



removed the existing cap of 7.5% of net profit in the last 3 years on campaign donations by companies and have legalised anonymous donations.

3. Use of Electoral Bonds for political donations is a cause of concern because:

- a. These bonds are in the nature of bearer bonds. The identity of the donor is kept anonymous. Political Parties are not required to disclose the name of the person/entity donating to a party through electoral bonds. Since the bonds are bearer instruments and have to be physically given to the political parties for them to encash, parties will know who is donating to them. It is only the general citizens who will not know who is donating to which party. Thus, electoral bonds increase the anonymity of political donations.
- b. The requirement of the donor companies to disclose details in their Profit & Loss account about the name of the political party to which a donation has been made is also removed. Only the total amount of donations to political parties has to be disclosed without naming the political party.
- c. With the removal of the 7.5% cap on the net profits of the last 3 years of a company, now corporate funding has increased manifold as there is no limit on the amount a company can donate. Even loss-making companies now qualify to make donations of any amount to political parties out of their capital or reserves. Further, it opens up the possibility of companies being brought into existence by unscrupulous elements primarily for routing funds to political parties through anonymous and opaque instruments like electoral bonds. This has increased the opacity of funding of political parties, and the danger of quid pro quo and if any benefits are passed on to such companies or their group companies by the elected government. This has a major negative implication on transparency in political funding and are in violation of citizens' right to information, a fundamental right.
- d. Moreover, the contribution received by any eligible political party in the form of electoral bonds will be exempt from income tax as per Section 13A of the Income Tax Act.

4. That the Ministry of Finance *vide* Notification dated 02.01.2018 notified the Electoral Bond Scheme, 2018. As per the said scheme an electoral bond is a bond issued in the nature of promissory note, it may be purchased by a person who is a citizen of India or entities incorporated or established in India. The bonds are issued in multiples of ₹1,000, ₹10,000, ₹1 lakh, ₹10 lakhs and ₹1 crore. These are available at specified branches of State Bank of India and any KYC-compliant account holder can buy these bonds. Donors can donate the bonds to their party of choice which can then be encashed by the party's verified account within 15 days. The bond does not carry the name of the buyer or the payee. The political party does not have to disclose who it has received the bond from in its account. Neither does the donor entity have to state to which party it has donated. Also, as per the scheme only eligible political parties with 1% vote share are eligible to buy Electoral bonds. A copy of the Electoral Bond Scheme, 2018 notification dated 02.01.2018 issued by the Ministry of Finance is annexed herewith as **Annexure A1** (page\_\_\_\_to\_\_\_\_\_).

5. That on 12.04.2019 this Hon'ble Court taking note of petitioner's submissions regarding the lack of transparency in the electoral bonds scheme and had stated that issues related to Electoral Bonds give rise to weighty issues which have a tremendous bearing on the sanctity of the electoral process in the country. The relevant portion of the interim order dated 12<sup>th</sup> April, 2019 is reproduced below:

*"13. In the above perspective, according to us, the just and proper interim direction would be to require all the political parties who have received donations through Electoral Bonds to submit to the Election Commission of India in sealed cover, detailed particulars of the donors as against the each Bond; the amount of each such bond and the full particulars of the credit received against each bond, namely, the particulars of the bank account to which the amount has been credited and the date of each such credit.*

*14. The above details will be furnished forthwith in respect of Electoral Bonds received by a political party till date. The details of such other bonds that may be received by such a political party upto the date fixed for issuing such bonds as*

*per the Note of the Ministry of Finance dated 28.2.2019, i.e. 15.5.2019 will be submitted on or before 30th May, 2019. The sealed covers will remain in the custody of the Election Commission of India and will abide by such orders as may be passed by the Court.”*

A copy of order dated 12.04.2019 in tagged matter WPC 333/2015 passed by this Hon'ble Court is annexed here-with as **Annexure A2** (page \_\_\_\_\_ to \_\_\_\_\_).

6. The petitioner is filing the instant application to bring on record certain vital documents which have surfaced recently and have a strong bearing on the instant case. The said documents have been disclosed under the RTI Act and have also been reported in the media. The revelations are given below:

**I. RBI repeatedly opposed Electoral Bond Scheme and amendments made to RBI Act through the Finance Bill, 2017**

7. That the Reserve Bank of India's (RBI) gave repeated warnings to the government against the electoral bond scheme stating that it has the potential to increase black money circulation, money laundering, cross-border counterfeiting and forgery. This is evident through the documents obtained under the Right to Information Act, 2005 by transparency activists Commodore Lokesh Batra (Retd.) and Anjali Bhardwaj which include the correspondence between the Reserve Bank of India and the Finance Ministry and the related file notings.

8. That RBI unequivocally opposed the mechanism of Electoral Bonds and made serious reservations against it and termed it as a “bad precedent”. RBI in its letter dated 30.01.2017, accessed under the RTI Act, raised concerns regarding the proposed amendment to Section 31 of the RBI Act for enabling Scheduled Banks to issue Electoral Bearer Bonds and stated that-

*“i. The move will result in multiple, non-sovereign entities being authorised to issue bearer instruments. As such, the proposed mechanism militates against the Reserve Banks' sole authority for issuing bearer instruments ie cash. Bearer instruments have the potential to become currency and if issued in sizeable quantities can undermine the faith in banknotes issued by the central bank.*

*Amending Section 31 of the RBI Act would seriously undermine a core principle of central banking legislation and doing so would set a bad precedent.*

*ii. Even the intended purpose of transparency may not be achievable as the original buyer of the instrument need not be the actual contributor to a political party. The bonds are bearer bonds and are transferable by delivery. Hence, who finally and actually contributes the bond to the political party will not be known.*

*iii. While the person/entity buying the bearer bond will be as per Know Your Customer (KYC) parameters, the identities of the intervening persons/entities will not be known. Thus the principles and the spirit of the Prevention of Money Laundering Act (PMLA 2002) get affected.*

*iv.. If it is the intention that the person/entity buying such a bond is expected to tender it to a political party, such an intention can be accomplished today by a normal cheque, demand draft or any electronic or digital mode of payment. There is no special need for, or advantage by, the creation of an Electoral Bearer Bond, that too by disturbing an established international practice.”*

A copy of RBI's letter dated 30.01.2017, obtained as part of the RTI reply dated 11.11.2019 is annexed herewith as **Annexure A3** (page\_\_\_\_\_to\_\_\_\_\_).

9. The concerns raised by the RBI were summarily dismissed by the Finance Ministry as recorded in note dated 30.1.2017 signed by Revenue Secretary and carrying signature of the then Finance Minister. The relevant extract of the note is reproduced below:

*“2. It appears to me that the RBI has not understood the proposed mechanism of having pre-paid instruments for the purpose of keeping the identity of the donor secret, while ensuring that donation is made only out of fully tax paid money of a person. Since there will be a time limit for redeeming the pre-paid instruments and since there will be a limitation of redeeming such bonds only in the designated accounts of registered political parties, the fear of such bearer instrument being used as currency is totally unfounded. Also this advice has come quite late at a time when the Finance Bill is already printed.*

3. *We may, therefore, go ahead with our proposal.*”

A copy of the note dated 30.1.2017, obtained as part of the RTI reply dated 11.11.2019, is annexed herewith as **Annexure A4** (page\_\_\_\_\_to\_\_\_\_\_).

10. The RBI again raised concerns about the potential of misuse of Electoral Bonds (EBs) highlighting that globally there are hardly any precedents in recent times for issuance of bearer bonds and recommended safeguards to minimise misuse vide its letter dated August 4, 2017 signed by B.P. Kanungo, the Deputy Governor of RBI.

A copy of the RBI letter dated 04.08.2017 is annexed herewith as **Annexure A5** (page\_\_\_\_\_to\_\_\_\_\_).

11. The Governor of the RBI, Sh. Urjit R. Patel vide his letter dated 14.9.2017 addressed to the Finance Minister Sh. Arun Jaitley once again raised objections. The relevant portions are reproduced below:

*“3. We are concerned that the issue of EBs as bearer instruments in the manner currently contemplated has the possibility of misuse more particularly through use of shell companies. This can subject the RBI to a serious reputational risk of facilitating money laundering transactions...*

*4. Given that the major objective of the EB scheme is to provide anonymity to persons making a contribution to political parties, we believe that this can be better achieved if EBs are issued in electronic form (demat form), with the Reserve Bank as the depository rather than as a physical scrip... Apart from avoiding the use of EBs for money laundering, this arrangement will be more secure and will also reduce the cost, as the need for printing security features is obviated.”*

A copy of the RBI letter dated 14.9.2017 is annexed herewith as **Annexure A6** (page\_\_\_\_\_to\_\_\_\_\_).

12. Upon the government not taking on board the objections and recommendations of the RBI, the Governor of RBI Sh. Urjit Patel again wrote to the Finance Minister Sh. Arun Jaitley on 27.9.2017 conveying the serious reservations of the Committee

of the Central Board of RBI on issuance of EBs in the form of bearer bond scrips in physical form. The relevant portions are reproduced below:

*“3. ...Some of the issues that the Committee flagged during the deliberations are listed below:*

*xxx*

*c) Issue of EBs in scrip form is fraught with serious risk of money laundering, as consideration for transfer of scrips from the original subscriber to a transferee and thereafter, till it is eventually given to the political party for encashment, will be paid in cash. This will leave no trail of the transactions and in the process of providing anonymity to the contributor to the political party, anonymity will be provided to several others in the chain of transfer of the EBs. This can render the scheme open to abuse by unscrupulous elements. If RBI agrees to issue EBs in scrip form, it will be accused of acquiescing in the process in spite of the risk that it would almost inevitably result in money laundering. This would seriously dent the image and reputation of the RBI.*

*d) The EBs in scrip form could also be exposed to the risk of forgery and cross-border counterfeiting besides offering a convenient vehicle for abuse by “aggregators”.*

*Xxx*

*4. The Committee of the Central Board, for the above reasons, suggested that we advise the central government in our fiduciary capacity, to reconsider the idea of issuing EBs in the form of physical scrips in view of the likely unintended consequences that it could result in. The Committee, also suggested that we convey our concurrence and readiness to issue EBs in demat form with such changes as are required to address the concerns of the government on the need to keep intact the anonymity of the contributor, adopting the now well established structure of demat form in securities.”*

A copy of the RBI letter dated 27.9.2017 is annexed herewith as **Annexure A7** (page\_\_\_\_\_to\_\_\_\_\_).

13. The record of proceedings of the 4040<sup>th</sup> weekly meeting of the Committee of Central Board (CCB) of RBI held on October 11, 2017 shows that the CCB was not in favour of issuing EB in scrip form and observed that *“if the Government decided to issue EB in scrip form through SBI, the Bank should let it be.”*

A copy of the proceedings of the 4040<sup>th</sup> weekly meeting of the Committee of Central Board (CCB) of RBI held on October 11, 2017 is annexed herewith as **Annexure A8** (page\_\_\_\_\_to\_\_\_\_\_).

14. Not only were the objections raised by the RBI disregarded, but even the suggestions made to make the scheme less vulnerable to fraud were ignored. The only suggestion which was accepted was regarding restricting the validity of these electoral bearer bonds to 15 days. The documents obtained through the RTI Act show that the Central Bank never actually gave the government its explicit consent to go ahead with the electoral bond scheme as envisaged. Instead, the government had to resort to using the RBI's “indirect approval” as recorded in a hand written noting by Secretary (EA) dated 21.11.2017 and also carrying signature of the Finance Minister. A copy of file notings dated 21.11.2017 obtained under the RTI Act are annexed herewith as **Annexure A9** (page\_\_\_\_\_to\_\_\_\_\_). A copy of the news report (Part 1) dated 18.11.2019 by journalist Nitin Sethi published in HuffPost is annexed herewith as **Annexure A10** (page\_\_\_\_\_to\_\_\_\_\_).

## II. Election Commission objected to the Amendments in Finance Act 2017

15. That the Election Commission in its letter dated 26 May, 2017 brought the attention of Ministry of Law and Justice to the amendments introduced through Finance Act 2017 and stated that these amendments *“will have a serious impact on Transparency aspect of political finance/funding of political parties”*. The Election Commission stated that it is evident from the Amendment in Section 29C of the Representation of People Act, 1951 *“that any donation received by a political party*

*through an electoral bond has been taken out of the ambit of reporting under the Contribution Report as prescribed under Section 29C of the Representation of Peoples Act, 1951, and therefore, this is a retrograde step as far as transparency of donations is concerned and this proviso needs to be withdrawn".* A copy of the letter dated 26.05.2017 by EC to the Ministry of Law and Justice is annexed herewith as **Annexure A11** (page\_\_\_\_to\_\_\_\_). A copy of the news report (Part 2) dated 19.11.2019 published in HuffPost is annexed herewith as **Annexure A12** (page\_\_\_\_to\_\_\_\_).

16. That the said fact was also brought to the notice of this Hon'ble Court by the petitioners herein in IA No. 40115/2019 filed on 06.03.2019 in the instant writ petition. That the Election Commission (Respondent No. 3 herein) *vide* its counter affidavit dated 27.03.2019 also brought the said objections of EC to the notice of this Hon'ble Court.

17. That the Central Government seems to have made a dishonest statement in the Rajya Sabha concerning the question pertaining to the concerns of the Election Commission dated 18<sup>th</sup> December 2018. The question posed by Rajya Sabha MP Mr. Nadimul Haque specifically asked whether "the Election Commission has raised concerns on the issue of electoral bonds, if so, the details thereof as well as reasons therefor". Further the question asked about the steps taken by the Government to address the concerns.

18. That Shri P. Radhakrishnan, Minister of State in the Ministry of Finance, in his answer to the Rajya Sabha stated that "*the Government has not received any concerns from Election Commission on the issue of Electoral Bearer Bonds*". Whereas, Election Commission had already sent the aforementioned letter dated 26.05.2017 to the Ministry of Law and Justice stating its serious concerns. This reply was subsequently revised after Rajya Sabha MP Mr. Nadimul Haque sent a notice for breach of privilege. A copy of the news report (Part 2) dated 19.11.2019 published in HuffPost which documents the correspondence regarding the subsequent revision and corrections made to Parliamentary records is annexed at

**Annexure A12.** A copy of the question and answer dated 18.12.2018 is annexed herewith as **Annexure A13** (page\_\_\_\_to\_\_\_\_).

**III. PMO ordered the special and illegal sale of Electoral Bonds just before State Polls in violation of the Scheme**

19. It is submitted that just prior to the notification of the Electoral Bond Scheme by the Central Government, PMO directed that these rules be broken on two separate occasions. This came to light when an officer in the Finance Ministry noted that an extra window period was being asked by the PMO in the run-up assembly elections held in May. It is based upon the documents obtained by a transparency activist Commodore Lokesh Batra (Retd.) through an RTI application and later reviewed and published by *The HuffPost* in news report dated 20.11.2019 titled "*Modi PMO Ordered Illegal Electoral Bond Sale Before Vital State Polls*". Thus, the Finance Ministry broke its own rules to approve the unscheduled and illegal sale of electoral bonds for state assembly elections on two separate occasions. Even though the allowance was called into question, as it was not in consonance with the wordings of the notification on electoral bonds scheme, which implies that the special allowance can only be in the year of general elections and not the state assembly elections. A copy of the news-report (part 3) dated 20.11.2019 published in HuffPost is annexed herewith as **Annexure A14** (page\_\_\_\_to\_\_\_\_). A copy of relevant file notings dated 03.04.2018 of the Ministry of Finance are annexed herewith as **Annexure A15** (page\_\_\_\_to\_\_\_\_).

**IV. Govt can get access to source of donations but not the public/opposition parties**

20. That electoral bonds carry unique alphanumeric characters hidden in the top-right corner of the bonds. It is visible only under ultraviolet light, and invisible to the naked eye. In its affidavit, the government repeated its earlier claim that the alphanumeric characters are embedded for security reasons – but that argument has been debunked by many experts. Series of articles reported by 'The Quint' and many other reports clearly states that such a feature existing in the bonds are for the obvious reason that the ruling government wants to keep a concealed track on the donors. Another news report dated 21.11.2019 based on the file notings of Finance Ministry show that electoral bonds on one hand provide no details to the general

public about who makes the donation to which party, but the said anonymity does not apply to the government of the day, which can always access the donor details by demanding the data from SBI. Thus, the only people in dark about the source of these donations are the Indian public and opposition parties.

21. That Former Election Commissioner of India Mr. S.Y Quraishi in an interview had also stated; *“While buying an electoral bond, one needs to furnish their KYC details. The serial number of the bond, matched with the KYC details, will clearly reveal who donated how much money to which political party.”* A copy of the news-report (Part 4) dated 21.11.2019 published in HuffPost and a copy of news report published in The Quint is annexed herewith as **Annexure A16** (page\_\_\_\_\_to\_\_\_\_\_). A copy of relevant file notings in this regard are annexed herewith as **Annexure A17** (page\_\_\_\_\_to\_\_\_\_\_).

#### **V. Govt made SBI Accept Expired Electoral Bonds Sold in Illegal Window.**

22. According to a report sent by SBI to the Finance Ministry, “some EB holders” with bonds worth Rs 20 crores requested for redemption of the bonds even after the 15-day rule. SBI sought clarification regarding the same from the Finance Ministry whether they should allow the redemption of these expired bonds. The Finance Ministry vide office memorandum dated 24.05.2018 allowed the redemption of expired Electoral Bonds in the following words:

*“As some amount of lack of complete clarity may have been witnessed in the bonds issue in last windows, SBI may grant credit to such bond holders of bond purchased before 10th May, 2018 if the bonds were deposited in 15 working days. No such accommodation will be available in future.”*

A copy of SBI report dated 23.05.2018 and SBI communication to Finance Ministry dated 24.05.2018 is annexed herewith as **Annexure A18** (page\_\_\_\_\_to\_\_\_\_\_ ) and **Annexure A19** (page\_\_\_\_\_to\_\_\_\_\_). A copy of Finance Ministry response dated the same day i.e. 24.05.2018 is annexed herewith as **Annexure A20** (page\_\_\_\_\_to\_\_\_\_\_). A copy of the news-report (part 5) dated 22.11.2019 published in HuffPost is annexed herewith as **Annexure A21** (page\_\_\_\_\_to\_\_\_\_\_).

## **VI. Government lied that donors asked for secrecy.**

23. At the time of introduction of electoral bonds in 2017, the government had made claims that the donors asked for electoral bonds due to fear of political retribution if they used transparent methods of funding. An RTI reply dated 04.11.2019 to Venkatesh Nayak has now shown this was a lie and in fact, no communication or representation was ever received from the donors regarding the need for anonymity. The investigative report published in *The HuffPost* titled "*Electoral Bonds: Govt Admits It Lied That Donors Asked For Secrecy*" by Nitin Sethi dated 23.11.2019 mentions how the government lied that the donors have expressed reluctance in donating by cheque or other transparent methods as it would disclose their identity and entail adverse consequences. The RTI response dated 04.11.2019 through an RTI application filed by Venkatesh Nayak received from Finance Ministry states the very opposite. As per the RTI reply the Finance Ministry stated:

*"No representation or petition or communication has been received from the donors, regarding the need for maintaining the confidentiality of their identity while making donations to political parties".*

This proves that the government had not received any formal representation for electoral bonds. A copy of RTI reply dated 04.11.2019 is annexed herewith as **Annexure A22** (page\_\_\_\_\_to\_\_\_\_\_). A copy of the news-report (part 6) published in the HuffPost dated 23.11.2019 is annexed here-with as **Annexure A23** (page\_\_\_\_\_to\_\_\_\_\_).

## **VII. Ruling Party received 95% of the total Electoral Bonds declared by political parties for FY 2017-18.**

24. It appears that fear with regard to electoral bonds has been proven right in light of the ruling Bhartiya Janta Party's annual audit report for 2017-18 according to which the ruling party received the largest chunk of the funds received through electoral bonds. The ruling Bharatiya Janata Party (BJP) has earned more than ₹1,000 crore in 2017-18 and is all set to be the maximum gainer of political funding

in the last financial year, according to its annual returns submitted to the Election Commission. A news report dated 29.11.2018 titled “Electoral Bonds: Ruling BJP bags 95% of funds” published in The Economic Times in this regard is annexed herewith as **Annexure A24** (page\_\_\_\_to\_\_\_\_).

## **VII. Law Ministry objected to the Finance Ministry’s stipulation and agreed only due to its insistence**

25. That as per an RTI response dated 11.11.2019 through an RTI application filed by activist Anjali Bhardwaj, the Law Ministry had expressed its reservations regarding the Electoral Bond Scheme, 2018 which the Finance Ministry chose to ignore. As per the documents obtained under the RTI Act, the Law Ministry repeatedly objected to the Finance Ministry’s stipulation that political parties must have a 1% vote share in Lok Sabha or State Assembly elections in order to be eligible for the scheme. The Law Ministry continued to point that the scheme should be aligned with the Representation of Peoples Act. The Law Ministry raised an issue that- *“Providing a condition precedent of obtaining 1% share in the electoral votes cast in the last Lok Sabha election or any Vidhan Sabha election may not be in sync with the substantive provisions (Section 29B) contained in the Representation of People Act, 1951. By way of subordinate legislation, a substantive provision of the Act cannot be over ridden.”*

26. Nevertheless, the Finance Ministry wanted to retain the formulation of 1% votes. The Law Ministry then pointed out that under the Representation of People Act, 1951, *“every political party may accept any amount of contribution voluntarily offered to it”* and cautioned that putting a 1% vote share condition would override a substantive provision of the Act. But on Finance Ministry’s insistence on the provision, the Law Ministry cleared the draft, saying it had been vetted *“as per the policy decisions”* of the Finance Ministry. A copy of RTI reply dated 11.11.2019 is annexed herewith as Annexure **A25** (page\_\_\_\_to\_\_\_\_). A copy of the news report dated 20.11.2019 published in The Hindu is annexed herewith as **Annexure A26** (page\_\_\_\_to\_\_\_\_).

**Association for Democratic Reforms Report on Recommendations for the scrapping of Electoral Bond Scheme, 2018 on the basis of its findings**

27. That the petitioner organization Association of Democratic Reforms (ADR) filed an RTI application seeking a list of all political parties that had submitted details of their donations received through Electoral Bonds to the ECI in sealed cover in compliance to the order dated 12.04.2019 passed by this Hon'ble Court.

28. That as per the RTI reply dated 05.11.2019 only 19 out of 93 political parties submitted the required details in sealed cover to the ECI on or before 30<sup>th</sup> May, 2019. Balance 74 parties submitted the details after a delay of 2-3 months in spite of the clear instructions given by this Hon'ble Supreme Court in its interim order dated 12<sup>th</sup> April, 2019. The RTI reply also discloses that even political parties which fail to meet the required eligibility criteria under the Scheme have also received donations through Electoral Bonds. The said RTI reply dated 05.11.2019 thus points out that there seems to be no scrutiny by any authority at any stage prior to redemption of Electoral Bonds by political parties. A copy of RTI reply dated 05.11.2019 is annexed herewith as **Annexure A27** (page \_\_\_\_\_ to \_\_\_\_\_).

29. That ADR has thereafter prepared a Report dated 08.11.2019 titled 'The Analysis of Eligibility of Registered Unrecognized Political Parties to Receive Funding Through Electoral Bonds observations of the report dated 08.11.2019 are mentioned herein-below:

*"1. As of 5th November, 2019, out of 93\* political parties that submitted their required details in sealed cover to the Election Commission of India (ECI), only 19 parties submitted the details on or before 30th May, 2019 in compliance with the Supreme Court interim order dated April 12, 2019. Remaining 74 parties and several Registered Unrecognised parties submitted the details after 30th May, 2019.*

*2. Ten Registered Unrecognised political parties that submitted their required details in sealed cover to the Election Commission of India were registered in*

March and April 2019. None of these parties had contested any elections before the 2019 General Elections to Lok Sabha.

3. There is no list of political parties eligible to receive donations through Electoral Bonds, as per the eligibility criteria mentioned in the Electoral Bond Scheme, 2018, available in the public domain or on the website of the ECI. In a reply to ADR's RTI application dated 10th October, 2019, ECI responded that it has not compiled any such list.

4. The Scheme mentions that the bond can be encashed only by an eligible political party by depositing the same in their designated bank account, raising the question that how political parties which fail to meet the required eligibility under the Scheme have submitted details on Electoral Bonds to ECI in sealed cover.

5. There seems to be no scrutiny by any authority at any stage prior to redemption of Electoral Bonds by political parties not eligible to encash bonds under the Electoral Bond Scheme, 2018.

6. The details of the last General Election to the House of the People or the Legislative Assembly of the State contested are not available for 13 Registered Unrecognised political parties on the ECI website at the time of preparation of this report.”

A copy of the ADR Report titled Analysis of Eligibility of Registered Unrecognized Political Parties to Receive Funding Through Electoral Bonds dated 08.11.2019 is annexed herewith as **Annexure A28** (page\_\_\_\_\_to\_\_\_\_\_).

30. That the Carnegie Foundation, an international thinktank with centres in Washington D.C., Moscow, Beirut, Beijing, Brussels, and New Delhi has also recently published an article on how electoral bonds have legitimised opacity. As per the said article:

*“First, transparency of any meaningful sort continues to elude political funding in India. In fact, the only entity that has a clearer picture of the political finance realities in India today is the government itself. Electoral bonds on their own*

*have not constructed this opaque reality; they have only served to ossify it. Second, nearly every independent institution of the state that has come into contact with the electoral bonds scheme—the RBI, the ECI, Parliament—has expressed reservations but proved unable or unwilling to affect change. In turn, the executive has further expanded its reach, and the credibility crisis afflicting India’s core institutions continues apace. Finally, the BJP was propelled to power in 2014 after delivering a devastating critique of the Congress-led United Progressive Alliance’s tenure, which was marked by excesses of cronyism and graft. Modi pledged his government would reverse the country’s institutional decline and root out political corruption. Alas, electoral bonds have only hastened the former and institutionalized the latter.*

A copy of the aforesaid article dated 25.11.2019 published on the website of Carnegie Endowment for International Peace and also on Huffpost is annexed herewith as **Annexure P29** (page \_\_\_\_\_ to \_\_\_\_\_).

31. **More than Rs 6,000 crore worth electoral bonds have been sold so far:** That in this new era financial transparency and accountability, electoral bonds have surely emerged as a vital instrument to both endorse and encourage opacity by not only opening the floodgates of indefinite and mysterious donations but also legitimizing the illicit money in our electoral and political process. As per a report released by Factly.in 29.11.2018, more than ₹ 6,000 crore worth electoral bonds have been sold in 12 cycles so far. The relevant points of the report are reproduced below:

- I. 55% of these bonds were sold in 2019-20. The highest value of electoral bonds sold was during 9<sup>th</sup> Phase i.e. 01<sup>st</sup> April – 20<sup>th</sup> April 2019. A total of ₹ 2,256.4 crores worth of electoral bonds were sold during this phase. The next highest was the earlier phase i.e. 8<sup>th</sup> phase between 01<sup>st</sup> March -15<sup>th</sup> March 2019, when bonds worth ₹ 1365.7 crores were sold. Significantly in the 10<sup>th</sup> phase, which was for a shorter duration of only 5 days between 06<sup>th</sup> May and 10<sup>th</sup> May 2019, the third-highest amount of electoral bonds were sold with ₹ 822. 25 crores.

- II. It needs to be noted that all these three phases were during the period of 2019 Lok Sabha general elections. Hence a total of ₹ 4,444.32 crores worth electoral bonds were purchased during these three phases, during the general elections. In other words, close to 73% of the electoral bonds by value were sold in just these three phases.
- III. So far, a total of ₹ 3,355.93 crores worth of electoral bonds were sold in the current financial year of 2019-20. This is higher than the whole of the previous financial year which was ₹ 2,550.78 crores. For the financial year 2017-18, which had only one phase i.e. the first phase during March'18 has recorded purchases worth ₹ 220 crores.
- IV. **99.7% of the bonds purchased by value are of ₹ 1 crore & ₹ 10 lakh denomination as of October, 2019.** Electoral Bonds with the highest denomination of ₹1 Crores form 45.68% of the total number of electoral bonds, their value makes up for 91.76% of the total worth. This is exceedingly high compared to the value of other denominations with the value of ₹10 lakh denominations amounting to 7.95% and ₹ 1 lakh denominations being only 0.27 %. The share of the lower denominations in the total value is negligible.
- V. Until the latest window period (October 2019), a total of 12, 313 electoral bonds of various denominations were purchased. A major portion of them is the highest value denomination of ₹1 crore (5,624 bonds) followed by the next highest denomination of ₹10 lakh (4,877 bonds). A total of 1,695 bonds of ₹ 1 lakh denomination were sold in these 12 cycles. Meanwhile, the purchases made for the lower denominations of One thousand and 10 Thousand Rupees are only 47 and 70 electoral bonds respectively.
- VI. The higher value of the bonds being purchased indicates that the electoral bonds are being largely purchased by corporates rather than individuals, although there could be certain exceptions.
- VII. While Mumbai and Kolkata are the cities where the highest amount of electoral bonds were purchased, it is New Delhi where the largest share of the

purchased bonds were redeemed. The total value of Electoral Bonds redeemed in New Delhi is ₹ 4,917.51 crores which make up to nearly 80.5% of the total amount.

- VIII.** National parties are the principal beneficiaries of this scheme cornering a high share of these bonds. The data from audit reports of 2017-18, corroborates this. As per the audit reports submitted by the political parties for 2017-18, 95% of the electoral bonds purchased in 2017-18 went to the BJP.
- IX.** Odisha along with Andhra Pradesh & Telangana had assembly general elections during the last one year. As expected, the principal regional parties in these states like BJD, TRS and YSRCP are among the parties that declared substantial donations through electoral bonds in 2018-19. These three parties together declared an income of more than ₹ 450 crores through electoral bonds in 2018-19.
- X.** The only source of information to find out the quantum of electoral bonds redeemed by a political party is the annual audit report submitted by the party to the Election Commission of India (ECI). The annual audit report is supposed to be submitted by 30<sup>th</sup> October every year for the preceding financial year.
- XI.** However as on today, not more than half of the political parties have submitted their annual audit report for 2018-19. BJP and INC, the two largest national parties are yet to submit their audit reports for 2018-19.
- XII.** The total income through electoral bonds as declared by the political parties who have submitted their audit reports for 2018-19 amounts to ₹ 599.07 crores which is only 23.5% of the total electoral bonds purchased in 2018-19. In other words, the two national parties together could have cornered more than 70% worth of the bonds in 2018-19.

**XIII.** As of November 2019, nearly 76.5% of the electoral bonds purchased during 2018-19, cannot be traced to any specific political party. The delay & non-compliance by political parties defeats the purpose of any such reporting.

A report dated 29.11.2019 titled “One has to wait till October 2020 or more to know which parties benefitted from Electoral Bonds” published by Factly.in is annexed herewith as **Annexure A 30** (page\_\_\_\_to\_\_\_\_)

32. That it won't be out of place to mention before this Hon'ble Court judgment delivered by the bench headed by Chief Justice M.C. Chagla of the Bombay High Court in 1957 in the matter of Jayantilal Ranchchoddas Koticha v. Tata Iron & Steel Co. Ltd., (1957) 27 Comp Cas 604. That through this judgment, the bench had issued an early warning to Parliament about the great danger inherent in permitting companies to make contributions to the funds of political parties' which may “ultimately overwhelm and even throttle democracy.” . In the appellate proceedings, the Court noted that “Democracy in this country is nascent and it is necessary that democracy should be looked after, tended and nurtured so that it should rise to its full and proper stature” and any “proposal or suggestion which is likely to strangle that democracy almost in its cradle must be looked at not only with considerable hesitation but with a great deal of suspicion.” The relevant portion of the judgment is reproduced below:

*“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.”*

33. A number of jurisdictions have encountered issues surrounding the funding of campaigns and concerns regarding how a level electoral playing field can be achieved.
- I. In Germany there is a ban on donations that may be received by parties from particular sources. These include public corporations, parliamentary parties and groups, parliamentary groups of municipal councils, non-profit, charitable or church-related organisations, foreign donations (with certain exceptions including an exception for donations under €1,000 made by a foreigner), enterprises with substantial state participation, anonymous donations above €500, donations evidently made in the expectation of, or in return for, some specific financial or political advantage etc.
  - II. In UK parties are required to prepare quarterly donation reports in which they must record benefits (donations or transactions) above a particular value that they receive or enter into. During general election periods, the party must prepare weekly donation reports, again for donations above a particular sum. These reports are submitted to the Electoral Commission which maintains a register of the same. Election agents of every candidate to an election are also required to submit returns as to election expenses and payments to the appropriate officer along with relevant bills and receipts. The Electoral Commission maintains public registers regarding a number of the above reports.
  - III. In U.S.A entities like corporations and labour organisations are also prohibited from making contributions or expenditures in connection with federal elections. They are permitted, however, to contribute to political committees established solely to finance independent expenditures (e.g. Super PACs), contribute to the non-contribution accounts of Hybrid PACs, and establish separate segregated funds (SSFs). Corporate and labour PACs raise only voluntary contributions from a restricted class of individuals and use those funds to support federal candidates and political committees. Contributions and donations by foreign nationals in connection with elections, whether made directly or indirectly, are prohibited.

**PRAYER**

In view of the facts & circumstances stated above, it is most respectfully prayed that this Hon'ble Court may be pleased to: -

- a) Grant a stay on the Electoral Bond Scheme 2018, notified by the Central Government vide Notification dated 02.01.2018.
- b) Any other and further orders or directions that this Hon'ble Court may deems fit, just and proper in the facts of circumstances of the case.
- c)

AND FOR THIS ACT OF KINDNESS THE APPLICANT BE FOREVER BOUND  
PETITIONER THROUGH

**PRASHANT BHUSHAN**

COUNSEL FOR THE PETITIONER

DATED: 29<sup>TH</sup> NOVEMBER 2019

NEW DELHI

DRAWN BY: NEHA RATHI/ SHIVANI KAPOOR.