Page 1375 - 1397

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Demystifying the Electoral Bond Scheme Political Contributions and quest for Transparency

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ABSTRACT

The principle of transparency and accountability in political contributions is the cornerstone of any salubrious functioning democracy. The focal consideration for achieving the desired goal of transparency in political funding is essentially the capacity of the citizens to identify the contributions which are received by any given political party or its affiliates through different corporate/non-corporate contributors. The Hon'ble Supreme Court has also recognised the importance of transparency in political funding and has accordingly embraced the concept of 'aware citizenry'. The Finance Act, 2017 had introduced the system of Electoral Bonds whereby amendments were made into various statutes and the Central Government was empowered to notify a scheme for the issuance of the said Electoral Bonds. Accordingly, the Electoral Bonds Scheme was notified on 2nd January 2018 and the State Bank of India was authorised to issue and encash the Electoral Bonds. The nature of the said bonds was prescribed to be a bearer banking instrument with no trace of the buyer and payee. This paper discusses the impact of Electoral Bonds on the transparency of political contributions in India. It highlights the accountability predicament that has emerged due to the bearer nature of the bonds. This paper views the amendments made into the Companies Act, 2013 and Foreign Contribution Regulation Act, 2010 by Finance Act 2017 and Finance Act, 2016 respectively, as having a delirious impact upon political autonomy and electoral transparency of the country as it allows anonymous contributions from foreign companies with subsidiaries in India to make donations to parties. This paper concludes with recommendations to scrap the bearer instrument nature of the Electoral Bonds, comprehensive disclosure of all political contributions without distinctions, thorough audit process for funding, and devising setups for public scrutiny of contributions received by parties, to ensure transparency and accountability in political funding.

Keywords: *Electoral Bond Scheme, political contributions, transparency, aware citizenry.*

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I. INTRODUCTION

The role of money in politics has been extensively researched about and the results of various such researches, either conducted independently or being sponsored by different international organisations have pointed out the colossal role that money plays in the formulation of popular opinion in favour or against an issue or a candidate contesting an election. It is seen that the candidates or political parties that have access to more money and muscle power are often able to turn around the result of an election in their favour.[3] Money is a means for the purchase of muscle power, weapons, liquor, and gifts which is often used to unduly influence the voter remains an area of concern for election regulators. Hence, electoral reforms across different jurisdictions around the world have concentrated upon the need for effectuating certain limitations on the funding which can be accepted by the political parties or their candidates, and attention is placed upon ensuring transparency and accountability in the contributions which are so received by them.

The reasoning for regulating pollical contributions has been argued upon differently by various commentators but the essence of the said argumentation can be summarised in a three-fold manner, *first*, the translation of electoral advantage due to financial predominance. The Hon'ble Supreme Court of India has also accepted this line of argumentation in the case of *Kanwar Law Gupta v. Amar Nath Chawla*, wherein the court observed that 'the availability of large funds does ordinarily tend to increase the number of votes a candidate will receive'.[4] Various subsequent judgments of the Apex Court have also pointed out the importance of money in politics and elections.[5]*Second,* the ubiquity of slush fund and corruption in donations which are made to parties and their candidates. It is observed that voters are heavily influenced by money and gifts which are distributed to them on a promise of voting in favour of a candidate in an election. *Finally*, the influence of big donors on the policies and decisions of the political parties that contest and win elections. The same has been felicitously articulated by Kennedy J. in the matter of *McConnell v. Federal Election Commission*, as:

> "The making of a solicited gift is a quid both to the recipient of the money and to the one who solicits the payment (by granting his request). Rules governing candidates' or officeholders' solicitation of contributions are, therefore, regulations

[3] Bruno Wilhelm Speck, *Money in Politics: Sound Political Competition and Trust in Government* (2013), O.E.C.D. (Apr. 29, 2020, 10:04 A.M.), https://www.oecd.org/gov/ethics/Money-in-politics.pdf.
[4] Kanwar Lal Gupta v. Amar Nath Chawla, (1975) 3 S.C.C. 646 (India).
[5] Ashok Chavan v. Madhavrao Kinhalkar, (2014) 7 S.C.C. 99 (India).

 [ISSN 2581-5369]

governing their receipt of quids."[6] (Emphasis added.)

The above-stated logic behind the reforms in the electoral process with special emphasis on financing in elections has been at the fore of Indian electoral reforms too. The Law Commission of India in its 255th Report on Electoral Reforms (hereinafter, "**LCI Report**") emphasised the need for creating channels for ensuring transparency and accountability in electoral donations which are received by the parties and their candidates.[7] Pursuant to the concerns regarding transparency in political funding and promoting the usage of non-cash instruments for the making contributions to the political parties, the Union Government came up with the certain Amendments to the Representation of People Act, 1951 (hereinafter, "**RPA**"), the Reserve Bank of India Act, 1934 (hereinafter, "**RBI Act**"), the Companies Act, 2013 and the Income Tax Act, 1961, thereby, empowering the Union Government to notify a scheme for the introduction of Electoral Bonds in the country, through the Finance Act, 2017.

The central aim of the Electoral Bond Scheme (hereinafter, "**Scheme**") was to effectively curb cash donations which are made to the political parties as such anonymous contributions account for 75% of the average contributions made to the political parties in India and it is feared that most of such donations are black money which is used to influence the results of parliamentary and legislative assembly elections.[8] However, contrary to the objective of the scheme, that is, to bring about transparency in political contributions made to the political parties, it has largely made the donations received through the Electoral Bonds even more opaque and paradoxical to the question of public scrutiny.[9]

This paper examines the issues revolving around the bearer banking instrument nature of the Electoral Bonds issued under the scheme and analyses the repercussions of opacity behind the identity of the donors and the political party that receives contributions through the scheme. It also delves into the question of limitation of large corporate donations which are received by political parties in an unchecked manner post the notification of the scheme and finally make recommendations for insinuating transparency and accountability in the donations received by political parties in India.

II. THE BACKGROUND

The drive for financial reforms in the electoral set up of India can be predominantly traced back

[6] McConnell v. Federal Election Commission, 540 U.S. 93, (2003).
[7] Law Commission of India, *Electoral Reforms: Report No. 255*, (2015), http://law-commission-of-india.nic.in/reports/Report255.pdf.
[8] Niranjan Sahoo, *Decoding India's electoral bonds scheme*, OBSERVER RESEARCH FOUNDATION (Nov. 30, 2019), https://www.orfonline.org/expert-speak/decoding-indias-electoral-bonds-scheme-58260.
[9] *Id.*

 [ISSN 2581-5369]

from the Report of the National Commission to Review the Working of the Constitution (hereinafter, "**NCRWC**").[10] The NCRWC highlighted the problems associated with election financing and a high degree of compulsion of corruption in the entire political system which had led to compromised governance. Accordingly, the NCRWC made the following recommendation for cleansing the election financing in India:

> 'The Commission recommends that the political parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend. These accounts should be monitored through a system of checking and cross-checking through the income-tax returns filed by the candidates, parties, and their well-wishers. At the end of the election, each candidate should submit an audited statement of expenses under specific heads.'[11]

Not long ago, the Election Commission of India (hereinafter, "**ECI**") had also issued Guidelines on Transparency and Accountability in Party Funds and Election Expenditure (hereinafter, "**EC Transparency Guidelines**")[12] in the exercise of its powers under Article 324 of the Constitution of India[13], which were on very similar lines as the recommendations of the NCRWC. The guidelines provided for the all recognised as well as non-recognised political parties to maintain consolidated books of accounts of its which were to be audited by a qualified practicing Chartered Accountant and given to the ECI in case of recognised parties and to the Chief Electoral Officer in case of unrecognised parties.

Furthermore, the LCI Report also made recommendations for certain amendments to be introduced in the provisions of the RPA and the Income Tax Act, 1961 to maintain transparency and accountability in the contributions received by the political parties.[14] However, to this date, the recommendations made in the LCI Report are not introduced into the relevant statutes and the legal lacunae which were pointed out in the LCI Report continue to persist in election financing in India.

Infelicitously, the Union Government introduced the Finance Bill, 2017 as a Money Bill in the

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[10] Amandeep Kaur, *Issues of Reform in Electoral Politics of India: An Analytical*, 73(1) I.J.P.S. 167, 167-174 (2012).

[11] Ministry of Law and Justice, *Electoral Processes and Political Parties*, REPORT OF THE NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION (2002) 4.14.3, http://legalaffairs.gov.in/sites.pdf (NCRWC).

[12] Election Commission of India, *Guidelines on Transparency and Accountability in Party Funds and Election Expenditure* (Aug. 29, 2014), https://eci.gov.in/files/file/5036-guidelines-on-transparency-and-accountability-in-party-funds-and-election-expenditure-matter-regardingdated-29082014/ (EC Transparency Guidelines).

[13] INDIA CONST. art. 324.

[14] Law Commission of India, *Electoral Reforms: Report No. 255*, (2015), 2.28.16. http://law-commission-of-india.nic.in-reports-Report255.pdf.

 [ISSN 2581-5369]

House of People, which received the presidential assent on 31st March 2017 and subsequently came into force. The Finance Act, 2017 empowered the Union Government to notify a scheme for the introduction of Electoral Bonds in the Indian political arena. Accordingly, the Scheme was introduced by the Finance Ministry on 2nd January 2018 by notification in the Gazette of India.[15] The introduction of the Scheme has raised many concerns in various quarters of the country. One of the major provisions of the Scheme, amongst others, which has been heavily debated upon by various policy law experts is the bearer banking instrument nature of the Electoral Bonds which effectively ensure that the identity of the buyer or payee i.e. the donor of the political party is not revealed under any circumstance.[16]

The introduction of the Scheme led to the institution of various Writ Petitions under Article 32[17] of the Constitution of India, on account of being violative of Article 19[18] of the Constitution and against the spirit of constitutional morality. The Hon'ble Supreme Court in one such petition filed by the Association for Democratic Reforms (hereinafter, "**ADR**") passed an interim order while observing that the 'contentions raised by the petitioner give rise to weighty issues which have a tremendous bearing on the sanctity of the electoral process in the country' and directed the political parties eligible for receiving donations through the Scheme to maintain proper records of the contributions received from various payee under the Scheme. The relevant paragraph of the said order is as follows:

> '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 a sealed cover, detailed particulars of the donors as against 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.'[19] (Emphasis added.)

Given the aforesaid discussion regarding the need for transparency in election funding and the opacity introduced by the Scheme for Electoral Bonds, the paper shall now delve into the policy and legal lacunae pervasive in the Scheme and subsequently make suggestions, to ensure transparency and accountability in election financing in the country.

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[15] Ministry of Finance, *Electoral Bonds Scheme* (2018), http://egazette.nic.in/ReadData/2018/181434.pdf (Electoral Bonds Scheme).
[16] Electoral Bonds Scheme, cl 2.
[17] INDIA CONST. art 32.
[18] INDIA CONST. art 19.
[19] Association for Democratic Reforms & Anr. v. Union of India & Ors., WP No. 333/2015 (SC) (2019) [hereinafter, "**ADR**"].

III. ELECTORAL BOND SCHEME AND LEGAL LACUNAE

The Union Government presented the Scheme with an underlying objective claimed to repress the perils of corrupt money and to narrow down the opaque nature of the electoral funding within the Indian legal framework.[20] However, with the enactment of the amendments within various statutes through the stipulations of the Finance Act, 2016, and the Finance Act 2017, the Scheme has paved the way for unwarranted, unchecked, and anonymous funding to the Political Parties. Thus, the amendments made in pursuance of Scheme critically contravene the fundamentals of transparency and accountability and are inconsistent with the public policy as jeopardizing the rights which are fundamental to the citizens enshrined in part III of the Constitution. We now enlist the major predicaments of the Scheme.

(A) The anonymity surrounding the contributions received under the Scheme

The RPA prescribes that every political party is required to prepare a report concerning all the contributions exceeding the limit of INR 20,000/- received by such political party within a particular financial year.[21] Furthermore, sub-section 3[22] of Section 29C of the RPA, 1951, makes it compulsory for every single party to submit such aforesaid Report of Contribution to the ECI before furnishing its returns of Income Tax per Section 139 of Income Tax Act.[23] Failure to fulfil such a condition denies the respective political parties from availing the advantage of exemption of tax under the Income Tax Act.[24] However, the amendment carried out in Section 29C of the RPA, vide Section 137 of the Finance Act 2017, inserted a proviso clause to sub-section 1 of Section 29C which provided that the political donations received through Electoral Bonds are out of the scope of declarations under the Annual Contribution Report as per the mandate of Section 29C of the RPA.[25]

The significant implication of the said amendment on the transparency of the electoral funding is that the political parties submitting the Contribution Declaration Reports to the Election Commission do not have to mention the names and other details of the ones contributing through Electoral Bonds. Accordingly, the political parties are free to not file yearly contribution reports in instances wherein contribution is received by way of electoral bonds. When the Election Commission of India receives the Annual Contribution Report of registered state and national political parties, it routinely publishes such contribution reports on its official

[20] *supra* note 8.
[21] The Representation of People Act, No. 43 of 1951, INDIA CODE, § 29C [hereinafter, "**RPA**"].
[22] RPA, § 29C (3).
[23] The Income Tax Act, No 43 of 1961, INDIA CODE, § 139 [hereinafter, "**ITA**"].
[24] RPA, § 29C (4).
[25] Finance Act, No. 7 of 2017, INDIA CODE, § 137.

 [ISSN 2581-5369]

website which serves as a platform for the citizens to know about the donations received by political parties and the sources of such donations. However, with the commencement of the electoral bond, the ECI as well as the citizens are unable to access the essential information concerning electoral funding.

The other issue arising out of such amendment is that in instances where donations are received by way of Electoral Bonds but are not reported through the Annual Contribution Report, it will be impossible for the Election Commission to determine whether or not the donation received by a particular political party is violative of the provisions stipulated under section 29Bof the RPA which proscribes the political parties to not to accept contributions from Government Companies as well as foreign sources.[26]

(B) The income of the political parties

Section 11[27] of the Finance Act 2017, effectively amended section 13A of the Income Tax Act, 1961 which provides tax exemption to political partied different heads of income, including the contributions, received employing political contribution.[28] As per Section 13A, any income received by a political party which is derived through voluntary contribution will constitute part of the total income of such political party subject to the following conditions, *first*, that a record of such contribution exceeding INR 20,000/- is maintained by the political party in its books of account to facilitate the Income Tax Officer to deduce such income, *second*, that the accounts of such political party are audited by an accountant as per Explanation under sub-section (2) of section 288[29], and *third*, that a report is furnished by such political party under subsection (3) of section 29C of the RPA. The amendment in the proviso clause (b) of Section 13A of Income Tax, 1961, has excluded the contributions received through electoral bonds from being reported to the Income Tax Department. That is to say, political parties are under no obligation to maintain records of donations taken using Electoral Bonds to get benefit under Section 13A, and if no records are essentially maintained by political parties, no questions can be raised to the Income Tax Department regarding such contribution.

Additionally, the amendment had also inserted a proviso clause which refers to the condition that all the donations above INR 2000/- are required to be received essentially through cheques, bank drafts, electoral bonds, or any other digital mode of payment. It is particularly necessary

[26]Aashish Aryan, *Election Commission Expresses Reservations on Donations via Electoral Bonds*, BUSINESS STANDARD (Nov. 20, 2019) <https://www.business-standard.com/article/current-affairs/election-commission-expresses-reservations-on-donations-via-electoral-bonds-119032701069_1.html>
[27] Finance Act, No. 7 of 2017, INDIA CODE, § 11.
[28] ITA, § 13A.
[29] ITA, § 188.

 [ISSN 2581-5369]

to take note that this proviso clause (d) inserted to section 13A of the Income-tax vide section 11 of the Finance Act, 2017 implies that the political parties will have to declare donations exceeding INR 2000/- to obtain tax exemption. However, no such amendment was made in this respect to the corresponding provision under section 29C of the RPA. This has caused a fallacy between two statues as it opens doors for instances where although the contributions received above INR 2000/- will have to be declared to the Income Tax Department by political parties but it will not be mandatory for such political parties to divulge the names of the benefactors to the ECI to avail tax exemption as the limit for declaration of political contribution is INR 20,000 under Section 29C of RPA.[30] As a result, this anomaly defeats the purpose of the amendment made through the Finance Act, 2017 because the citizens are unable to get to know the identity of the donors contributing over INR 2000/- to a political party.

Because of the position explained above, the cumulative impact of the amendments to the RBI Act, the Income Tax Act, and the RPA has resulted in complete opacity of political funding in India as the political parties are now under no obligation to reveal the source of donations received by way of Electoral Bonds because such contributions are exempted from being reported in the annual declaration of political parties to the Income Tax Department or the ECI.[31]Moreover, even if any question is raised regarding such contributions under the Right to Information Act, 2005 (hereinafter, "**RTI Act**") the Income Tax Department and the ECI can take the plea of secrecy that is vested in the assessees.

Furthermore, it is observed that parties make every possible effort to contribute cash of less than INR 2000/- only, the reason being that the declaration of contributions applies to donations of above INR 20,000/- only, by section 29C of the RPA. Consequently, such individual cash donations of less than INR 2000/- up to the amount of INR 20,000/- will not be required to be reported to the IT Department or the ECI. To put a finer point on it, the political parties are restricted to report and disclose sources of only such donations that are received over INR 20,000/- by way of cheques, bank drafts or by use of any other banking channel via electronic medium to the ECI and the Income Tax Department.

(C) Uncapped Corporate donations

To give effect to the Scheme, the amendment to section 182 of Companies Act, 2013 through

[30] Anubhuti Vishnoi, *Non-amended RPA prevents funding Transparency*, THE ECONOMIC TIMES (Oct. 2, 2018), https://economictimes.indiatimes.com/news/politics-and-nation/non-amended-rpa-prevents-funding-transparency/articleshow/66036321.cms.

[31] Vaibhav Singh, *Electoral Bonds: Secretive and Opaque*, THE HINDU (Mar. 22, 2018), thehindubusinessline.com/opinion/electoral-bonds-secretive-and-opaque/article23323002.ece.

 [ISSN 2581-5369]

section 154[32] of the Finance Act, 2017, waived off the limits stipulated under the proviso clause of section 182(1) which prescribed that the corporate donations to political parties within a financial year cannot be more than 7.5% of a company's average net profits in the past three consecutive financial years.[33] The statutory cap of 7.5% served as an essential check on the unreasonable and illegal corporate donations. Further, the requirement for the companies to donate out of the net profits of three preceding financial years ensured that the companies which are contributing to the political parties are bona fide profit-making companies.

Additionally, the amendment operatively eliminated the mandate under sub-section (3) of section 182 which prescribed for a requirement for a company contributing to political parties to necessarily disclose in its books of account the amount of each contribution along with the full particulars of parties to whom such contributions were made, to make the shareholders acquainted with the expenditures of the company. Upon the amendment, the companies making contributions are now required to reveal only the aggregate amount of the contributions in their profit and loss account. As a result, the citizens as well the shareholders of the company are now prevented from getting the information concerning the specifications of political parties, the amount of contribution against each political party, and the number of political parties to which such contributions are made by the companies.[34]

A noteworthy ramification of the aforesaid amendments is that they allow companies to make unlimited corporate donations which would enable the companies to unduly influence the ruling political parties by giving them huge contributions.[35] As a result of this *quid pro quo* tacit understanding between the corporations and political parties, the political parties forming the government at the centre and state level necessarily hold the interests of such corporations.[36]

Additionally, the lack of limitation on political contribution further increases the level of electoral propagandas at the time of election due to which the political parties having low budgets are now unable to keep up with the high budgets of the cash-rich national political parties in a fair manner.[37] Besides, the amendment authorizes any company under the definition of the Companies Act, 2013 to make political contributions regardless of whether the business

[32] Finance Act, No. 7 of 2017, INDIA CODE, § 154.
[33] The Companies Act, No. 18 of 2013, INDIA CODE, § 182.
[34] Jagdeep S. Chokkar, *Much Ado About Nothing: Electoral Bonds and an Unapologetic Lack of Transparency*, THE WIRE (Jan. 4, 2018), https://thewire.in/business/electoral-bonds-transparency-in-political-funding.
[35] M.V. Rajeev Gowda & Sridharan, *Reforming India's Party Financing and Election Expenditure Laws,* 11(2) E.L.J. 226, 226-240, (2012).
[36] Seema Chishti, *Electoral Bonds: How they'll work, how 'transparent' they'll really be*, THE INDIAN EXPRESS (Jan. 8, 2018), https://indianexpress.com/article/explained/electoral-bonds-election-funding-arun-jaitley-party-finances-political-donations-india-5015438/.
[37] *supra* note 2.

 [ISSN 2581-5369]

undertaken by the company is genuine and legitimate, or, whether or not the interests of the shareholders are carried out by the company. To this effect, the amendments open the floodgates for the shell companies, which may be formed with the primary objective of funnelling black money, to channel an unlimited amount of black money to political parties through opaque and anonymous bearer instrument of Electoral Bond, thereby, legalizing slush funding.[38] The other notable implication is that the omission of a cap of 7.5% of average net profits on corporate contribution to political parties facilitates the troubled as well the loss-making companies to make unlimited political donations out their share capital or free reserve account.[39] Therefore, the reforms concerning electoral funding are nowhere near as effective as it ought to be.

(D) Foreign Contributions

The RPA under Section 29B forbids the political parties from receiving political contributions from any foreign source as mentioned under Section 2(e) of the Foreign Contribution (Regulation) Act, 1976.[40] The Foreign Contribution (Regulation) Act, 2010 (**FCRA**), which is a substitute for Foreign Contribution (Regulation) Act, 1976,[41] was primarily enacted to govern and regulate the receipt and administration of foreign contributions by individuals, associations, and corporations and to prevent misutilisation of foreign contributions received by such entities which are detrimental and pernicious to the national interests. Accordingly, section 3 of the FCRA interdicts the independent candidates contesting elections, members of the legislature, political parties, and office-bearers of political parties from receiving any foreign contribution. Correspondingly, Section 35 of the aforesaid Act punishes political parties that accept any contribution from a foreign source.

In the case of *Association for Democratic Reforms and Ors. v. Union of India and Ors.*,[42]a couple of national political parties were deemed to have received donations in violation of sections 2[43] and 4[44] of the FCRA as the donations taken from the donor companies were construed as foreign contributions because the donor companies namely Sterlite and Sesa, comes within the category of 'Foreign Source' under section 2(e)(vi) of the said Act. According

[38] Gautam Bhatia, *The electoral bonds scheme is a threat to democracy*, THE HINDUSTAN TIMES (Mar. 18, 2019), file:///E:/ELECTION-LAWS/The-electoral-bonds-scheme-is-a-threat-to-democracy-analysis-Hindustan-Times.html.
[39] Chanda Mishra, *Electoral bonds and FCRA amendments pave the way for unaccounted political funding*, THE ECONOMIC TIMES (Mar. 31, 2018), https://economictimes.indiatimes.com/news/politics-and-nation/electoral-bonds-and-fcra-amendments-pave-the-way-for-unaccounted-political-funding.html.
[40] RPA, § 29B.
[41] The Foreign Contribution (Regulation) Act, No. 49 of 1976, INDIA CODE [hereinafter, "**FCRA**"].
[42]Association for Democratic Reforms & Ors. v. Union of India & Ors., (2014) 3 CompLJ 41 (Del) (India).
[43] FCRA, § 2.
[44] FCRA, §. 4.

to rule (vi) of section 2(e) of the FCRA, a company under the definition of Companies Act can be said to be a 'foreign source' provided that more than 50% of the share capital of such company is held by the corporations which are incorporated in a foreign territory.[45] Thus, owing to the requirement of Section 2(e)(vi),[46]the High Court of Delhi ruled that contributions received by the political parties are interpreted as originating from a foreign source as more than 50% of the share capital of the donor companies are possessed by Vedanta which is a corporation incorporated in the territory of United Kingdom. Consequently, the acts of the political parties to receive a donation from a foreign source of Vedanta frustrates the bar put by section 4 of the FCRA, which prevents political parties from receiving foreign contributions.[47]

To reverse and nullify the consequences of the decision of the High Court, the government enacted an amendment retrospectively by inserting a proviso clause under the definition of 'foreign source' in Section 2(1)(j)(vi) of the FCRA vide section 236[48] of the Finance Act, 2016 which precludes all the companies under the Companies Act, 1956, the value of share capital of which are compliant with the limits for the foreign investment prescribed by the Foreign Exchange Management Act, 1999, even though more than 50% of the shares of such companies are held by a foreign country, foreign citizen, foreign company, corporation incorporated in a foreign country or foreign societies /trusts /associations, from the ambit of 'Foreign Source'.[49] As a result, all political parties receiving foreign funds are excluded from scrutiny with retrospective effect from 1976. The aforesaid provisions may even encourage foreign companies to make subsidiary companies make political funding in India and influence the election results. The discernible impact of the said amendment along with the amendments in the various statutes is that the foreign companies are now enabled to make unlimited, unaccounted, and unidentified contributions within the country.[50]

The deleterious impact of the foreign funding on the electoral policy was further acknowledged by the Delhi High Court in the case of the *Association for Democratic Reforms and Ors. v.*

[45]Vaish Associates Advocates, *Between the Lines: Indian companies with foreign shareholding over 50% unshackled from FCRA chains* (March, 2016), https://s3.amazonaws.com/documents.lexology.com/9fbfd64b-8849-46ef-8c61-dbe3979a45ef.pdf.
[46] FCRA §. 2(e)(vi).
[47] Milan Vaishnav, *Don't Believe the BJP and Congress Claims That They're Cleaning Up Poll Funding*, CARNEGIE ENDOWMENT FOR INT. PEACE (Feb. 6, 2018), https://carnegieendowment.org/2018/02/06/don-t-believe-bjp-and-congress-claims-that-they-re-cleaning-up-polls.
[48] Finance Act, No. 28 of 2016, INDIA CODE, § 236.
[49] FCRA, § 2 (1) (j) (vi).
[50]Anuj Srivas, *In Supreme Court, EC Criticizes Modi Govt's Electoral Bonds and Foreign Funding Tweaks*, THE WIRE (Mar. 27, 2019), https://thewire.in/law/supreme-court-election-commission-modi-electoral-bonds-foreign-funds.

Union of India and Ors.,[51] wherein the hon'ble court propounded that not only does the foreign aid or contribution has the capability of acquiring international favours but is potential enough to persuade and even impose political beliefs. This potentiality of the foreign influence on the electoral system is reinforced by the amendments in the Finance Act, 2016, and Finance Act, 2017 in the form of dual accessories of anonymity from the citizens and the absence of statutory limitation on the number of donations.

Further, the amendments are deemed to ease the foreign shell companies to route black money anonymously in India by making political contributions through their subsidiary companies in India through Electoral Bonds. Hence, it will result in a conspicuous travesty of democratic processes in India. However, it is pertinent to note that what cannot be done directly, cannot be indirect. Therefore, if a foreign contribution is prohibited in electoral funding under the law, the same cannot be made legitimate through subsidiary companies.

(E) Eligibility for encashment of Electoral Bonds

The Scheme prescribes the eligibility criteria of the political parties to encash Electoral Bond under sub-clauses (3) and (4) of clause 3 of the scheme. Under clause 3(3) of the Scheme,[52] only those political parties are permitted to take Electoral Bonds which are registered as per Section 29A of the RP Act, 1951 and have obtained at least 1% of the total votes in the previous general elections to the Lok Sabha or the State Legislative Assembly.[53]However, the concerned provision failed to take into account the independent candidates contesting elections, the political parties which did not participate in the previous general election, newly constituted political parties which will face a major setback in raising funds under the provisions of the scheme, and any other political party which fails to secure 1% of total votes polled in the previous general elections.

Additionally, clauses 3(4)[54] and 12(1) of the Scheme further prescribes for a requirement that the eligible political parties can encash the Electoral Bonds only by depositing the said bonds in their respective bank accounts designated by the authorized bank.[55]On a closer view of the aforesaid provisions, it can be inferred that where contributions taken by way of Electoral Bonds are not declared under sections 29C of RPA and 13A of the Income Tax Act[56], on inspection of the Contribution Reports and books of account of a political party, it is now

[51] *supra* note 42.
[52] **Electoral Bond Scheme 2018, cl 3(3).**
[53] RPA, § 29A.
[54] **Electoral Bond Scheme 2018, cl. 3(4).**
[55] **Electoral Bond Scheme 2018, cl. 12(1).**
[56] ITA, § 13A.

 [ISSN 2581-5369]

difficult to ascertain as to whether or not a political party has received any contribution in contravention of eligibility criteria for encashment of bonds under clauses 3 of the Scheme.

The abovementioned position is further substantiated by the findings of the ADR, according to which a sum of 69 registered unrecognized parties which took donations through electoral bonds provided details of the contributors of such bonds to ECI to comply with Supreme Court's interim order[57] dated 12 April 2019, out of which the details of the vote share of only 43 parties were accessible to check their eligibility.[58] Of these 43 registered unrecognized parties which were scrutinized, only one party was found to fulfil the eligibility criteria of obtaining 1% of the total votes in the past general elections, while the share of votes of the rest of the parties ranged from 0.0003 % to 0.86 %.[59] In light of the inconsistency mentioned above, the question that arises is that how is it possible for the political parties which failed to fulfil the eligibility criteria to encash the electoral bonds in their designated bank accounts. One of the possible reasons can be that the Election Commission of India has not published on its official website any list of political parties eligible to take contributions through Electoral Bonds, as per the eligibility criteria mentioned within the Scheme. Neither does the said list is made available in public through any other source. Another shortcoming is that the scheme does not provide for a regulatory authority to scrutinize the political parties which are not eligible to encash electoral bonds, thereby, rendering the provisions of the Scheme as toothless and ineffective.

It is further pointed out that the Electoral Bond Scheme is disproportionately opaque as clause 2(b) of the scheme provides that the bonds are to be issued and encashed through the authorized bank which is the State Bank of India (**SBI**).[60] Being a public sector bank, SBI will have all the required details about the donors of the electoral bonds, and keeping this in view, the Ministry of Finance as well as the government will have an edge on this method of donation. In this way, the scheme will always be inclined towards the political party whichever is ruling at a particular time.[61] Exempli Gratia, ADR in its report divulged that out of the total political contribution made by way of Electoral bonds, the ruling Bhartiya Janata Party managed to receive nearly 95% of such contribution.[62]

[57] *supra* note 17.
[58] Association for Democratic Reforms, *Analysis of Eligibility of Registered Unrecognised Political Parties to Receive Funding through Electoral Bonds* (Feb. 18, 2020), https://adrindia.org/research-and-report/political-party-watch.
[59] *Id.*
[60] **Electoral Bond Scheme, cl 12(1).**
[61] *supra* note 56.
[62] *supra* note 45.

(F) Citizens right to know

The freedom of speech and expression is known to be the cornerstone of a democratic form of government.[63] The right to knowledge and information is a universally conceded natural right stemming from the conception of democracy[64] and has been construed by the apex court to have been emanated from the fundamental right of speech and expression ingrained within Article 19(1)(a)[65] of the Constitution of India.[66] To exercise the right to vote given under Article 326[67] of the Constitution along with Section 62[68] of the RPA, effectively, a citizen must have access to relevant data and information about activities and other undertakings of the political parties.[69] The casting of vote in favour of a particular party is also an essential aspect of the fundamental right to expression within the meaning Article 19(1)(a) and in absence of relevant information concerning the political party, the voters will not be able to exercise their freedom of expression to choose in a free and fair manner[70] because they are unaware of the concerned information.[71] Therefore, 'aware citizenry' is the key to a successful democratic process of voting.[72] Given the nexus between 'aware citizenry' and Article 19(1)(a), the citizens have the right to know about the political funding received by the parties.[73]

The amendments in the Finance Act, 2016 and Finance Act, 2017 along with the corresponding amendments within the different statutes, have a delirious impact on the transparency in electoral funding in so far as the books of accounts and yearly reports of the contribution of the political parties do not have to reveal the identities of the contributors donating through electoral bonds to the Income Tax Department and the ECI. Further, the amendments have developed a framework whereby the corporate donations are selectively concealed from public scrutiny with no statutory limitations, no record, and no penal provision to regulate the disclosure of such contributions. It can be inferred that the aforesaid amendments have violated the voters' right to know about the political donations made to different parties along with the source of such contributions under Article 19(1)(a). Moreover, the amendments cannot be

[63] Romesh Thappar v. State of Madras, (1950) S.C.R. 594 (India).
[64] *Resurgence India* v. *Election Commission of India*, (2014) 14 S.C.C. 189 (India).
[65] INDIAN CONST. art. 19.
[66] State of Uttar Pradesh v. Raj Narain & Ors., (1975) 4 S.C.C. 428 (India); S.P. Gupta v. Union of India, (1981) Supp. S.C.C. 87 (India); Secretary, Ministry of Information and Broadcasting, Government of India & Ors. v. Cricket Association of Bengal & Ors., (1995) 2 S.C.C. 161 (India).
[67] INDIA CONST. art. 326.
[68] RPA, § 62.
[69] C. Narayanaswamy v. C.K. Jaffer Sharief, (1994) 3 S.C.C. 170 (India).
[70] Dr. P Nalla Thampy Terah v. Union of India, (1985) 2 S.C.C. 189 (India).
[71] Union of India v. Association for Democratic Reforms & Anr., (2002) 5 S.C.C. 294 (India).
[72] Secretary, Ministry of Information and Broadcasting, Government of India & Ors v. Cricket Association of Bengal & Ors., (1995) 2 S.C.C. 161 (India).
[73] People's Union for Civil Liberties & Anr. v. Union of India, (2003) 4 SCC 399 (India).

 [ISSN 2581-5369]

protected under the veil of reasonable restrictions given under Article 19(2)[74] because the confidentiality claimed by under various amendments regarding non-disclosure of political contributions has no repercussions on the security of the public.[75]

The Electoral Bond Scheme violates the citizens' right to information under Article 19(1)(a) as it protects the political parties from public scrutiny by way of Clauses 2(a) and 7(4) which ensure that the identities of donors and payee, that is, political parties remain anonymous to the general public. Clause 2(a) of the scheme provides for contributions through bearer instruments which prevent the identity of contributors making electoral donations from being revealed and encourages the political parties to take actions as per the requests of the donors contributing such parties without being held answerable for such quid pro quo settlement to the public.[76] Furthermore, Clause 7(4) of the scheme specifies that the information provided by the purchaser of the electoral bond to the authorized bank must not be disclosed to any authority for any purpose and thus, must be kept confidential by the said bank.[77] However, the scheme cannot provide confidentiality meaningfully as the scheme does not prescribe for a redressal mechanism to penalize the breach of secrecy. Therefore, the aforesaid amendments are in contravention of the principles of reasonableness[78] and non-arbitrariness[79] and are violative of Article 14 of the Constitution because there is no reasonable nexus between the application of the said amendments and the object sought to be achieved through the proposed amendment which is to reinforce transparency and to constrain the usage of black money in funding a political party.[80] Moreover, the scheme along with the other amendment with various statutes imposes vague and arbitrary restrictions upon the right to freedom of information.

The right to vote in a free and fair election can be traced back to Article 21(1) of UNDHR to which India is a signatory. The constitution under Article 324[81] confers plenary power on the Election Commission of India to regulate the conduct of elections freely and fairly.[82] In the case of *Mohinder Singh Gill* v. *Chief Election Commr.*,[83] *the Supreme Court ruled that in a democratic form of government, the government extracts its power from the will of the citizens and thus, it is very important to ensure that the voters exercise their right to choice in a fair*

[74] INDIA CONST. art. 19, cl. 2.
[75] State of Uttar Pradesh v. Raj Narain & Ors., (1975) 4 S.C.C. 428 (India).
[76] **Electoral Bond Scheme 2018, cl 2(a).**
[77] **Electoral Bond Scheme 2018, cl 7(4).**
[78] Shayara Bano v. Union of India, (2017) 1 S.C.C. 1 (India).
[79] Sunil Batra v. Delhi Administration & Ors., (1978) 4 S.C.C. 494 (India).
[80] E.P. Royappa v. State of Tamil Nadu & Anr., (1974) 4 S.C.C. 3 (India); Mithu v. State of Punjab, (1983) 2 S.C.C. 277 (India).
[81] INDIA CONST. art. 324.
[82] *Public Interest Foundation v. Union of India*, (2019) 3 S.C.C. 224 (India).
[83] (1978) 1 S.C.C. 405 (India).

 [ISSN 2581-5369]

and free manner as fair and free election is the heart and soul of representative democracy. In light of the aforesaid, it can be logically deduced that any attempt to conceal the political funding from public scrutiny will vitiate the democratic process of free and fair elections.[84] *The same can be illustrated by an example, if an owner of a slaughterhouse gives political funding to X, a political party, the political agenda of which is to prevent cattle slaughter, in that case a voter who idolizes cows as deities and intends to vote for the X party will not vote in favour of this party after knowing the fact that the X party is getting funding from a slaughterhouse. However, in absence of such information regarding political funding through an electoral bond, the voters will not be able to exercise their freedom of expression in a free and fair manner. Therefore, there is a need for a stern regulation of the conduct of political parties regarding the collection of funds and electioneering*[85] *as non-maintenance of proper accounts of political donations will contaminate the purity of elections.*[86]

Moreover, if Election Commission has the power to question the expenditure incurred by a political party under Article 77[87] *and if the ECI can use its power under Article 324 to obtains the citizens the information about the assets and liabilities of candidates competing for election,*[88] *logically, the Election Commission of India must also be empowered to procure the relevant information concerning all the political contributions to the voters.*

IV. CONNECTING PROBLEMS TO REMEDIES: POLITICAL FINANCING AND ELECTORAL REFORMS

Transparency and accountability have been at the fore of electoral reforms initiated under different jurisdictions around the world. It has been seen that countries which had strict measures for the audit and accounting of the political contributions received by political parties, their candidates and third party actors working on behalf of the political parties, strengthened the trust of the citizens in the electoral process and accordingly increased their participation in the political process.[89] However, in India the applicability of audit, accounting, and scrutiny parameters are far from satisfactory and therefore, adversely affect the confidence of the citizens in the electoral system. As already discussed in the preceding section that the introduction of the Scheme has further deteriorated the already lagging behind financial

[84] Jayantilal Ranchhodas Koticha & Ors. v. Tata Iron & Steel Co. Ltd., A.I.R. 1958 Bom 155 (India).
[85] Common Cause (A Registered Society) v. Union of India, A.I.R. 1996 SC 3081 (India).
[86] Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe, (1955) 5 S.C.C. 347 (India).
[87] INDIA CONST. art. 324.
[88] People's Union for Civil Liberties & Anr. v. Union of India, (2003) 4 S.C.C. 399 (India).
[89] Trilochan Sastry, *Electoral Reforms and Citizens' Initiatives: Some Breakthroughs*, 39(13) E.P.W. 1391, (2004).

 [ISSN 2581-5369]

regulation set up of the political parties in India due to the anonymity of transactions that take place through the Scheme. Accordingly, we now list the reforms which can be implemented in our system for effectuating accountability and transparency in the financial matters of electoral politics, with special focus on the Scheme.

(A) Transparency: enhancing citizens' confidence

The four most important established principles surrounding transparency in election funding are reliability, accessibility, intelligibility, and suitability in respect of time.[90] It has been argued that *timely* publication and dissemination of election funding data help the civil society and election watchdogs to delve into the intricacies of the data. The availability of such data months or years after when the contributions were made to the political party makes the data less apt for political scrutiny. Moreover, the data gains its *reliability* over a while when it is effectively scrutinised by the election regulators and civil society. Data which is timely put to scrutiny but not made *accessible* to the public at large due to the absence of mandatory legal provisions to do so or because of the prescription of a difficult process to access the data is also unable to produce the desired effect. Finally, the *intelligibility* of the made accessible to the citizens is also crucial to ensure transparency in political funding.

The Indian legal system struggle on all accounts of the above-stated parameters for ensuring transparency in political contributions. Under the present scheme of law, the political parties are supposed to submit their audited books of accounts with the ECI in the case recognised political parties and with the Chief Electoral Officer in case of unrecognised political parties,[91] which is then published on the official website of the ECI. However, there is no legislative force behind the requirements of audit and accounting of the books of accounts of the political parties. The said requirements are only like Guidelines which are issued by the ECI according to its regulatory powers under the Constitution and accordingly there are no effective sanctions present for punishing the parties which do not comply with the EC Transparency Guidelines. The books of accounts of the political parties are not timely produced in the public forum and the accessibility of an intelligible report on political contributions is not made available to the common citizens for an informed decision in the elections.

The Electoral Bond Scheme operatively dilutes the provisions of already ineffective state and public scrutiny of political donations received by political parties in India. It puts in place a myriad of provisions under different statutes that makes it impossible for the regulators as well

[90] Bruno Wilhelm Speck, *Money in Politics: Sound Political Competition and Trust in Government* (2013), O.E.C.D. (Apr. 29, 2020, 10:04 A.M.), https://www.oecd.org/gov/ethics/Money-in-politics.pdf.
[91] EC Transparency Guidelines, cl. 3(vi).

 [ISSN 2581-5369]

as the civil society to access and analyse the contributions received by parties through the Electoral Bonds. The interim order of the Hon'ble Supreme Court in *Association for Democratic Reforms v. Union of India* also does not conform with the mandate of transparency and accountability as it puts in place the condition on the political parties to set forth the details of contributions received under the Scheme in a sealed cover to the ECI.[92] This effectively ensures that details of the donors of the political parties remain confidential and far away from the reach of citizens and civil society.

1. State scrutiny: the need for a statutory framework

The suggestions in respect of state scrutiny of the contributions made through the Scheme or otherwise shall be three-fold. *First*, the bearer banking instrument nature of the Electoral Bonds must be scrapped off as it ensures that the credentials of the buyer of the bonds remain undisclosed.[93] Moreover, the political parties which are eligible for accepting the Electoral Bonds are required to be made responsible for including the details of contributions received under the Scheme. This is because there cannot be effective state oversight of the contributions received through the Electoral Bonds if the identity of the buyer and the political party receiving the bond is kept undisclosed.

Second, the EC Transparency Guidelines must be made enforceable with proper enforceability mechanism by a statute specifically addressing election financing or through suitable amendments in sections 29 and 77 of the RPA. State scrutiny of finances of the political parties is necessary for ensuring that unaccounted, unabated, and illegal money is not channelled into the electoral process. For an effective dissection of the donations made to the parties, the ECI needs to be given discretionary powers ranging from financial, political and criminal to punish the political parties which do not abide by the terms of statutory oversight as it is seen that lack enforcement makes such oversight nothing more than a façade.

Finally, there needs to be a mechanism for the audit of the books of accounts of parties in India. Presently, parties are only obliged to submit their books of accounts to the ECI post an audit by a qualified Chartered Accountant.[94] However, it is realised that such an audit framework is not effective when it comes to political parties due to various problems surrounding non-compliance with the industry standards in the audits. Accordingly, the audit of the accounts of political parties must be done by the financial officers of the ECI itself.

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[92] ADR, *supra* note 17.
[93] Association for Democratic Reforms, *The opacity around Electoral Bonds* (Nov. 26, 2019), https://adrindia.org-content-opacity-around-electoral-bonds.
[94] EC Transparency Guidelines, cl 3(vi).

 [ISSN 2581-5369]

2. Public Scrutiny: role of citizens

The role of civil society in ensuring the proper implementation of the statutory framework for electoral regulations has been a source of immense discussions surrounding political financial reforms. The civil society tends to expose the donors, parties, and regulators for non-compliance of election laws. They gather information regarding political donations and disseminate in the society, which in turn helps the citizens to make informed decisions while voting in an election.[95] Therefore, it can be said aware citizens play a very vital role in the implementation of financial reforms about the political parties.

The RTI Act recognises the right of the citizens to gather information, subject to the provisions of the Act.[96] However, political parties do not fall within the ambit of the RTI Act and therefore, citizens cannot *per se* direct their questions relating to electoral funding to the political parties. Having said that, it is to be noted that the information of electoral financing in India is still disseminated amongst the citizenry through the ECI, which publishes the reports of various political parties that it receives under section 29 of the RPA, on its official website. Additionally, the ECI being State within the meaning of Article 12 of the Constitution[97], is bound by the provisions of the Act, and accordingly, citizens can even file an application under the RTI Act for any specific information which is permissible to be given under the Act.[98]

Keeping in view the aforesaid, the need of the hour is that parties must be bought within the purview of the RTI Act for FACILITATING even stringent public scrutiny norms. Presently, there is a statutory mandate under the RPA that parties are not supposed to maintain the record of petty donations i.e. donations below INR 2,000/-, however, the said mandate is reportedly misused by all the political parties in India as they show almost 75% of their donations below the statutory limit and accordingly anonymous.[99] It is required that a cap of 20% must be introduced on anonymous donations received by political parties[100] and rest all of the money needs to be accounted for which after an audit of the ECI can be publicly made available for inspection.

(B) Strengthening political competition between the parties

[95] ADR, *supra* note 17.
[96] Right to Information Act, No. 22 of 2005, INDIA CODE, vol.__, §. 3.
[97] INDIA CONST. art. 12.
[98] Vaishali Rawat & Hemant Singh, *Why there is an urgent need to bring Political Parties under the RTI Ambit*, THE WIRE (Feb. 7, 2017), https://thewire.in/politics/why-there-is-an-urgent-need-to-bring-political-parties-under-the-ambit-of-rti.
[99] Association for Democratic Reforms, *Electoral and Political Reforms* (Mar. 18, 2016), https://adrindia.org/sites/default/files/Electoral-Political-Reform-and-ADR.pdf.
[100] Law Commission of India, Electoral Reforms: Report No. 255, (2015), 2.28.16. http://law-commission-of-india.nic.in-reports-Report255.pdf.

 [ISSN 2581-5369]

The essence of controlling the role of finances in an election is to facilitate the free and fair election. Besides, healthy competition between political parties is a desirable trait of representative democracies. Two of the most important factors responsible for facilitating fair elections are the abuse of administrative powers and the role of large corporate contributions from single donors.

1. Constraining large corporate donations

The role of powerful corporate donors in swinging the result of an election is not unknown. Taking a clue from the argument of experts, we submit that the result of an election can be efficaciously impacted due to the volatility of voters.[101] India being a country that is no stranger to such a voting pattern of the citizens is also receptive to such undue financial influence in the electoral process. Accordingly, there were limits on large corporations to make political contributions under the Companies Act, 2013 but the same has been undone by the Finance Act, 2017, which has operatively removed the statutory cap of 7.5% of a company's average net profit in the last three preceding financial years.[102] The effect of the aforesaid amendment is that even despondent companies can make donations to political parties in an unabated manner.

On the above account, it is suggested that the erstwhile statutory limit on corporations to make donations to the political parties needs to be reinstated with even stringent norms for single donors to contribute to the political parties. In addition, a legislative policy is needed to be put in place for the naming of large donors in public outlook, so that citizens can make informed decisions while voting during an election. The measures can involve a series of reforms including, a cap of 7.5% of a company's net average profits for the three preceding financial years under section 182 of the Companies Act, a cap of 5% on parties to accept donations from single donor companies and their subsidiaries under the RPA and imposing a statutory duty on political parties to reveal the name of their corporate donors before the conduct of every Parliamentary and State Legislative Assembly election.

2. Preventing administrative abuse

The use of administrative machinery by elected representatives during an election has been normalised in India. It ranges from the usage of government vehicles for commutation purposes to the devising of tools such as the Electoral Bond Scheme to ensure that the opposition is

[101] Nilesh Ekka, *Electoral Reforms in India- Issues and Reforms*, ASSOCIATION FOR DEMOCRATIC REFORMS (Apr. 21, 2018), https://adrindia.org/default/files/Electoral-Reforms-in-India-Issues-and-Reforms-by-Nilesh-Ekka.pdf.
[102] Finance Act, No. 7 of 2017, INDIA CODE, § 154.

 [ISSN 2581-5369]

prevented from challenging the incumbent government. But India is not an exception for such behaviour of the ruling parties, it is visible in most democracies where political parties have a large majority in the Parliament and the opposition is just unable to counter the ruling party.[103] Moreover, the diversion of state finances from corporations having government shareholding is also evident in India, although section 29B of the RPA restricts parties from accepting donations from government companies.[104]

The said anomaly of the diversion of state finances into electoral politics in the scheme of the RPA is misplaced as it merely talks about government companies. The Companies Act, 2013 defines government companies as, 'any company in which not less than 51% of the paid-up share capital is held by the Central Government, or State Government'.[105] The said definition, however, cannot be put to use under the RPA as companies having substantial government shareholding but not essentially more than 51% can still donate to the political parties. With the introduction of the Electoral Bond Scheme, such donations may not even be put to public scrutiny and ruling parties will always be advantageous against their rivals. Accordingly, there must be an amendment under section 29B of the RPA, whereby restriction is imposed upon political parties from accepting donations from companies with more than 10% paid-up share capital under state control.

3. Prohibition on external influence

Almost every representative democracy has prohibited the influence of foreign powers in their electoral process, with Germany being an exception.[106] Hence, statutory bars are placed upon the political parties from accepting contributions from foreign companies and their subsidiaries. India also follows the same policy paradigm but as discussed above, the Finance Act, 2016, effectively removed the bar from political parties to accept contributions from the subsidiaries of foreign companies, which are operational in India.[107] This move-in turn exposes the political parties to political and financial influence from multinational corporations, having deep pockets.

Given the aforesaid, it is suggested that the amendments made into the FCRA must be rolled back and the definition of 'foreign source' must be reinstated as it existed before the coming into force of section 236 of the Finance Act, 2016. Moreover, the funding of the political parties

[103] Ajit Ranade, *The unfinished agenda of Electoral Reforms*, LIVE MINT (Mar. 21, 2018), https://www.livemint.com/Opinion/The-unfinished-agenda-of-electoral-reforms.html.
[104] RPA, § 29B.
[105] The Companies Act, No. 18 of 2013, INDIA CODE, § 2 (45).
[106] Law Commission of India, Electoral Reforms: Report No. 255, (2015), 2.25.4. http://law-commission-of-india.nic.in-reports-Report255.pdf.
[107] FCRA, § 2 (1) (j) (vi).

which have received foreign contributions, by taking refuge of the said amendments must be scrutinized by the ECI and later put to public inspection.

4. Incentives for grassroots donations

While the authors argue that transparency and accountability are at the centre of all financial electoral reforms, we also realise that the strengthening and multiplying the provisions of small private donations by citizens is required to facilitate funding for political parties. Two major approaches in this respect are, *first*, tax benefits that can be granted to individuals when they contribute to political parties and *second*, formulation of policies that provide an incentive for political parties to solicit small donations.[108] The Income Tax Act, 1961 entitles corporations as well as individual citizens to income tax deduction under sections 80GGB and 80GGC, respectively.[109]

Because of the aforesaid, it is stated that although there is the presence of incentives for individual citizens to make donations to political parties as they get income tax deductions at the time of filing their tax returns but there is lack of policy framework to provide an incentive for political parties to seek more grassroots donations from individual citizens. A possible way of addressing the said problem is by following a system of *matching funds* which is followed in Germany and the USA.[110] Under such a set-up, a political party receives an amount equal to the donation that it receives from an individual source up to a certain limit sponsored by the state. Accordingly, it is suggested that Election Laws in India also need to come up with such provisions for strengthening political competition in the country and addressing the dual concerns of transparency and accountability in election funding and curbing the menace of a slush fund and large interest group funding in the political arena.

V. EPILOGUE

The interim order of the Hon'ble Supreme Court in *Association for Democratic Reforms v Union of India*, passed in the year 2019, recognises the grave commination that the Electoral Bonds Scheme has the potential to pose to the existing public policy and the sanctity of electoral process of India.[111] However, infelicitously so, but the Apex Court has not stayed the operation of the scheme, to this day. The window for the purchase of Electoral Bonds has been opened twice after the interim order of the court. The duty imposed upon the political parties to set

[108] Cyrus R. Vance, *Reforming the Electoral Reforms*, 1(1) YALE L& POLICY REV 151, 153. (1982)
[109] ITA, § 80GGB, 80GGC.
[110] Bruno Wilhelm Speck, *Money in Politics: Sound Political Competition and Trust in Government* (2013), O.E.C.D. (Apr. 29, 2020, 10:04 A.M.), https://www.oecd.org/gov/ethics/Money-in-politics.pdf.
[111] ADR, *supra* note 17.

forth the details of contributions received under the Scheme in a sealed cover to the ECI cannot either be appreciated as it operatively ensures that the details of such contributions are not shared with the common citizens.

India has a long way to go in its quest for financial electoral reforms but policies like the Electoral Bonds Scheme of the government are retrograde and nullify most if not all, the achievements in this direction. As arduously expressed by Justice DY Chandrachud in *Bhima Koregaon's* case that, 'dissent is the safety valve of democracy'[112], on similar lines, free and fair elections are also prevenient for the protection of dissent and therefore, also democracy. Accordingly, the need for the hour is the rollback of the bearer banking instrument nature of the Electoral Bonds, and proper guidelines in form of legislation are needed to be issued for political parties and their donors for facilitating transparency and accountability in electoral funding.

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[112] Romila Thapar & Ors. v. Union of India & Ors., (2018) 10 S.C.C. 753 (India).

 [ISSN 2581-5369]