect of the exercise*

by him of those powers. Article 212(1) seems to make it possible for a citizen to call in question in the appropriate Court of law the validity of any proceedings inside the Legislative Chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a Court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular. That again is another indication which may afford some assistance in construing the scope and extent of the powers conferred on the House by Article 194(3)."

S. That therefore this Court saw Article 212(1) to be phrased in such a manner so as to positively enable a citizen to call a question in a Court the validity of any proceeding in a legislative chamber/ House on the ground of illegality or unconstitutionality. Article 212(1) was clearly not seen as a complete bar on a judicial review of actions taken in a legislative House for the obvious reason that any such interpretation would have led to the possibility that there will be complete and thorough misuse of the protection in

Article 212(1) that would even allow a serious constitutional violation to go unchecked. In fact, an examination of the Constituent Assembly debates on Article 212 and Article 299 (in case of a State Legislative Assembly) clearly shows that the protection under these provisions was only meant for bona fide procedural lapses and not for putting deliberate illegal/ unconstitutional lapses beyond the pale of judicial scrutiny.

T. That Article 212 was introduced in the Constituent Assembly as Clause 20A by Sir Alladi Krishnaswamy Aiyar on 18th July 1947 (CAD Proceedings Vol-IV) in the following terms:

> *"Sir Alladi Krishnaswami Ayyar : Sir, I also move: "That the following new clause be inserted after Clause 20 (That is a very material provision):*
>
> *'20-A. (1) the validity of any proceedings in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.*
>
> *(2) No officer or other member of a Provincial Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the*

jurisdiction of any court in respect of the exercise by him of those powers'."

That is a very salutary and necessary provision, because it ought not to be open to any individual to challenge the validity of any enactment on the ground that any particular rule or order has not been observed in the passage of a particular enactment. That is a provision which has found a place in every Government of India Act. It is a very salutary provision. I would therefore request the House to accept this amendment the reason for which I have explained."

The amendment was accepted in this form in the context of adherence only to a "rule or order" of procedure.

U. That upon application of the principle derived by the Court, given that the resulting impact of the present violation of Article 110(1) is to nullify other provisions of the Constitution granting powers of legislation to the Rajya Sabha, Article 110 must be construed as a "mandatory" provision.

V. That in *Raja Ram Pal v Hon'ble Speaker, Lok Sabha & Ors.* (2007) 3 SCC 184 a five-judge bench of this Court speaking through Sabharwal, C.J. has reiterated this distinction

between procedural irregularity and substantive illegality or unconstitutionality and held as follows:

> ***"360.*** *The question of extent of judicial review of parliamentary matters has to be resolved with reference to the provision contained in Article 122(1) that corresponds to Article 212 referred to in Pandit Sharma (II) [AIR 1960 SC 1186 : (1961) 1 SCR 96 (Eight Judges)] . On a plain reading, Article 122(1) prohibits "the validity of any proceedings in Parliament" from being "called in question" in a court merely on the ground of "irregularity of procedure". In other words, the procedural irregularities cannot be used by the court to undo or vitiate what happens within the four walls of the legislature. But then, "procedural irregularity" stands in stark contrast to "substantive illegality' which cannot be found included in the former. We are of the considered view that this specific provision with regard to check on the role of the judicial organ vis-à-vis proceedings in Parliament uses language which is neither vague nor ambiguous and, therefore, must be treated as the constitutional mandate on the subject, rendering unnecessary search for an*

answer elsewhere or invocation of principles of harmonious construction. ...

366. *The touchstone upon which parliamentary actions within the four walls of the legislature were examined was both the constitutional as well as substantive law. The proceedings which may be tainted on account of substantive illegality or unconstitutionality, as opposed to those suffering from mere irregularity thus cannot be held protected from judicial scrutiny by Article 122(1) inasmuch as the broad principle laid down in Bradlaugh [(1884) 12 QBD 271 : 53 LJQB 290 : 50 LT 620] acknowledging exclusive cognizance of the legislature in England has no application to the system of governance provided by our Constitution wherein no organ is sovereign and each organ is amenable to constitutional checks and controls, in which scheme of things, this Court is entrusted with the duty to be watchdog of and guarantor of the Constitution."*

W. That subsequently, another Constitution Bench of this Court in Ram Das Athawale (5) v Union of India & Ors. 2010 (4) SCC 1 speaking through B. Sudershan Reddy, J. held as follows:

*"**36.** This Court Under Article 143, Constitution of India, In re (Special Reference No. 1 of 1964) [AIR 1965 SC 745 : (1965) 1 SCR 413] (also known as Keshav Singh case [AIR 1965 SC 745 : (1965) 1 SCR 413]) while construing Article 212(1) observed that it may be possible for a citizen to call in question in the appropriate court of law, the validity of any proceedings inside the legislature if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular. The same principle would equally be applicable in the matter of interpretation of Article 122 of the Constitution."*

X. That is it therefore beyond any doubt that in respect of Article 122(1) the distinction between procedural irregularity and substantive illegality/ constitutionality will apply and the same has been reiterated in at least four Constitution Bench judgments of this Court.

Y. That although in **Mangalore Ganesh Beedi Works v State of Mysore & Anr. (1963) Supp. 1 SCR 275**, **Mohd. Saeed Siddiqui v State of U.P. & Anr. 2014 (11) SCC 415,** and **Yogendra Kumar Jaiswal & Ors. v State of Bihar & Ors. 2016 (3) SCC 183** this Court held the decision of the Speaker to be final under Article 212(1), it is submitted that in all the three decisions referred to above the Court has simply chosen to rely upon Article 212(1) without going into whether and to what extent the provisions of Article 110 or Article 199 were in breach while certifying or introducing a Bill as a Money Bill. It is submitted that in the event the Court were to make that analysis and come to a finding that the Bill which was passed as a Money Bill can under no circumstance be certified as a Money Bill within the meaning ascribed to it under Article 110 or 199 of the Constitution, then it would amount to an illegality/ violation of a constitutional provision and the above three decisions which have not gone into and made that analysis will not come in the way of this Court making that determination in the present case especially in light of the seven-judge Bench decision of this Court in *In Re Special Reference No. 1 of 1964* and the five-judge Bench decision in *Raja Ram Pal.* Any other view of the matter would mean that

all the above three decisions which are of smaller bench strengths were rendered per incuriam which is clearly not the case.

Z. That further any other view would mean that the Speaker of the Lok Sabha or the State Legislative Assembly (in states which also have a Legislative Council) can certify all bills as Money Bills and render the functioning and relevance of the Upper House as completely useless in these States and in Parliament which is not the intended effect of either Article 122 or Article 212.

AA. That therefore the impugned provisions of the Finance Act, 2017 are arbitrary, prohibitive of the right to freedom of information, and in violation of the provisions of Part III and Part V of the Constitution and are liable to be struck down.

BB. That the Electoral Bond Scheme introduces an opaque and arbitrary method for funding political parties and has no reasonable nexus with the proposed purpose of the impugned amendments, that is, to make the process of political funding transparent and to eliminate the use of "black money" in politics.

CC. That the Electoral Bond Scheme provides political parties protection from scrutiny of their motivations by the public through Clause 2(a) and Clause 7(4) which keeps the

names of the donor and the payee political party hidden from information for the ordinary public in flagrant violation of Article 19(1)(a) and the right of citizens to know about the activities of public bodies insofar as it relates to the exercise of their right to vote which is an essential aspect of the fundamental right to freedom of expression. Clause 2(a) is the specific provision of the Notification bringing the Electoral Bond Scheme into creation which permits the active concealment of sources of funding by political parties and directly enables political parties to act in favour of corporations and other contributors who have donated to the political party without being held accountable for such quid pro quo arrangement in direct contravention of the foundations of representative democracy.

DD. That Clause 7(4) of the Scheme is in direct contravention of both Article 14 and Article 19(1)(a) by imposing vague and arbitrary restrictions upon the right to freedom of information. The Scheme does not specify when and at what stage a law enforcement agency can be granted information about the purchaser of a bond including the recipient of the bond purchased. The words "upon registration of a criminal case" do not have any fixed meaning in law and are open to rampant misuse. It is

submitted that this provision is entirely arbitrary in its impact and is capable of being misused by the State in control of the "law enforcement agency" which can easily register any criminal case in relation to any political party or individual, organisation, or corporation in order to know details of the contributions made or received by such entity and thus enables a monopoly in donor information in favour of the political party forming the Government.

EE. That Clause 7(4) of the Scheme is vague, undefined, and liable to be struck down as arbitrary further because there is no provision in either the Scheme or the Reserve Bank of India Act, 1934 which provides for any mechanism to penalise the breach of such confidentiality or to redress grievances in case any purchaser is a victim of a breach of confidentiality. It is submitted that the Scheme cannot guarantee confidentiality in any meaningful terms in the absence of any provisions to protect such confidentiality.

FF. That Clause 3(3) of the Scheme provides that "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." It is submitted that this provision excludes from the potential recipients of electoral bonds independent candidates and any political party formed after the publication of the Scheme which cannot have secured more than one per cent of the votes polled in the last general election to either the House of the People or any Legislative Assembly. It is submitted that independent candidates are subject to the same restrictions as candidates contesting as members of political parties under Section 77 of the Representation of the People Act, 1951 by which they must comply with requirements to report and limit their election campaign expenditure. It is further submitted that newly formed political parties will face an automatic disadvantage in fundraising ability under the provisions of the Scheme.

50. That the Petitioners have filed this Petition for directions to protect and safeguard the fundamental rights of citizens of India under Article 14 and Article 19(1)(a) of the Constitution since the Petitioners have no alternate efficacious remedy but to approach this Court under Article 32 of the Constitution of India for the reliefs prayed for herein.

51. That the Petitioners have for the first time filed this Petition in respect of the subject-matter i.e. issuance of directives in respect of safeguarding fundamental rights under Article 14 and Article 19(1)(a) of all citizens of India against the aforesaid Respondents.

52. That this Court has the jurisdiction to entertain and try this Petition.

53. That the Petitioners crave leave to alter, amend, or add to this Petition.

54. That the Petitioners seek leave to rely on documents, a list of which, along with true typed copies, has been annexed to this Petition.

55. That this Petition has been made bona fide and in the interests of justice.

56. That the Petitioners have not filed any other Petition before this Court or before any other Court seeking the same relief.

PRAYER

In the facts and circumstances, it is most respectfully prayed that your Lordships may graciously be pleased to:

a) Issue a Writ of Mandamus or any other appropriate writ declaring:

(1) Section 135 of the Finance Act, 2017 and the corresponding amendment carried out in Section 31 of the Reserve Bank of India Act, 1934,

(2) Section 137 of the Finance Act, 2017, and the corresponding amendment carried out in Section 29C of the Representation of the People Act, 1951,

(3) Section 11 of the Finance Act, 2017 and the corresponding amendment carried out in Section 13A of the Income Tax Act, 1961,

(4) Section 154 of the Finance Act, 2017 and the corresponding amendment carried out in Section 182 of the Companies Act, 2013, and

(5) the Notification dated 02.01.2018 issued by the Department of Economic Affairs under the Ministry of Finance, as being unconstitutional, illegal, and void.

b) Pass any further order as this Court may deem fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IS DUTY BOUND SHALL EVER PRAY.

Drawn and Filed By:

Drawn On: 19**.01.2018**

Filed On: 19**.01.2018**

Shadan Farasat

Advocate for the Petitioner