

CHIEF JUSTICE'S COURT
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

SERIAL No. 501, COURT NO.1 SECTION PIL-W
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Writ Petition (Civil) No.880/2017

ASSOCIATION FOR DEMOCRATIC REFORMS & ANR. (Petitioner)

Versus

UNION OF INDIA & ORS. (Respondent)

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CHIEF JUSTICE DY CHANDRACHUD: Yes Mr. Solicitor.

TUSHAR MEHTA: My Lord, I was on page 24 of my written submissions, because I left at the article written by My Lord, the then the Honourable Law Minister.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

JUSTICE B.R. GAVAI: Finance minister.

TUSHAR MEHTA: No, that was an article written in response to certain concerns which were raised, and which was published in Press Information Bureau. It's available in public domain. My Lord, I was reading from Volume 2 at page 14. Kindly read from page 14, Volume 2. Then I'll come back to my written submissions.

JUSTICE B.R. GAVAI: Page?

TUSHAR MEHTA: Page 14 of Volume 2. The title My Lord, for identifying the letter. Press Information Bureau, Government of India, Ministry of Finance. Your Lordships gets, My Lord?

JUSTICE B.R. GAVAI: Yes.

TUSHAR MEHTA: Kindly come to... allow me to read the last para, because I have read till 10. I do believe, My Lord, 'I do believe that donations made online through cheques, remain an ideal method of donating to political parties. However, these have become a very popular, but this has not become very popular in India, since they involve disclosure of donor's identity. However, the Electoral Bond Scheme, which I placed before the Parliament a few days ago, envisages total clean money and substantial transparency coming into the system of political funding. A donor can purchase Electoral Bonds from a specified bank only by a banking instrument. He would have to disclose in his account the amount of political bond that he has purchased. The life of the bond would be only 15 days. A bond can only be encashed in a pre-declared account of a political party. Every political party in its returns, will have to disclose the amount of donation it has received through Electoral Bonds, to the Election Commission. The entire transaction would be through banking instruments, as against a total non-transparency in the present system of cash donations, where the donor, the donee, the

1 quantum of donation and the nature of expenditure, are all undisclosed. Some element of
2 transparency would be introduced, in as much as, donors declare in their accounts the amount
3 of bonds that they have purchased, and all parties declare'. My Lord, it is very careful, some
4 element of transparency, because we have to begin...

5
6 **JUSTICE SANJIV KHANNA:** Mr. Mehta, in fact, I was just going through some papers.
7 There was a very interesting discussion - Why the Trust Scheme came into force? How the
8 trust... In fact, in 1996, one big group... corporate group with over 100 companies, has set up
9 a Trust.

10
11 **TUSHAR MEHTA:** Correct, Tatas. Yes.

12
13 **JUSTICE SANJIV KHANNA:** No. I don't want to... and the money from all those Trust
14 companies or the group companies will come in the Trust and then they'll distribute and give
15 it to different parties. The idea behind the Trust was that the Trust may be of five or more than
16 five. The money will come into the Trust, the Trust will then distribute the money. So nobody
17 knows... The companies will give instructions to the Trust to give to A, B or C party, but nobody
18 knows which company has given that money. But what happened was 2013 Scheme of the
19 Election Commission made it mandatory to disclose which party... which company has
20 directed to give the payment. So that scheme virtually failed because of that. It had a contrary
21 impact.

22
23 **TUSHAR MEHTA:** Yes. My Lord, but still as a matter of...

24
25 **JUSTICE SANJIV KHANNA:** That's somebody's point of view. I'm not saying that's the
26 right point of view or the wrong point of view.

27
28 **TUSHAR MEHTA:** Correct. But as a matter of fact, the Trust Scheme still continues. One
29 can have Trust. And the same system can be adopted. Few companies can gather together and
30 create a Trust. Trust is a misnomer. It's a Section 25 company. Nothing turns on that. But it
31 is... nomenclature is Trust. But one fact inadvertently, we admit that the moment the question
32 of disclosure of the donee comes... donor comes, the scheme fails as it failed in Trust. Because
33 that is the disincentive, My Lord. The incentivizing factor for the purpose of paying by cash is,
34 My Lord, secrecy, the confidentiality. Secrecy and anonymity is a negative connotation. I am
35 using the expression confidentiality. What I'm submitting is that Honourable Finance
36 Minister is also saying that we have started a process may not be a foolproof process. 'Some
37 element of transparency would be introduced in as much as all donors declare in their account

1 the amount of Bonds that they have purchased, and all parties declare the quantum of Bonds.
 2 How much each donor has distributed to a political party would be known only to the donor.
 3 This is necessary because once this disclosure is made, past experience has shown donors
 4 would not find the scheme attractive and would go back to less desirable option of donating
 5 by cash.' My Lord, this is the experience, the view of the lawmakers that if this confidentiality
 6 is not ensured, people go to the earlier regime. 'In fact, the choice has now to be consciously
 7 made between the existing system of substantial cash donations, which involves total unclean
 8 money and is non-transparent, and the new scheme, which gives the option to the donors to
 9 donate through entirely a transparent method of cheque, online transaction or through
 10 Electoral Bonds.' My Lord, if I want to disclose my identity, I can pay by cheque. It's not taken
 11 away. I don't have to go through this Electoral Bond Scheme. I can still pay by RTGS, direct
 12 banking transfer or through cheque. But then my identity would be disclosed. If I wish that to
 13 remain confidential then Electoral Bond. My Lord, I have very seriously, and I'm bound to
 14 consider the concerns which Your Lordships have shown as custodian of fundamental rights
 15 of the citizens and the Government is proud about it, that Your Lordships are concerned. And
 16 My Lord, I have some solutions to offer so that that concern also can be addressed. And Your
 17 Lordships would find the bona fides of the Government that we really do not want to know
 18 who has donated whom, what amount. Let the confidentiality remain complete except under
 19 the Court order. I'll say as and when, My Lord, that part of the Scheme comes.

20
 21 **CHIEF JUSTICE DY CHANDRACHUD:** But that Mr. Solicitor, you know, anyway, who
 22 has donated what amount? The moment an Electoral Bond is tendered to a political party by
 23 a constituent...

24
 25 **TUSHAR MEHTA:** The party would know.

26
 27 **CHIEF JUSTICE DY CHANDRACHUD:** The party knows it.

28
 29 **TUSHAR MEHTA:** Correct, My Lord. What the donor doesn't want is the other party should
 30 not know. Kindly, My Lord, appreciate the example which... comfortable to Mr. Sibal. Just on
 31 the lighter side. Suppose My Lord, as a contractor. I donate to say Congress party, I don't want
 32 BJP to know because it might form a government in the next elections.

33
 34 **KAPIL SIBAL:** You might have forgotten I'm not in the Congress party.

35
 36 **TUSHAR MEHTA:** You appear for a Congress person from Madhya Pradesh, and therefore,
 37 I am saying.

KAPIL SIBAL: You are appearing for a government. You are not part of that party.

TUSHAR MEHTA: Absolutely not.

KAPIL SIBAL: So I'm also not. With that example I thought was baseless.

TUSHAR MEHTA: Am just putting myself as a contractor. My learned friend's client is a leader of a Congress party in Madhya Pradesh. Therefore, I'm giving the example of Madhya Pradesh and I'm saying that the contractor wants to donate to Congress would have an apprehension that BJP might continue to be in power or vice versa. If he gives donation to the ruling party in Madhya Pradesh, he might have element of fear that Congress might form the government. That confidentiality the donor wants to ensure. And that is not for me to judge. That is for the lawmakers to judge and the lawmakers My Lord, felt in the Parliament that this is the most incentivized way of black money generation and black money payment in the political process. It is their view.

JUSTICE B.R. GAVAI: But what about this, voters right, as Justice Chagla has pointed out long years back?

TUSHAR MEHTA: My Lord, let me conclude. That is a wider choice that would be a separate debate. Voters' right My Lord, is to know what party gets, what information. I would not choose to vote for a particular party because Mr. X, the contractor has given electoral contribution to a party. That's a utopian dream. That's an idealistic dream. We have to formulate a policy based on practicalities involved. Otherwise we will not be able to... Your Lordships have a very heavy responsibility on Your Lordships' shoulders that is encouraging clean money to come into the system and discouraging those elements which compelled the people to use the black money. So, the transparency, democratic principles, right to know, etc, etc. they are idealistic things that I bow down to those principles. But when we formulate a policy, we must formulate a policy which balances purity of election is supreme, over right to know. Voter votes not based upon which party is funded by whom. Voter votes based upon the ideology of the party, the principles of the party, the leadership of the party, the efficiency of the party and how the business houses vote, whether this party's government is giving me a sufficiently good environment to secure my investment. It's not always *quid pro quo*. As a businessman, I would choose that this party government, whenever it is formed, there is red-tapism, there is corruption, there is interference by the Minister, there is interference by the MLAs. As against that X party, when it forms the government, it is policy based decisions, not

individual based decisions. My investment is secured. There is a business friendly environment less red-tapism. And therefore, I would like this government to be formed. And that's the business interest of every business owner. I'll read further because the Honourable Finance Minister was also very categorical that we are not coming out with a foolproof scheme. There may be some lacunae here or there and we are ready to improve. In fact, My Lord I have read that. While all the three methods involve clean money, the first two are totally transparent and the Electoral Bond Scheme is a substantial improvement in transparency over the present system of non-transparency. Please see, My Lord, this is what the honest government framing a policy for the betterment of the people and in larger public interest would say and rarely says. This is what the honourable Finance Minister said the government is willing to consider all suggestions to further strengthen the cleansing of political funding in India. It has to be borne in mind, that impractical suggestions will not improve the cash domination system. They would only consolidate it. My Lord, the words are, if I may use the expression [UNCLEAR], that this is substantially, we are trying to reduce the element of black money, clean money coming in the system. There may be lacunae; we are ready for suggestions. We are ready for improvement. But, if the suggestions, as the Honourable Minister says, are not practical, it would defeat the objective. Now, My Lord, coming back to my note at page 24.

CHIEF JUSTICE DY CHANDRACHUD: Volume?

TUSHAR MEHTA: My Lord, 2-A. Your Lordships may now kindly come to 25. I'll explain the scheme. And, possibly, at least I will be able to satisfy Your Lordships to convey that *bona fide* of the government are writ large, and from one or two suggestions which I will make, Your Lordships' conscience would be satisfied, that scheme is forget designed to ensure that the ruling party knows, it's not even the intention. The ruling party doesn't want; that's the stand of the government. Whoever is the ruling party. Ruling party should not know about any of the details which others are not knowing - who donated, to whom, what amount; even ruling party should not. And I, My Lord, will point it out. And if necessary, I have some suggestion, which may, perhaps, subject to Your Lordships being satisfied, take care of Your Lordship's concern.

CHIEF JUSTICE DY CHANDRACHUD: Mr. Solicitor, is it your contention that under this scheme, the ruling party does not know who its donors are?

TUSHAR MEHTA: No, no. The party knows... every party knows who their respective donors are.

1 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

2

3 **TUSHAR MEHTA:** My Lord, the confidentiality is from other party. I'm sorry, I am unable
4 to convey the heart of the matter. My Lord, if I donate to Congress, the Congress knows Tushar
5 Mehta has donated. My worry is...

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** Right. But, you don't want another party to
8 know.

9

10 **TUSHAR MEHTA:** BJP should not know, so that I don't get victimized. That's the purpose
11 of confidentiality. My Lord, technically I can say, Mr. Bhushan has given this example, that
12 even ruling party can... any party, why ruling party? Any party can feign ignorance, that
13 somebody came and in my drop box... Dropbox, not in the digital sense, in the postal box,
14 there was an envelope. An envelope contained hundred crores. But nobody donates like this.
15 We donate... We give money like this only in pilgrimages. People would not donate
16 anonymously. In Shrinathji, My Lord, people would donate hundred crores without any name;
17 it would be an anonymous donation, because that is... Yes, Tirumala. That's what I'm saying.
18 But, that is again, idealistic way. Practically, the...

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** Even that is not idealistic, because the
21 assumption is that the Almighty knows who has money in the *hundi*.

22

23 **TUSHAR MEHTA:** I bow down, I bow down, My Lord. There is no confidentiality. There is
24 no confidential. My Lord, even the person also knows why he is donating. That is reflection of
25 the fact that there is a line in Ganges, because they know *ki bahot paap kiye hain, dhona jaana*
26 *padega*. So, people also know that... But, the party who receives knows who has given. That
27 you can never come out of. There cannot be any system where the donor and donee, each other
28 would not know.

29

30 **JUSTICE SANJIV KHANNA:** But then, Mr. Tushar Mehta, if this is so, why not make
31 everything open?

32

33 **TUSHAR MEHTA:** Then the purpose is defeated. As I...

34

35 **JUSTICE SANJIV KHANNA:** As it is, everybody knows about, or partly knows about it,
36 partly they know about it. Only person who's been deprived is, the voter. Your contentions that

1 the voters do not have the right to know after the number of decisions of this Court, it's slightly
2 difficult for me...

3
4 **TUSHAR MEHTA:** No, My Lord, voters...

5
6 **JUSTICE SANJIV KHANNA:** Because they would know... that they should know...

7
8 **TUSHAR MEHTA:** Then, I bow down, and we go back to the earlier policy. That's the only
9 answer.

10
11 **CHIEF JUSTICE DY CHANDRACHUD:** No, it's not like that. That's why we said... We are
12 not for the moment saying that... Look, there are three or four considerations which are very
13 important. One, the need to reduce the cash element in the electoral process. Very important.

14
15 **TUSHAR MEHTA:** It has reduced.

16
17 **CHIEF JUSTICE DY CHANDRACHUD:** Right? Second, the need to encourage the use of
18 authorized banking channels for that purpose, which is the only way you can reduce the cash
19 element. That's the second consideration. Third, there is a countervailing consideration...
20 Sorry. Third is incentivizing the use of the banking channels.

21
22 **TUSHAR MEHTA:** Which is confidentiality, according to us.

23
24 **CHIEF JUSTICE DY CHANDRACHUD:** And therefore, according to incentivizing the use
25 of the authorized banking channel, should therefore result in greater confidentiality. But there
26 is a fourth consideration, which is a need for transparency. And the fifth consideration, which
27 is that this should not become a legitimization of kickbacks. And *quid pro quo* between the
28 power centres, whether in the States or in the centre, and people who are really in that sense,
29 they are benefactors of that power they are supplicants. They want...

30
31 **TUSHAR MEHTA:** I bow down.

32
33 **CHIEF JUSTICE DY CHANDRACHUD:** Yes. So all these. So when the balance is drawn
34 between these... of course, the balance has to be drawn by the Legislature, and by the executive,
35 not by us. We are quite conscious of that. But it's not therefore, that you have an either/or.
36 Either you have this or you go back to an entire cash system. You can design another system
37 which does not have the flaws of this system, which really... they put a premium on... they put

1 a premium on opacity. You can still devise a system which balances out in a proportional way.
2 That's the point. How it is to be done is for you to decide. We will not go step into that arena.
3 That's no part of our function.

4
5 **TUSHAR MEHTA:** I'll just respond to My Lord, after showing the Scheme. But let me
6 respond the last point first, which is bothering Your Lordships that this might be used as
7 legitimized kickback. Well, first of all, whenever Your Lordships are considering a piece of, My
8 Lord, subordinate Legislature like a Scheme...

9
10 **CHIEF JUSTICE DY CHANDRACHUD:** Because, you know, now these five
11 considerations which I have listed out, you must now read in the perspective of how it has been
12 implemented. First, there was a cap that your donation must be related to a percentage of net
13 profits. A percentage of net profits meant that the company must be in a position to have net
14 profits. And that you would donate 5% initially, then it became 7.5% under the 2013 Act. Now
15 what had been done. Now we say that well, it has nothing to do with whether you have net
16 profits or not. In other words, the company may have zero profits, it may have zero turn over,
17 but it gets a donation only for.... it gets certain income or revenue, only for the purposes of the
18 donation that meets with the... That passes muster.

19
20 **TUSHAR MEHTA:** I'll immediately say... And Your Lordships may clarify that if that is any
21 concern. It's the right concern that so far as the condition with regard to the profit making
22 company, that percentage of a net profit. A non-profit making company cannot donate. I
23 understand because then it would be used as a shell company. That is one of the objectives.
24 We have removed 2,30,000 shell companies from the system.

25
26 **CHIEF JUSTICE DY CHANDRACHUD:** So, what will you do then? You'll bring about an
27 amendment to the Companies Act? Government will...

28
29 **TUSHAR MEHTA:** Let me take Your Lordships through this.

30
31 **CHIEF JUSTICE DY CHANDRACHUD:** So you will move an amendment to amend the
32 Companies Act to the effect that...

33
34 **TUSHAR MEHTA:** Amending is a legislative function. I cannot make this.

35
36 **CHIEF JUSTICE DY CHANDRACHUD:** But you have to move the amendment, if you...

1 **TUSHAR MEHTA:** Or Your Lordships may read it accordingly.

2
3 **CHIEF JUSTICE DY CHANDRACHUD:** No. Is the Government is making a statement
4 that we will amend the Companies Act to bring back the position what it was, namely that this
5 will be only a percentage of the net profit?
6

7 **TUSHAR MEHTA:** No, I'm not saying percentage. I'm saying profit making company can
8 only donate.
9

10 **CHIEF JUSTICE DY CHANDRACHUD:** But tell us something. Assuming that it is a profit
11 making. It may have a Rs. 1 profit. It may have a Rs. 100 profit. Why would a company... if you
12 don't have a percentage...
13

14 **TUSHAR MEHTA:** Yes, My Lord.
15

16 **CHIEF JUSTICE DY CHANDRACHUD:** Why would a company, for what conceivable
17 reason, would a company donate 100% of its profits? Because we have to take the extreme
18 case.
19

20 **TUSHAR MEHTA:** Yes, My Lord.
21

22 **CHIEF JUSTICE DY CHANDRACHUD:** That's why I give you Rs. 1 company, passes a
23 threshold that I am a profit making company.
24

25 **TUSHAR MEHTA:** I have two answers.
26

27 **CHIEF JUSTICE DY CHANDRACHUD:** I have Rs. 1 profit but I will donate 100 Crores.
28 Why would a company do that? Therefore, it can't be that the Government says that, well, it
29 can't be that we lay down under 142 the principle that so long as you're a profit making
30 company, you can donate as much as you want. The reason why these caps were introduced,
31 now they stood the test of time, were for very legitimate reason. Mainly that you're a company.
32 Your purpose is to carry on business. The purpose is not to donate to political parties. And if
33 your purpose is not to donate to political parties, you must donate only a small portion of
34 your... assuming that that's an altruistic motive which is of course not so... But we will not go
35 into it because nobody is challenging the 1956 Act Provisions, or the 2013 Act Provisions. We
36 are now looking at today's challenge.
37

TUSHAR MEHTA: My Lord, may I respond to Your Lordships concern, and it's a very valid concern My Lord, we shared concern. But what was the reason why that was removed? The experience had shown that in a given sector, for example where the business environment should be business friendly in terms of the administrative or political setup. Some companies wanted to donate say 10% or 15%. Right? Now there was a cap, 7.5%. What used to happen was that company would create shell companies. So, I would as a main company, donate 7.5% and from that shell company, I would donate 7.5%, to make it 15. With a view to discourage creation of shell companies, we have said that it is the company. It is the company doing the business through the managing director, through the board of directors, which are trusted by the shareholders and therefore if they want to donate more than 7.5% let them do it. Let that discretion remain with them. As a Government or as a Parliament, It's none of our business to prescribe that ceiling that don't use more than 7.5%. My Lord, that was the purpose. The purpose was to disincentivize. Creation of shell companies to do what they wanted to do. Now you do it number 2.

CHIEF JUSTICE DY CHANDRACHUD: But you can disincentivize that....

TUSHAR MEHTA: Allow me to....

CHIEF JUSTICE DY CHANDRACHUD: By having tailored having narrowly tailored provisions, for instance, that you must carry on business for a certain stipulated period. You must have a certain asset base, you must have a certain turnover, these are all usually accepted yardsticks under the Income Tax Act to prevent a shell company from carrying on activity. You must have a certain degree of business turnover, capital, assets before you can donate. That makes sure that you don't have a shell company. You can put all these things in place. There's no difficulty. That will obviate your concern of shell companies.

TUSHAR MEHTA: I bow down, I bow down. Another thing, another thing which weighed with the Government. And I'm just trying to satisfy Your Lordship's conscience about the positive approach with which My Lord we approach this problem. Another...

CHIEF JUSTICE DY CHANDRACHUD: Mr. Solicitor, we don't have to wait to the motives of the government at all. I mean as a constitutional point it is no part of our function to deal with motives.

TUSHAR MEHTA: No certainly. Your Lordships may even deal...

CHIEF JUSTICE DY CHANDRACHUD: This is the rough and tumble of democracy. Entirely respect. That is why we have this freedom of speech that all of us have in the court outside the world. We respect that person. The point really is this, the point really is not that. We don't want to go back now to a cash only system. That's not the purpose of the Court. All that we are saying is, that do it in a proportional tailor made manner, which takes care of the serious deficiencies of this.

TUSHAR MEHTA: Now another factor which weighed with the government while coming out this no cap policy was that if some party wants to donate more than 7.5% and they do not wish to have a shell company also, what would be... I'm posing a question to myself what the company will do.

JUSTICE SANJIV KHANNA: They will not pay.

TUSHAR MEHTA: That's the first idealistic option, but that was not.. that didn't used to happen. What they used to do was, the balance they want to donate 10%. The balance 3.5% would come in cash. Now at least if they donate 10%, the clean money comes in the system.

CHIEF JUSTICE DY CHANDRACHUD: Which is not to say that the unclean money is not coming into the system.

JUSTICE SANJIV KHANNA: See, we are in fact going into... there are two conflicting rights in a way coming. One is confidentiality, the other is check on kickbacks of *quid pro quo*. These are times...

TUSHAR MEHTA: I would earnestly urge My Lord, I would earnestly urge dealing with a subject My Lord, which is bothering everyone. To start with a presumption that every contribution should necessarily be a part of corruption may perhaps be a wrong way of looking at things. It may be that in some cases it can be *quid pro quo*. But the experience have suggested that in most cases, the vote, whoever donates. Donors, be it individual contractor, businessman, company, trust, HUF, etc they donate which kind of a government they want... May be out of 110, may be kickbacks. I'll address that kickback part also,

CHIEF JUSTICE DY CHANDRACHUD: But, would that be valid if a company were to donate even 100% of its revenue? Is that guided by altruistic motives? See, everybody doesn't donate as a kickback. Not at all!

1 **TUSHAR MEHTA:** Therefore, kindly My Lord...

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** We also have companies... we also have
4 companies. All companies cannot be tarred with the same brush in India. You have corporate
5 sector, which has contributed to the productive assets of the nation. We're not at all saying
6 that our corporate sector is therefore paying, we shouldn't make that assumption.

7

8 **TUSHAR MEHTA:** My Lord, only a minute. Mr. Sibal? There was something personal. It
9 was not a fun or humour. Out of concern, I asked something, which I'll right now not share.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** That's alright.

12

13 **TUSHAR MEHTA:** He had some concerns. I said, "Go to my Chamber". That's all. So, the
14 idea was, that instead of either shell company or paying by cash, let clean money come into
15 the system, and My Lord, clean money has come into the system. Second, whether we like it
16 or not, industrial houses, commercial houses, corporations, companies, they have immensely
17 helped in the development of the nation. And now, as I have shown...

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** That's what I said that we don't scar every
20 [UNCLEAR] that our corporate sector...

21

22 **TUSHAR MEHTA:** Everyone does not pay by kickbacks, to believe that they need Electoral
23 Bonds to be used or any other factor to be used, to influence the decision making, would be
24 My Lord, shutting an eye on the reality. Without that also, that can be done. And, possibly,
25 practically, despite this white channel being available, both channels might be used by some
26 companies, which are not kind of good companies. But, good companies do decide to donate
27 based upon their experience, whether in this regime of the political government, my
28 investment is safe or not. Whether the country is going forward or going backward. whether I
29 am...

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** Alright. Mr. Solicitor, we have now understood
32 this point.

33

34 **TUSHAR MEHTA:** But, but...

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** Can we do this? To carry the dialogue further,
37 should we go straight to the scheme? Because we'd like to hear you on the scheme.

TUSHAR MEHTA: Page 25.

CHIEF JUSTICE DY CHANDRACHUD: Let's have a look at the scheme, so that your argument on the scheme will be of value to us. This we have now seen that... You have made your point, no doubt about it.

TUSHAR MEHTA: Your Lordships have the challenge to a provision, which gives away or does away with, the cap. I have given my answer for Your Lordships... I think I'm clear.

CHIEF JUSTICE DY CHANDRACHUD: Yes, of course.

TUSHAR MEHTA: Now, My Lord, the scheme. See the definition. And please read as if it is for a *bona fide* reason, and not to encourage or legitimize kickbacks. Please examine that. There may be 10% out of 100 where kickback is provided. Kickback can be the motive of the donor. 'Electoral Bond means a bond issued in the nature of promissory note, which shall be a bearer banking instrument and shall not carry the name of the buyer or payee'. I have already explained why this is. Why this confidentiality. So, I'll not read the... The second part, the second column is the object behind it. Object, I have sufficiently attempted to explain, and therefore, I'll not repeat it. Please see, My Lord, authorized bank. My Lord, this is the entire policy produced, reproduced verbatim. I have not missed anything. So, Your Lordships can read either from the policy or from here. But here it would be more convenient, because I have given my object of each clause.

CHIEF JUSTICE DY CHANDRACHUD: That's alright.

TUSHAR MEHTA: But, there is no part of the policy that is missed in reproduction. 'Authorized Bank means the State Bank of India, authorized to issue and encash the bonds in the branches specified in Annexure 1 to this notification'. We had options of public sector banks and private banks. Obviously, we cannot choose private banks. In public sector banks, the largest bank with largest presence in the country, is State Bank of India. Therefore, State Bank of India. There is a specific exclusion of private banks in the FAQs, that don't use private banks for this channel, because let it remain in one particular bank which can be trust. And Your Lordships would not... kindly bear with me, would not trust institutions. And, I am going to show to Your Lordships that there is any deviation, if anyone tries to breach into the confidentiality, it leaves its footprints and will not go unpunished. I, as a law officer, spoke to the Chairman of the State Bank of India and I have his letter signed by him saying three things.

1 a) except the contingency contemplated under Section 7(4), that is the Court's order, nobody
2 can get...

3 My Lord, I might even read the letter, My Lord, so that Your Lordships' conscience is satisfied
4 that even ruling party will not know. My Lord, if I can share. It's a three paragraph, one page
5 letter, My Lord. Just to satisfy Your Lordship's conscience, that the Scheme does not allow or
6 permit even the ruling party to know about it, even the Government to know about it. The
7 Central Government as a body, My Lord, not forget the ruling party in the Government,
8 Central Government would not know about it. My Lord, I have the hard copy. This is a letter
9 addressed to me. May I read?

10 'In response to the queries of the Solicitor General, we submit our response as under. The State
11 Bank of India has a foolproof mechanism for maintaining complete secrecy of details of
12 purchaser of the Electoral Bond and also the political party which deposits such Electoral
13 Bond. This information cannot be shared with anyone, including the Central Government. In
14 the eventuality contemplated under Clause 7(4), there is a scientific system available whereby
15 this confidentiality can be decoded by a process and be placed before the competent authority
16 or court under Clause 7(4) of the Scheme. It will not be in the interest of the Scheme to put it
17 in public the mechanism which will be used while decoding information for being provided as
18 required under Clause 7(4) of the Scheme.' Now, My Lord, the largest public sector bank, is
19 before the Highest Court of the country signed by the Chairman of that bank, saying that this
20 cannot be shared even with the Central Government. And we have a mechanism in place that
21 nobody can breach it. So the point I'm respectfully making is that we have to trust institutions
22 that they will go by the law. If there is any deviation, I have a suggestion which I'll make at an
23 appropriate stage when I come to that part of the Scheme. Now C) is an issuing branch. 'Issuing
24 branch means a designated branch of the authorised bank specified in Annexure 1 for issuing
25 Electoral Bonds.' My Lord, everywhere it cannot be purchased and everywhere it cannot be
26 deposited. Because what happens is... My Lord, why this? The donor and donee, both must
27 have a designated account in a designated branch. Why? I'll just very candidly and very bluntly
28 point out what can happen. I purchase a bond of one crore of rupees... I'm sorry. I purchase a
29 bond of one crore of rupees. I give it to a political party. They don't wish to show it in their
30 written account. What they can do is, they can go to one small cooperative bank in Trichur or
31 some corner of Gujarat or some corner o

32 f Gujarat or some corner of Maharashtra, deposit it, withdraw in cash and nobody would come
33 to know. To avoid this we have said, that every political party will have one designated account.
34 Only there it can be deposited. And that would be in one of the 29 designated branches. And
35 it is so ensured that each branch is there in each state broadly. Then D). Person includes an
36 individual, a Hindu undivided family a company, a firm, association of persons or body of
37 individuals, whether incorporated or not, every artificial juridical person not falling within any

1 of the preceding subclauses, and any agency, office, or branch owned or controlled by such
 2 person. My Lord, petitioners have confined their arguments essentially to companies. But this
 3 includes all and there are several donors from experience My Lord, when I discussed who
 4 donate on individual basis, there are several conventional businesses like transport business,
 5 like contractors business where they are individuals who do the business. They don't form any
 6 kind of formal company or Hindu undivided family or a partnership firm. Then, third,
 7 eligibility for purchase and encashment of Electoral Bond. The bond under this scheme may
 8 be purchased by a person who is a citizen of India, or incorporated or established in India. I
 9 am keeping My Lord, FCRA part separately. That's not something which is argued with Your
 10 Lordships have very consciously, My Lord, by judicial order de-tagged it. A person being an
 11 individual, can buy bonds, either singly or jointly with other individuals. Only the political
 12 parties registered under Section 29(a) of the Representation of People Act and secured not less
 13 than 1% of votes polled in the last general election to the House of People or Legislative
 14 Assembly, as the case may be, shall be eligible to receive the bond. The bond shall be encashed
 15 by an eligible political party only through a bank account with the authorized bank. There
 16 would be a designated account out of these 29 designated branches. My Lord, the objection
 17 was that why is this 1% limit and there is a simple reason. Earlier, when exemption was given
 18 to political parties there were some mushrooms, mushrooming of political parties, fake parties
 19 just to get exemption. Therefore 1% presence would mean you are a serious political party and
 20 1% is not something unrealistically high. And it can be even in parliamentary election or in any
 21 of the assembly elections. So just to ensure that there are no fake parties which are created to
 22 get benefit of this. Then My Lord, 4). Applicability of know your customer norms. The extent
 23 instructions issued by Reserve Bank of India regarding know your customer norms offer
 24 bank's customer shall apply for buyers of the bonds. The authorized bank may call for any
 25 additional Know Your Customer documents if it is deemed necessary. Now why this? Apart
 26 from the obvious reason that there cannot be any anonymous purchase. I cannot go and say
 27 that I will not give my name, but give me the Electoral Bond. There is a list of the KYC
 28 documents. I'll have to give my Aadhaar number. I'll have to give my PAN number. I'll have to
 29 give my residential proof, I'll have to give my passport number, if any, etc, etc, so that anyone
 30 cannot just walk in and purchase the bond. That is the object. There is one more reason and
 31 Your Lordships, as the highest court must know about it. Therefore, I'm saying. India is a
 32 signatory to one treaty, international treaty that is for eradication of money laundering and
 33 drug money under which there is a Vienna and Palermo, there are two conventions where
 34 there is one Financial Action Task Force. It's created under the aegis of the United Nations.
 35 That task force has created 40 conditions, that every country who is a signatory will have to
 36 follow those conditions. Based upon every country's performance or compliance of those 40
 37 conditions, there is a peer review. Other five persons from different countries would come and

review our system, whether we are following that or not, and would grade us. We can be in white. What do they call? White list, Gray list, Black list, which decides whether in international market, like World Bank, Asian Development Bank, India as a nation would get the financial assistance or not? If we are in the Gray list, we will not. One of the major conditions is, that bring your clean money into the system, and one of the modes is to insist for KYC documents. Therefore, the neighbouring country was in the Gray list. It managed to come out of it. Otherwise, it was going into the Black list. And that also depends, based upon the gradation. Gradation also decides our credit rating at the international stock market. The country's credit rating. Therefore, it's very crucial to follow those 40 principles. Then denomination. "The bonds shall be issued in the denomination of 1000, 10 thousand, 1 lakh, 10 lakh and 1 crore. This is for the purpose of administrative simplicity. And as Your Lordships very rightly expressed the concern, that somebody can be aggregator. If I want to donate 50 lakhs... 50 crores, then I'll have to find out 50 aggregators. Instead, it is easy for me to go and pay cash 50 crores that this is my contribution. Why should I go to...

CHIEF JUSTICE DY CHANDRACHUD: No, no. The party does not get money in white. Party wants capital.

TUSHAR MEHTA: Party does not need money in white, let us be very clear. The government is insisting that every party must...

CHIEF JUSTICE DY CHANDRACHUD: This is not a scheme only for elections. This is not a scheme only for elections.

TUSHAR MEHTA: Correct, My Lord. It's for running the party. It's for running the party. No, I'm not feeling shy of saying that, because that's the part of the scheme.

CHIEF JUSTICE DY CHANDRACHUD: It applies to everybody across the board.

TUSHAR MEHTA: Across the board. My learned friend said, "Haan" as if he trapped me into it. I'm saying it consciously. What happens is...

KAPIL SIBAL: I'm an independent Member of Parliament. I don't know why you associate me with the party. History can't My Lords...

TUSHAR MEHTA: I'm not going to it.

1 **KAPIL SIBAL:** Don't victimise me by my history.

2

3 **SHADAN FARASAT:** He's not entitled to get an Electoral Board under the scheme. He
4 doesn't have 1% of national or the local [UNCLEAR]

5

6 **TUSHAR MEHTA:** Let's not go into that. Personal thing I never intended. My Lord, what
7 happens is, let me clarify that position. This is not for election. When we talk of election, we
8 think of general Parliamentary election. When a political party is running, it contests
9 Parliamentary elections, it contests Assembly elections, it contests local authorities' elections.
10 It has its own campaigns. It has its own rallies. It has its own think tanks. Think tanks are
11 also... Every party has think tanks, their salaries, they need some kind of building in every
12 state, they need offices in every part of the country where the voters would go and seek some
13 minor help, like, my name is not entering into the ration card, etc., and some workers of the
14 party... each party. So it's holistic, My Lord. Nobody has so far heard... at least I have not heard
15 that, as my learned friend gave a very fantastic example that bungalows being built for the
16 leaders. No party has, no party, My Lord, I'm not on one party... has built bungalows for any
17 leader. But, they are building offices and other electoral expenses. Now, it comes to the validity
18 of the bond. 'The bond shall be valid for 15 days from the date of the issue...'

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** Just a second. We just consulted. If you are not
21 feeling too well, you can sit in one of our anterooms and watch it on your iPad. We are now on
22 streaming online.

23

24 **TUSHAR MEHTA:** I requested, My Lord, Mr. Sibal to sit in my chamber. And we have the
25 video hearing.

26

27 **KAPIL SIBAL:** My Lord, the time I have to reply. I should be here.

28

29 **TUSHAR MEHTA:** No, you can listen to the arguments.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** If you would like to sit in one of our conference
32 rooms, I can ask the Registrar to...

33

34 **KAPIL SIBAL:** Yes. I can sit down, My Lords. I can sit there and watch if Your Lordships...

35

36 **TUSHAR MEHTA:** My Lord, in the morning, in fact, I suggested that it's nearer...

37

1 **KAPIL SIBAL:** Yeah, I can do either.

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** The Registrar will escort you, so you can take
4 your iPad..

5

6 **TUSHAR MEHTA:** Mr. Sibal...That's exactly what I told him when I said...

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** The moment he is here, we will ask him to escort
9 you.

10

11 **TUSHAR MEHTA:** My Lord, my gesture was in...

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** We realized the moment you said that.

14

15 **TUSHAR MEHTA:** ...that you go to my chamber. The video will be on. You can keep the
16 video off and listen to the arguments.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** The work is, of course, part of our duty as in daily
19 lives, but you know...

20

21 **TUSHAR MEHTA:** Not at the cost of health. That is what I.... Now My Lord...

22

23 **JUSTICE SANJIV KHANNA:** Off the track, the KYC with regard to anyone who makes
24 donation above Rs. 2000 is also required to be done by the political parties, or is there a format
25 prescribed for that?

26

27 **TUSHAR MEHTA:** I'll just ask My Lord, in the... Scheme doesn't provide for...

28

29 **JUSTICE SANJIV KHANNA:** This is nothing to do with the Scheme.

30

31 **TUSHAR MEHTA:** I'll just take instructions. For banking channels, yes, even if it is less than
32 2000. But political parties can... there is no...

33

34 **JUSTICE SANJIV KHANNA:** There is no...

35

36 **TUSHAR MEHTA:** There is no... the political parties.

37

JUSTICE SANJIV KHANNA: When you take the name and other details, they don't take any document in support thereof.

TUSHAR MEHTA: My Lord, as a matter of fact...

JUSTICE SANJIV KHANNA: I am just asking as a factual... It's not possible. It may practically...

TUSHAR MEHTA: Practically, nobody pays Rs. 1900 or Rs. 19,000 earlier. Nobody comes. If I get as a political party 100 Crores I'll have fictitious names divided into whatever is the amount. And I'll show that 19... so many people, so many thousand people gave me Rs. 1900.

JUSTICE SANJIV KHANNA: There is no check as far as multiple deposits by same person is concerned.

TUSHAR MEHTA: Now that incentive is not. But if 1000 is also Electoral Bond permitted, if I want to buy Electoral Bond of 1000 it is through the KYC channel only. But if I want to go and give Rs. 1000 which nobody would go and nobody would pay. but then there is no KYC. Anybody can go and pay.

Then My Lord, Validity of Bond. 'The Bond shall be valid for 15 days from the date of issue and no payment shall be made to any payee political party if the bond is deposited after the expiry of the validity period. The Bond deposited by any political party to its account shall be credited on the same day.' My Lord, this is one check. My Lord, kindly see why this 15 days period.

a) It does not become a currency. It does not become like a Bearer Bond, which can be traded. That is number one. Number 2, this eliminates the element of a potential kickback. I'll tell Your Lordships how. I kept an Electoral bond of say 100 crores with me. I tell a political party which is about to go in election, that I have 100 crores. If you form the government and if you give me this contract or whatever is the *quid pro quo*, this is yours. If 15 days is to be mandated, this is not possible. I have to give it to them and take a chance if there is a *quid pro quo*. I again say, all do not donate because of *quid pro quo* fortunately, we have that business atmosphere, that business environment.

CHIEF JUSTICE DY CHANDRACHUD: What is the actual reason for putting this 15 day cap?

TUSHAR MEHTA: My Lord, this was the reason A) It doesn't become a trading currency that I owe 1 crore to my learned senior, learned attorney. I don't have ready cash which I can

1 give it or he doesn't want to accept cash or whatever, I can give him the bond. So, bond is not
 2 a trading commodity, cannot be traded. Second as I, I'll just explain in a different way, but let
 3 us give a live example so that it can be better clarified by me. Madhya Pradesh is going in
 4 election. BJP can win, Congress can win or any other party technically can win. I go to
 5 Congress with 100 crores of, 100 crores worth of Electoral Bond, that this bond I have. If you
 6 form the Government and give me this particular contract, after you are forming the
 7 government, this will be yours. This would be *quid pro quo* which is not completely minimized
 8 if I have to deposit in 15 days only. So I have to give it within 15 days and they also cannot keep
 9 it pending till the government is either formed or not formed they have to deposit. So I take
 10 that risk as a contractor of paying to a party which may or may not form the government. That
 11 is why this 15 days. These are all checks and balances, whichever could be practically thought
 12 of, are incorporated that it is not becoming another problem while we are trying to find a
 13 solution. Sometimes the solutions are bigger than problems. So therefore, while the
 14 Honourable Finance Minister, the then Finance Minister, says that this may not be a full proof
 15 screen, but we have tried to make it as transparent as possible. It will be read with 12 if it is
 16 not deposited in 15 days it goes in Prime Minister Relief Fund.

17
 18 **CHIEF JUSTICE DY CHANDRACHUD:** That yes.

19
 20 **TUSHAR MEHTA:** So money you don't get. The donor does not get back the money it is for
 21 him to ensure that the party deposits. Otherwise what happens is, he is out of pocket for 1 crore
 22 or whatever crore, party doesn't get it so it doesn't get if at all there is any *quid pro quo* and
 23 his money goes in Prime Minister's Relief Fund. This is he will also have to say that
 24 you deposit
 25 this amount. Otherwise my money will go to Prime Minister relief fund, not for the purpose I
 26 am giving you. So this is My Lord, strict check which is inbuilt. Yes My Lord.

27
 28 **CHIEF JUSTICE DY CHANDRACHUD:** We've now seen the scheme. You have explained
 29 it.

30
 31 **TUSHAR MEHTA:** Only 7. I have a suggestion another thing my Learned Attorney My Lord
 32 very rightly says, that this is not election related bonds. Your Lordships have seen every
 33 tranche is 4 times, 4 quarters of the...

34
 35 **CHIEF JUSTICE DY CHANDRACHUD:** Generally April, July, October.

TUSHAR MEHTA: So, I as a political party get 10 crores. I can't wait till the next election and promise him that if I get elected, I'll deposit and I'll give you something as a... if it is a contribution, it is a contribution. Within 15 days you have to deposit. 7) Which might... I'm going to make one suggestion which might perhaps substantially take care of Your Lordships very valid concern.

CHIEF JUSTICE DY CHANDRACHUD: Can you make the suggestion if you can just take it down and then we read it.

TUSHAR MEHTA: Kindly have a look at 7. Procedure for making application for purchase of bonds. Every buyer desire of purchasing bond can apply with a physical or through online application in the format specified in Annexure 2, which provides for KYC, etc. Your Lordships are right now not concerned. 'Every application shall contain particulars', Your Lordship can leave it. 'On receipt of an application, the issuing branch shall issue the requisite bond if all the requirements are fulfilled'. Now 4 is important, where the Chief Justice had some concern, and My Lord Justice Khanna also had some concern. And I'll very candidly express that concern and satisfy Your Lordships. 4.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

TUSHAR MEHTA: 'The information furnished by the buyer shall be treated confidential by the authorized bank', first part. This is the mandate of the scheme. Correct, My Lords?

CHIEF JUSTICE DY CHANDRACHUD: Yes.

TUSHAR MEHTA: 'And shall not be disclosed to any authority for any purposes, except when demanded by a competent court', to which one would anyone... no one can have any objection. We have to trust the court ultimately. 'Or upon registration of criminal case by any law enforcement agency'. There are two things which may, perhaps not be acceptable to Your Lordship's conscience. a) What happens if this confidentiality, which is statutory built in the scheme, is not adhered to?

CHIEF JUSTICE DY CHANDRACHUD: Yes.

TUSHAR MEHTA: Your Lordships would mark, that if I try to breach the confidentiality system, it would lead digital footprints left. It's not as if... my learned friends oversimplified... it's not even over simplification, something less than that. That you can just see in the light

1 and you get the number, and you can compare it with the political party. It's not like that. If
 2 necessary, I'll come to that, what is the system. It leaves its footprints in the digital format
 3 which cannot be erased. Please read and kindly see the intention of the government and the
 4 *bona fide* of the government. 'Anyone not complying with or committing breach of this
 5 confidentiality', Your Lordships may say would be criminally liable for criminal breach of trust,
 6 or whichever other provision is applicable. I have not examined from IPC point of view.

7
 8 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

9
 10 **TUSHAR MEHTA:** Correct, My Lords? This takes care of one thing, that you have the... the
 11 biggest public sector bank, the assurance of the Chairman of biggest public sector bank, with
 12 Your Lordship's direction, that any breach will be visited with penal consequences. Now,
 13 second, and that's where My Lord Justice Khanna's very valid concern was expressed. So far
 14 as court is concerned, I don't think anybody has disputed. Somebody where to go to the court,
 15 for example, just to answer, My Lord Justice... Chief Justice's query, that there is a *quid pro*
 16 *quo*. Suppose somebody goes to the court, that this gentleman has given money as per his bank
 17 statement or as per his account, or this company has given 50 crores to some political party as
 18 per his statement... My Lord, kindly listen to this. This is interesting how the scheme works.
 19 That this company has given 50 crores to some political party, that is reflected in their balance
 20 sheet which is to be made public as per the Company's Law. Immediately thereafter, one
 21 particular government has given him a contract worth 250 crores, and therefore I suspect... he
 22 has to give reasons. He can't go... He can't rush the way PIL petitioners are rushing. But, he
 23 can say that there may be a *quid pro quo*, and the court is *prima facie* satisfied that yes, there
 24 may be. Let us see whether those 50 crores have gone to the party which is in the government
 25 who has given the contract. That is why, under the court's order, it will have to be decoded,
 26 which has a very serious and complicated process. It is not easy, even under the court's order.
 27 Now the concern of My Lord Justice Khanna, and very right concern, that upon registration of
 28 a criminal case by the law enforcing agency. My Lord, the concern would be that you register
 29 a criminal case and ask SBI that give me the details. That was the concern. Your Lordships
 30 would recall in ***Aadhar judgment***, there was a similar provision and Your Lordships have
 31 read it down to meet to say that when investigating agency wants this, it can get only if there
 32 is an order of the Court. Kindly put that layer by reading it down. Kindly see, My Lord, *bona*
 33 *fide* is the purpose is not that the party in power knows what is paid to whom. The purpose is
 34 not that this is to be used for the purpose of penal persecution.

35
 36 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

TUSHAR MEHTA: So, level playing field... when we talk about the level playing field. If I have to understand level playing field means every party should get equal political contribution that can never happen. Mr. Sibal would have 10 matters. Somebody would have only one matter. Nobody can argue that there should be a level playing field, everyone should have three matters. That every political party will have to rise to the level that they get more trust and they get more contribution. But if the level playing field argument is attached to the fact that the party in power comes to know about it, My Lord, this is the way in which it can be taken care of and both apprehension and the public interest can be balanced that even party in power will not come to know. Now, My Lord, at this stage I would like to show how this Scheme operates to satisfy Your Lordship's conscience. Because yesterday, I found Your Lordship's valid concern that it is possible for the ruling party to know, but the rest of the parties would not know. As I was told by the Chairman that it can't be discussed publicly. Whatever can be discussed publicly, I have a separate thing. On my request, the officials of the SBI are here. I would request Your Lordships if Your Lordships would like to know the entire semantics. How this system operates and how there are separate silos which cannot be breached and you have to go into one system. You have to go into another digital system. You have to go into third digital system, leaving your footprints, if there is a Court order also, then Your Lordships would be satisfied that it's not as if that a Finance Secretary calls the Managing Director of SBI - *ki har 15 din mujhe bhej do, kisse kitani, kaunsi party ko kitane paise diye*. it's impossible. It's that foolproof a system. Your Lordships can hear them in chamber. But right now, My Lord, I may show this, My Lord, what is the system to satisfy Your Lordships' conscience. It's not as if that I go and deposit some amount in the bank. And tomorrow, the senior official of the Bank calls the Branch Manager *ki* what amount Tushar Mehta has deposited. He will just see and say that he has deposited Rs. 10,000. It's not that simple. It cannot be that simple. When we are ensuring confidentiality and when confidentiality is the heart and soul of the Scheme. Please, My Lord, allow me to share this. Screen share this. There are extra copies also. I have emailed also. But I have not My Lord, I have missed purposefully. I have decided it's my call that I have not said many things which the Chairman also rightly feels, and I also feel should not be made public. How we maintain secrecy, My Lord, can't be a public debate, that's all. Because by definition. It has to be confidential.

CHIEF JUSTICE DY CHANDRACHUD: Mr. Solicitor, just so that we have a little bit of an eye on the clock. Learned Attorney will take about half an hour after your turn?

TUSHAR MEHTA: I think so My Lord. I might be over by 1:00.

1 **CHIEF JUSTICE DY CHANDRACHUD:** 1 o' clock if you finish. So learned Attorney can
2 argue between 2:00 and 2:30. And then you can leave a little time for rejoinder.

3
4 **TUSHAR MEHTA:** I can rest assure, I can assure Your Lordships that every judgment which
5 I have quoted, I'm not going to cite. I would be very *naïve* if I quote judgments which I know
6 Your Lordships have read.

7
8 **CHIEF JUSTICE DY CHANDRACHUD:** Give us the citation and the paragraphs.

9
10 **TUSHAR MEHTA:** I have quoted that. So I'll say that kindly read it. I'm not going to read,
11 except few judgments which I am unable to resist them.

12
13 **CHIEF JUSTICE DY CHANDRACHUD:** You may just flag those. That's all for us.

14
15 **TUSHAR MEHTA:** Yes, yes. My Lord this is the.... the copy is here?

16
17 **CHIEF JUSTICE DY CHANDRACHUD:** Leave yourself a little time to deal with the
18 challenges to the amendments to the statutes.

19
20 **TUSHAR MEHTA:** These are My Lord the objects.

21
22 **CHIEF JUSTICE DY CHANDRACHUD:** Right, right. We have now covered the scheme...

23
24 **TUSHAR MEHTA:** No...

25
26 **CHIEF JUSTICE DY CHANDRACHUD:** I'm just saying that since we have an hour to
27 conclude, give yourself a little time to deal with the challenge to the Statutory Amendments.

28
29 **TUSHAR MEHTA:** But that's what my answer is, one line answer. The Statutory
30 Amendments are to ensure that this claim can be framed and can be operated. That's the
31 purpose of the amendments. There are no separate objects.

32
33 **CHIEF JUSTICE DY CHANDRACHUD:** Yeah, there are no separate, that's okay. And you
34 fully covered the reasonableness aspect also.

TUSHAR MEHTA: They are corollary to the scheme. First it came under the Reserve Bank of India Act. That government can formulate the scheme, that is challenged to the Reserve Bank of India Act. Now, by itself is not illegal.

CHIEF JUSTICE DY CHANDRACHUD: Just wanted to ask you this. It may not be very relevant for the, but just to understand the legal framework. Why was it necessary to amend the RBI Act actually, to bring in the scheme? I mean as a matter of law, what was the reason?

TUSHAR MEHTA: My Lord, that...

CHIEF JUSTICE DY CHANDRACHUD: We just have that. I have in fact, opened here at page 31, in your written submissions. Section 31 says that - 'No person except the Reserve Bank of India or the Central Government can issue a Bill of Exchange, Promissory Note or engagement for the payment of money payable to be... to bearer on demand'.

TUSHAR MEHTA: My Lord it would be a Bearer Bond.

SHADAN FARASAT: Because the reason seems to be and that's the RBI's report, that only Central Government and RBI is permitted under that section. The Issuance is being done by SBI now.

TUSHAR MEHTA: No, no that's not the idea.

SHADAN FARASAT: Yes, so it's somebody else which is being permitted. And that's one of the reasons which the RBI letter also which I think Mr. Bhushan showed to Your Lordships...

TUSHAR MEHTA: My Lord there is no... nothing turns on that, you will not succeed or lose on this, but the purpose was...

CHIEF JUSTICE DY CHANDRACHUD: 31, 31 *mein hai woh*. 31.

TUSHAR MEHTA: Please see My Lord, 1. This is to make an exception to 1.

CHIEF JUSTICE DY CHANDRACHUD: There's an authority or the legal authority [UNCLEAR]

TUSHAR MEHTA: There is a statutory backing to the scheme.

JUSTICE SANJIV KHANNA: That order is to be confronted with the legal [UNCLEAR].

CHIEF JUSTICE DY CHANDRACHUD: That is a clearly Executive Act.

TUSHAR MEHTA: Yes. Otherwise, it would have been challenged as an Executive Act.

CHIEF JUSTICE DY CHANDRACHUD: [UNCLEAR]

TUSHAR MEHTA: It could have been said that it's a Bearer Bond, Only RBI can issue etc, etc. And therefore, with a view to empower the Central Government to come out with this policy...

CHIEF JUSTICE DY CHANDRACHUD: And it would otherwise fall within the broad definition of a Bill of Exchange.

TUSHAR MEHTA: Exactly. Or a bearer instrument, they say payment of money payable to bearer on demand to borrow.

CHIEF JUSTICE DY CHANDRACHUD: Or engagement for the payment of money payable to bearer on demand. Engagement is very broad.

TUSHAR MEHTA: And one...

CHIEF JUSTICE DY CHANDRACHUD: And therefore that... [UNCLEAR].

TUSHAR MEHTA: My Lord, Sub-Section 1, first line.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

TUSHAR MEHTA: First line, Sub-Section 1,- 'No person in India, other than the bank that is RBI or as expressly authorized by this Act.' So this is the authority given to the central. That's all, to give a statutory backing so that it doesn't remain an administrative instrument.

CHIEF JUSTICE DY CHANDRACHUD: All right. Now, what next, Mr. Solicitor?

TUSHAR MEHTA: Yes, My Lord. Now what I'm reading is on the screen, I have shared My Lord. Your Lordships may skip, 1(i), 1(ii).

CHIEF JUSTICE DY CHANDRACHUD: Read that, read this out.

TUSHAR MEHTA: My Lord (i) and (ii). I've said, nothing to hide My Lord. I've said that the Chairman has, one should trust the system, etc. Third, without elaborating, however, a brief description of the system can be provided to the court to satisfy the court's conscience, that it is impossible for anyone, including the incumbent government, to breach this system without a) the contingency contemplated under Clause 7(4) or b) without leaving a digital footprint and trail if someone tries to breach into the system over and beyond the mandate of Clause 7(4). The process for providing donations through Electoral Bond has two separate compartments, and they are: Issuance of bond and redemption of bond'. Correct, My Lord? Your Lordship knows. I leave it at that. Three, 'In order to maintain confidentiality of the process, the data that is populated at both ends, is recorded in a limited manner, and not populated in the central databases. It doesn't contain the name of the donor'. My Lord, I can purchase it from Assam, Guwahati, because that is one of the SBI branches, and pay in Delhi to Indian National Congress or Bharatiya Janata Party, because their office is situated here. They can have their authorized account, practically, generally, in Delhi, but anywhere in the country. And I can purchase it from Delhi and pay to Trinamool Congress in Calcutta. They would have their account in Calcutta. Now four, 'Separate storage and separate collection of data ensures that there are no direct linkages maintained in the database between the donor details, with donee details'. Five, 'The register which is maintained at the designated branch', please mark this, 'which issues the bond, does not maintain the register with names of the purchaser or the donor'. So, if I go and buy a bond worth one crore, the register would only say 'One bond issued, one crore Rupees'. My name will not come. The only person, I must tell Your Lordships, which would temporarily come to know, would be the cashier, My Lord, when I go with my KYC documents, because...

CHIEF JUSTICE DY CHANDRACHUD: The issuing bank. The issuing bank.

TUSHAR MEHTA: Yes, one person.

CHIEF JUSTICE DY CHANDRACHUD: 11(1) says, 'All payments for the issuance of the bond shall be accepted in Indian Rupees through demand draft or cheque, or through electronic clearing system or direct debit to the buyer's account'. Where payment is made through...

TUSHAR MEHTA: So, it would have to be through banking channel, the purpose is this.

CHIEF JUSTICE DY CHANDRACHUD: Therefore, the issuing bank has all the data.

TUSHAR MEHTA: No, no My Lord. It would come. Therefore, it would come. 'The only person who'd first know my name, and my... is the person to whom I give KYC. Then KYC is sealed, sealed cover is maintained elsewhere. It comes. The details of donor i.e. the KYC details are put in a sealed at the end of each tranche, because within 15 days many people purchase many multiple bonds. I may purchase ten bonds worth ten lakhs of rupees. Tranches by the designated brand and sent in a sealed cover form to the SBI main branch, Mumbai main branch, where it remains sealed till the contingency under Clause 7(4) arises'. So, Guwahati where purchases are made, or Trivandrum, where purchases are made, we'll send it in a sealed form to Bombay. 'So far as the redemption of these bonds by the political parties is concerned, each party can deposit such bond only in their designated account. In account details of the political party also, only the amount of the bond will be reflected, as the bond does not contain the name of either purchaser, donor or the political party. The political parties would have one designated account in one branch out of the designated branches of SBI, in which only the redemption of Electoral Bond is permissible'. So bond may have been purchased from Chennai, but will be redeemed or can be redeemed in Calcutta. 'However, the political party can present the bond for redemption in any of the designated branches, which will credit the amount only in the main designated branch'. They can go to Jaipur and say that this is my bond, if the money would be transferred without anybody's name to the designated account, wherever it is maintained. One designated account. 'At the time of redemption of the original bond, the pay-in slip would be stored... would be storage in a sealed cover and sent to SBI Mumbai main branch. Both the sealed covers cannot be opened either together or at different times, except under the contingency under Clause 7(4) arises. In the event of contingency under Clause 7(4) arising, it would be very difficult to trace out that even after that...', My Lords, kindly see this. It's not as if we open the cover and match it. 'Trace out the details of the purchaser of the Bond as such, purchaser may have purchased several Bonds from several designated branches in different tranches. In other words, several sealed covers may have to be opened and examined.

2) So far as details of redemption details are concerned, they are stored in the Global Information Technology Centre of SBI, which stores the data in a digital format. In case the link between the donee and the donor is required to be established in terms of Clause 7(4), it would require a detailed and in-depth tracing out of information from two different information silos of donors and donees. The said exercise is not automated and cannot be

carried out in a linear fashion and requires a scanning of different databases which are designed without maintaining inter-linkages. Therefore, the process of issuance and redemption of Electoral Bond and data generated therewith is not maintained in a central database and the data sheets are not populated and tallied at one end. There exists no direct linkages and completely separate information silos are stored under separate heads with separate departments.'

So I'll have to ask several people to collude with me if I want to get the information. Because I have not given that, but this centre, Global Information Technology Centre, also, as I was explained... I was also not explained in detail, and nor did I insist. But they also have three, four layers. It goes... the request with the Court order goes to one, he will open, then it goes at a second layer, then he opens. My Lord, and everything is digitized, leaving the footprints. And therefore to satisfy Your Lordships' conscience I say that please criminalize, if there is anybody who breaches this system.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

TUSHAR MEHTA: Now, I'll come to My Lord... Please come to page 36 of my written submissions. Rather, My Lord, at page 37 I have quoted *Puttaswamy*. I'll abide by the time, Your Lordships have indicated. But Your Lordships would bear with me. I have not repeated it, except...

CHIEF JUSTICE DY CHANDRACHUD: No. No. Not at all.

TUSHAR MEHTA: I'm not reading this, *Puttaswamy*. All of My Lords have read and read it. But the purpose, I'll say, My Lord, Your Lordships have devised this concept of Informational Privacy. Your Lordships were examining two competing interests, namely, one - Right to Know. And second - Right to have Informational Privacy. And Your Lordships have accepted Information Privacy to be a fundamental right. If My Lord, I am the person donating and if Your Lordships conscience is satisfied that system is in public interest, Your Lordships can accept my Right to Informational Privacy as against general Right to Know. And why I say this? If there is a genuine public interest in the disclosure, you go to the Court, you have 7(4) remedy. But merely for your curiosity, you cannot invade somebody's privacy. If that privacy ultimately serves larger public interest. My Lord, that's the submission, which I have made. I have quoted the relevant paragraph. I'm not reading it. Your Lordships are aware. Please come to...

JUSTICE SANJIV KHANNA: Just one minute.

TUSHAR MEHTA: Directly come to page. I'm sorry...

CHIEF JUSTICE DY CHANDRACHUD: Yes.

TUSHAR MEHTA: Page 39. I am just skipping through My Lord rest.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

TUSHAR MEHTA: My Lord, not that I'm giving up, Maybe treated as read.

CHIEF JUSTICE DY CHANDRACHUD: Yes

TUSHAR MEHTA: Para. 95. In the matter of ***Puttaswamy***. This Honourable, it should be ***Justice Puttaswamy***. This Honourable Court discussed the validity of Section 33 of the Aadhar Act, which provided for disclosure of information, including identity. I'm sorry. I was on 95 reading ***Puttaswamy***. Second para. 95. 2nd para. It is submitted that while upholding Section 33 this Honourable Court, however, added a layer of safeguard as per which such information may be shared only upon an order being passed by the Judge of a High Court. Your Lordships, respected the privacy, but in public interest if Your Lordship said that if it is required, then of course, with the order of the High Court. So it's not, as if it's an afterthought which I am suggesting to Your Lordships. It's already there in my written submissions. Which shows My Lord that the intention is not, that there is no level playing field, government, whichever is the party in power knows about it, and the rest of them do not know. Nobody should know, that incentivizes clean money coming into the system. Then Your Lordships kindly skip the rest and My Lord come to... My Lord I have quoted FAQs which are relevant, but broadly, I have indicated what are those FAQs. Please come to page 46. My Lord this I have already argued. I will not bother Your Lordships. Please come to page 48. Here, I would respectfully seek permission to read only few paragraphs of the judgments, because Your Lordships had a valid concern that in some cases it can be *quid pro quo*, in some cases it can be misused also. Nobody says that it cannot be. Any system can be misused. There can never be a system which is so foolproof, which can never be misused.

CHIEF JUSTICE DY CHANDRACHUD: You are reading the ***Shirur Mutt*** case?

TUSHAR MEHTA: Yes, My Lord, ***Lakshmindra Thirtha... Shirur Mutt*** My Lord. Kindly, see the last three lines which are bold and highlighted. For Your Lordship's

1 convenience, My Lord. I have done this. I don't wish to read the whole. The saving provision
 2 contained in Section 91 of the Act makes the position quite clear, an apprehension that powers
 3 conferred by this section may be abused in individual cases, does not make the provision itself
 4 bad or invalid in Law. this is Your Lordships are aware, Seven Judges case. It can My Lord, in
 5 Indian ingenuity is popular around the globe, and general human ingenuity, everywhere this
 6 is happening. Then please see 117. 'Similarly, in **Collector of Customs versus so and so**,
 7 this court observed, the possibility of abuse of a statute otherwise valid, does not import to it
 8 in an element of invalidity. Further, in **State of Rajasthan** it was said that it must be
 9 remembered'. My Lord, these are very well put, therefore, I am tempted to read. 'It must be
 10 remembered that merely because power may sometimes be abused, it is no ground for denying
 11 the exercise of power. The wisdom of man has not yet been able to conceive of a government
 12 with power sufficient to answer all its legitimate needs, and at the same time, incapable of
 13 mischief.' There can never be a system. We have started, we have begun. And as I've pointed
 14 out, the beginning is giving us fruits. Digitized money is bringing clean money into the system.
 15 I have given the figures of payment made by digital mode. Then, My Lord, **Kesavananda**
 16 **Bharati**. 'In exercising the power of judicial review, the courts cannot be oblivious of practical
 17 needs of the government. The door has to be left open for trial and error. Constitutional Law,
 18 like other mortal contrivances, has to take some chances. Opportunity must be allowed for
 19 vindicating reasonable belief by experience'. The government, which consists of all politicians,
 20 the Parliament consisting of all people in politics, they discuss this threadbare, and found that
 21 there may be some lacuna in the system. But this is under the circumstances, the best system.
 22 My Lord, that trial and error, the government is entitled to. Then My Lord, I am not reading
 23 **Mafatlal**, but please come to... I'm not reading **A.K. Roy**, also. Please treat it as read. Please
 24 come to... **PUCCL**, also, My Lord, is on the same lines. Therefore, there is no point in
 25 duplicating. Then, My Lord, I have pointed out legitimate State interest. Your Lordships would
 26 always balance... I have argued this, I'll not take Your Lordship's time further. But, the
 27 legitimate State interest is linked to public interest. So, you have the Right to Information, no
 28 denial. But you have the information which company purchased how many bonds, and you
 29 have the information in public domain, which party got how many Electoral Bonds? If
 30 anything beyond that is encouraging cash economy to enhance, that Your Lordships can
 31 balance, and that would be in the legitimate State's interest, that public interest would be of
 32 paramount consideration, when Your Lordships examine this. My Lord, please see para 130.
 33 'It is submitted that judgment in **PUCCL** and...' which were referred to by them, 'sought
 34 disclosure of information which was already in the knowledge and possession of the state
 35 authority'. When they say that you declare what is your property, you declare what are the
 36 criminal proceedings? These are all in public domain. At once... platform you declare. But
 37 here, you are trying to lift the veil of confidentiality, which is, by design, made a part of the

1 very system, and which is the pivotal part of that system. And, even the government doesn't
 2 know it. So, Right to Information cannot be claimed from me. Now, Your Lordships may kindly
 3 go to page 60. But one passage from **Puttaswamy**. This is the majority view. Of course, all
 4 views are concurring, except on the ground of... except the question of Money Bill. Privacy,
 5 Your Lordships gets that? 'Privacy and proportionality are two interlocking that recur
 6 consistently in the above judgements. Privacy also construed as informational self-
 7 determination is a fundamental value. There is a consistent emphasis on the impact on
 8 personal dignity, if private information is widely available and individuals are not able to
 9 decide upon its disclosure and use. This right of controlling the extent of the availability and
 10 use of one's personal data, is seen as a building block of data protection, especially in an
 11 environment where the state of technology facilitates ease of collection, analysis and
 12 dissemination of information'. Then Your Lordships may kindly see how the judgments cited
 13 are different, I have already said.

14
 15 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

16
 17 **TUSHAR MEHTA:** Level playing field, My Lord, I have dealt with at page 64. But I have
 18 already orally made submissions before Your Lordships But kindly see My Lord, 151. Para 151
 19 at page 65. I have already marked which portion I'll skip and which portion I think I must
 20 assist Your Lordships with.

21 151 -'The Petitioner claims that there is an un-incumbent bias... incumbent bias as large
 22 amounts of money go to the ruling party. It is submitted that whether such an incumbent bias
 23 exist, and if it does, what its extent would be is a question only irrelevant to determining the
 24 constitutionality of the Scheme.' And my Lord, I have already said that that has been the trend.
 25 Ruling party gets maximum because ruling party has the confidence of the maximum people.
 26 Yes. Now, My Lord, page 65 bottom. I have said that secrecy per se is not alien concept in even
 27 electoral issues. Secrecy of ballot.

28
 29 **JUSTICE SANJIV KHANNA:** That's something separate. In the uneven level playing field,
 30 you have referred to fairness of elections. That issue has not been addressed.

31
 32 **TUSHAR MEHTA:** Correct.

33
 34 **JUSTICE SANJIV KHANNA:** Has that issue with regard to fairness of elections been, or
 35 because of the mismatch between the money power. Has that had been addressed here?
 36 Because that will be larger, which are not specific like...

1 **TUSHAR MEHTA:** I'll just, again try and attempt to point out.

2
3 **JUSTICE SANJIV KHANNA:** No, you have argued that because of ruling party has always
4 been getting substantially more donations.

5
6 **TUSHAR MEHTA:** My Lord, average Indian voter, be it corporate or an illiterate voter, My
7 Lord, we have to accept this fact and we should be proud of that, is a very intelligent decision
8 maker. A ruling party in 2013, though ruling party may not get maximum political contribution
9 because the voter knows that in 2014 the wind is somewhere else. We have to trust his
10 [UNCLEAR]. So, ruling party is not getting maximum because of the Scheme, that's my
11 submission.

12
13 **JUSTICE B.R. GAVAI:** According to you, even otherwise the ruling party will get donation.

14
15 **TUSHAR MEHTA:** Always. Even before this Scheme, I have shown from 2005 to 2014
16 whoever was ruling party... My Lord BJD... BJD is a ruling party in one state, state of Orissa.
17 They have maximum political contribution. That's the trend. That's how the people of India
18 contribute. It's not as if because of the Scheme, the ruling party is getting any benefit and there
19 is no level playing field.

20
21 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

22
23 **TUSHAR MEHTA:** My Lord, I have analysed in secret ballot, that secrecy per se, is not
24 antithetical to free and fair election. Sometimes it enhances free and fair elections. Like, My
25 Lord, in my respectful submission, the present case. My Lord, kindly come to page 70, para
26 165. My Lord, where I have attempted to address how this Scheme accelerates or enhances
27 free and fair election. 'It is submitted that a...' - Your Lordships have para 165? My Lord Justice
28 Pardiwala?

29
30 **JUSTICE J.B. PARDIWALA:** Yes.

31
32 **TUSHAR MEHTA:** 'It is submitted that a conjoined reading of the principles of secret ballot
33 and the Right to Privacy under Article 21 clearly postulates that there exists a claim on part of
34 the donors to make donations without fear of reprisal. It is submitted that such right would
35 obviously not be absolute and would have to be counterbalanced with public interest and
36 concept of free and fair elections, and further optimized with policy interest of bringing the
37 first step of shift from cash to banking channel in political donations. It is submitted that the

balancing element in the present policy is Clause 7(4) of the Electoral Bond Scheme clearly provides for disclosure in case of appropriate proceedings before the competent court or criminal proceedings My Lord.' Then I'll not bother Your Lordships further. My Lord, then kindly come to page 73. Financial policy and limits of judicial review. I'm not going to read the whole. I'll just read the highlighted part because that would in the facts of the case be very, very relevant and direct for assisting Your Lordships. First is ***Rustom Cavasjee Cooper*** Your Lordships know the judgment. It's a Bank nationalization case.

CHIEF JUSTICE DY CHANDRACHUD: Then ***Garg*** is a bearer bond.

TUSHAR MEHTA: Yes. My Lord 63. Would Your Lordship like me to skip ***Rustom Cavasjee Cooper***?

CHIEF JUSTICE DY CHANDRACHUD: Absolutely. You can just us the title of the case and then we'll read it.

TUSHAR MEHTA: Then in ***R. K. Garg***, I would like to read few paragraphs which are not quoted. Kindly go to, My Lord, page 2175. I'm sorry, there is a mistake. Volume 2, 2184. Allow me to read, My Lord only few paragraphs.

CHIEF JUSTICE DY CHANDRACHUD: Same volume?

TUSHAR MEHTA: Volume 2 My Lord. Main Volume.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

TUSHAR MEHTA: My Lord, please read para. 16 and 17 at page 2194. Para 16. Here also, it was concerned with the Black Money part. Therefore, I'm tempted to read. 16, Your Lordship gets? Page 1924. 2194, sorry. 2194. It was then urged... Your Lordships gets? 'It was then urged, on behalf of the petitioners that Section 4, Clause C operates only in relation to a period...' I'm sorry, Para 16 just

JUSTICE J.B. PARDIWALA: That is 2203. 2203.

TUSHAR MEHTA: I'm sorry, I'm giving wrong pagination because there are two pagination. 2203. My apologies. I stand corrected. I'm obliged to My Lord Justice Pardiwala. 'It was then urged on behalf of the petitioners that...' My Lord, Justice Gavai got it?,- '...that Section 4,

Clause C operates only in relation to a period before the date of maturity of Special Bearer Bonds, and after the date of maturity the holder of Special Bearer Bonds can sell such bonds, and without running any risk, disclose the consideration received by him as his white money. Because Section 4 Clause C being out of the way, he can account for the possession of such money by showing that he has received it as a consideration for sale of special bearer bonds. And so far as the purchaser is concerned, if he has paid the consideration out of his black money, he can claim the immunity granted in the Clause 3. Thus, the black money of the seller which had been converted into white on his subscribing to or otherwise acquiring Special Bearer Bonds would remain white, and in addition, the black money of the purchaser would also be converted into white by reason of his purchase of Special Bearer Bonds. This argument, plausible, though it may seem, is, in our opinion, fallacious and cannot be sustained. It is highly debatable issue, whether under the provisions of the Act, Special Bearer Bonds are at all intended to be transferable after the date of maturity.' Here, My Lord, 15 days, there maturity was long period. 'For the postulate of the legislation clearly seems to be, that on the date of maturity, the special bearer bond will be encashed. It is indeed difficult to believe, that anyone holding special bearer bonds, would keep them uncashed without earning any interest from the... from and after the date of maturity, when they can be immediately encashed and the amount received can be invested, yielding interest ranging between 18% to 40%. Moreover, special bearer bonds would cease to be exempt from Wealth Tax, from and after the date of maturity, and they would therefore be includable in the Net Wealth'. My Lord, the last line of this paragraph, 'But, the law cannot be condemned as invalid on the ground, that after a period of ten years, it may lend itself to some possible abuse'. My Lord, please come to para 19. The argument that black money would be promoted is dealt with. Please read para 19. It's a long para. I don't propose Your Lordship's time. But, it's a similar argument, that you are encouraging black economy. The court analysed the entire scheme and said that, no, it brings the clean money into the system. Now, coming back to my written submissions. Please come to para 78. My Lords are aware, but I am always tempted to show these judgments. The *Lochner* Era... which is known as *Lochner* Era, where the Honourable American Supreme Court was having seven honourable judges, and whenever there was an economic policy change by the then President, it used to be struck down with the majority of four versus one. And popularly the four were known as 'the four horsemen', and less known fact is, the three were known as 'the three musketeers'. That in America, this is possible. But be that as it may. No, I'm sorry nine. But one was being convinced by Justice McCraine also. It is believed that he used to convince. But let's not go into it. This is ***Lochner vs New York***. Ultimately overruled.

CHIEF JUSTICE DY CHANDRACHUD: [UNCLEAR]

TUSHAR MEHTA: But, Your Lordships would recall, *Lochner versus* overrule starts with a dissent by Justice Brandeis.

CHIEF JUSTICE DY CHANDRACHUD: Justice Holmes as well.

TUSHAR MEHTA: First, Justice Holmes, thereafter Justice Brandeis, and thereafter that popular article written by Justice Brandeis on privacy in Harvard Law Review. And eventually, this was... *Lochner* was declared not to be good law. That also I have...

CHIEF JUSTICE DY CHANDRACHUD: It's alright, we can skip that.

TUSHAR MEHTA: But it says, 'The government or the Legislature', not the government, 'the Legislature has a right of trial and error'. This is accepted by our court recently, reasonably recently, when *IBC* was challenged. There were several issues in *IBC*. There have been several lacunae pointed out in *IBC*. But, the court said that that free play in the joints will have to be given. Even trial and error, unless it is so abhorrently or atrociously arbitrary, that it can never satisfy our conscience, the court would defer to the wisdom of the legislative action.

JUSTICE B.R. GAVAI: Even in demonetization it was [UNCLEAR]

TUSHAR MEHTA: I have relied upon that My Lords. Please see... I'll just... We have quoted that judgment. Your Lordship's judgment in demonetization. My Lord, I'll just give that cite.... But the pagination. But I'm relying upon the...

JUSTICE B.R. GAVAI: *Vivek Narayan Sharma*.

TUSHAR MEHTA: Pardon, My Lord.

JUSTICE B.R. GAVAI: *Vivek Narayan Sharma*.

TUSHAR MEHTA: *Vivek Narayan Sharma*. Page 76. I'm sorry. Page 76. My Lord it is page 76. *Vivek Narayan Sharma vs Union of India*. That Your Lordships would find it at **2023 SCC Online**. Page 1, where My Lords also accepted this proposition that Government can have trial and error unless it is ill-intended, so atrociously arbitrary that it shakes Your Lordships' conscience or it doesn't achieve the object it seeks to be achieved, or it

1 is for a different object. My Lord, suppose the object would have been that the Government of
2 the day, the ruling party would like to know who paid what to whom. I have therefore, satisfied
3 Your Lordships that please criminalize if there is any breach of confidentiality.

4
5 **CHIEF JUSTICE DY CHANDRACHUD:** Anything else, now, Mr. Mehta?

6
7 **TUSHAR MEHTA:** My Lord, Your Lordships one of the questions - only five minutes My
8 Lords - was what happened after the Scheme was introduced. What is the trend? That we have
9 given in Document Number 2-A which, My Lord, we highlighted yesterday. My Lords, these
10 are figures. And my learned colleague has examined these figures. If Your Lordships can give
11 him five minutes to explain what is post Scheme situation. That he would be able to do it better.
12 I'm never good at figures and...

13
14 **KANU AGRAWAL:** Please, My Lord, it is the compilation that is on the screen right now.

15
16 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

17
18 **KANU AGRAWAL:** If My Lord would come to PDF page 8 of that compilation, it would show
19 the party wise income from unknown sources. It's the report by the ADR itself for financial
20 year '17-'18. So this is the pre Electoral Bond scenario. In the first table, on the left hand side
21 column is the name of the political parties, the second column...

22
23 **CHIEF JUSTICE DY CHANDRACHUD:** What page is that?

24
25 **KANU AGRAWAL:** It is page number 6 at the top. But I believe the PDF page would be page
26 8.

27
28 **JUSTICE B.R. GAVAI:** It's page 6 only.

29
30 **KANU AGRAWAL:** At the top, right hand side the page numbering is page number 6.

31
32 **CHIEF JUSTICE DY CHANDRACHUD:** Volume 2-A, right? Compilation documents?

33
34 **KANU AGRAWAL:** Yes. Please, My Lord.

35
36 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

KANU AGRAWAL: Please, My Lords. So, Annexure 1, party wise income from unknown sources financial year '17-'18. The first table has on the left hand side column the name of the political parties, the second column. Now this is the pre Electoral Bond scenario because '17-'18. Second column has the voluntary contributions below 20,000. I believe the Solicitor General has already explained that how this below Rs. 20,000 mechanism was previously a sort of a loophole where contributions could come in without there being any identification. So this shows that how the first party has received about 342 Crores in this financial year. The third political party has received about 36 Crores in this financial year, and the numbers go on. In the second annexure, if, My Lord sees the third political party, the total income from unknown sources is 39 crores that contributes to about 37% of the total income. Now, My Lords, will see a trend which starts from 2018 onwards, that these contributions, these contributions below 20,000 which if, for the lack of a better word, I can term as sort of slightly dubious contributions have gone down, and simultaneously the contributions by the Electoral Bonds have gone up.

JUSTICE SANJIV KHANNA: 2018 there was an amendment?

KANU AGRAWAL: Please, My Lord, 2018 the bonds come in.

JUSTICE SANJIV KHANNA: One minute, please. Bonds is one thing but cash amount which would be deposited had come down to Rs. 2000. Is that correct?

KANU AGRAWAL: No. My Lord, 29-C Amendment keeps it still at 20,000

JUSTICE SANJIV KHANNA: 29-C Amendment, but for cash deposits were restricted to Rs. 2000. Is that correct?

KANU AGRAWAL: No matter the declaration requirement is in 29-C itself, so that amount remains 20,000. So, still till date less than Rs. 20,000 can be deposited without....

JUSTICE SANJIV KHANNA: Till 20,000... above 2,000 you had to declare your identity?

KANU AGRAWAL: Above 20,000.

JUSTICE SANJIV KHANNA: That was retained, but cash deposit were restricted to 2000 after the Amendment in 2017. When was the amendment with regard to Rs. 2000?

1 **KANU AGRAWAL:** No, My Lord. There is no specific amendment with regard to Rs. 2000.

2

3 **JUSTICE SANJIV KHANNA:** There is no specific amendment.

4

5 **SHADAN FARASAT:** The amendment on 2000 is in Section 13-A of the Income Tax Act.
6 What it does is that up to, above 2000, if you pay by non-cash means, then you won't get the
7 exemption under 13-A of the Income Tax Act.

8

9 **KANU AGRAWAL:** It has nothing to do with the...

10

11 **SHADAN FARASAT:** But the disclosure for 29-C remains 20,000.

12

13 **JUSTICE SANJIV KHANNA:** 20,000.

14

15 **SHADAN FARASAT:** That's right.

16

17 **JUSTICE SANJIV KHANNA:** 29-C remains.

18

19 **KANU AGRAWAL:** Remains as it, is to that extent. My Lord, the next year that is 2018...

20

21 **JUSTICE SANJIV KHANNA:** But that maybe reflected because of the amendment in the
22 Income Tax Act.

23

24 **KANU AGRAWAL:** My Lords, they may not want to take the exemption also.

25

26 **JUSTICE SANJIV KHANNA:** No, nobody, I'm yet to see a political party which will say...
27 So once the restrictions under the Income Tax Act, 13-A is by 2000, the immediate impact
28 thereof is that's the figures which will be disclosed below 20,000 will come down.

29

30 **KANU AGRAWAL:** At the same time My Lords, because there is another mechanism of
31 Electoral Bonds that figure has gone up.

32

33 **JUSTICE SANJIV KHANNA:** Then show us, how many deposits were made through
34 Electoral Bonds of less than 20,000.

35

36 **KANU AGRAWAL:** My Lords may comes to page number 13, there is something...

37

JUSTICE SANJIV KHANNA: If that is so then it will be reflected in the deposits of less than 20,000.

KANU AGRAWAL: There is something else also that comes out from it. The political party that has taken a principled stand of not accepting Electoral Bonds is still accepting those, less than Rs. 20,000 voluntary contributions. My Lord, may come to page number 13.

CHIEF JUSTICE DY CHANDRACHUD: That is the CPM [UNCLEAR]

KANU AGRAWAL: Yes My Lord. Page number 13, It may be page number 15 in the PDF.

JUSTICE SANJIV KHANNA: Do we have the breakup of the bonds less than 20,000 and above 20,000?

KANU AGRAWAL: My Lords, I don't think so.

SHADAN FARASAT: My Lords all are... 1000 is the smallest denomination.

JUSTICE SANJIV KHANNA: I'm aware of it.

SHADAN FARASAT: All of them are without any disclosure. So that works across the bar for the Electoral Bonds.

CHIEF JUSTICE DY CHANDRACHUD: Anything else?

KANU AGRAWAL: My Lords, this is the point. If My Lords want, I can take My Lords, through.

CHIEF JUSTICE DY CHANDRACHUD: No, we'll see that. Page 13.

KANU AGRAWAL: The number of Electoral Bonds will increase, the numbers of voluntary contributions less than 20,000, which are the dubious transactions, will decrease. The only political party for which it has not decreased is the political parties that has taken the stand that it will not take the Electoral Bond. So, obviously that is a political party that is continuing in the older regime.

JUSTICE SANJIV KHANNA: What is the ratio of increase in non-bond deposits?

1
2 **KANU AGRAWAL:** My Lords, non-bond deposits have gone down...

3
4 **JUSTICE SANJIV KHANNA:** No, non-bond deposits, if we exclude the bank transactions.
5 What is the ratio in that?

6
7 **KANU AGRAWAL:** My Lords, the bank transactions have remained the same. If My Lords
8 comes to page number 13, and if I would show the latest...

9
10 **TUSHAR MEHTA:** Non-electoral non-bank transaction. See you can pay by check also

11
12 **JUSTICE SANJIV KHANNA:** Correct, correct.

13
14 **KANU AGRAWAL:** My Lords, may see the latest numbers at page number 40. It would
15 show, that the first party has received about... Page number possibly would be 40.

16
17 **JUSTICE SANJIV KHANNA:** This is ADR report?

18
19 **TUSHAR MEHTA:** My Lord what we can do is by tomorrow. Not for arguments. We can
20 compile this. We understand...

21
22 **CHIEF JUSTICE DY CHANDRACHUD:** Add a note of two pages or so.

23
24 **TUSHAR MEHTA:** Not a note...

25
26 **CHIEF JUSTICE DY CHANDRACHUD:** Just a compilation.

27
28 **TUSHAR MEHTA:** ...a chart.

29
30 **CHIEF JUSTICE DY CHANDRACHUD:** A chart actually. Tabulation, you can give us. All
31 right.

32
33 **TUSHAR MEHTA:** Yes My Lord. That we'll do.

34
35 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you. Where is Mr. Amit Sharma?

36
37 **TUSHAR MEHTA:** He's maintaining his confidentiality it seems. On the lighter side.

1
2 **CHIEF JUSTICE DY CHANDRACHUD:** We can start with the Learned Attorney General.
3 We can hear Mr. Amit Sharma at the end. Mr. Attorney General then...

4
5 **ATTORNEY GENERAL R. VENKATARAMANI:** One is conscious...

6
7 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, Mr. Attorney.

8
9 **ATTORNEY GENERAL R. VENKATARAMANI:** The global canvas on election funding,
10 party funding, campaign funding is like a kaleidoscope, where it presents very interesting
11 items, experiments made, and just as the Learned Solicitor was talking about,
12 experimentation. And he has referred to one of the most oft quoted judgments in the US, the
13 ***New State Ice Company versus Liebmann*** case. Experimentations in economics and
14 related branches. To stay experimentation. The Court looked at it with distaste. We look at all
15 these experiments and how they have, either invited a wide range of concerns. Now, I would
16 address Your Lordships on three or four important aspects of the Constitutional issues raised
17 in this case. Before I do that, a very broad brush has been stated in this case. It is said that,
18 this scheme violates Article 14, 19, 21, and also undermines the basic structure of the
19 Constitution. I think we need to take stock of this kind of propositions very closely. Alongside
20 it is also said, well, here is a manifest of arbitrariness, and therefore, Article 14 is attracted. I
21 suppose that you must pay very close attention to an argument, because the Constitution
22 Bench, in terms of Article 145, looks at substantial issues of interpretation of provisions of the
23 Constitution, except when a reference is made on a difference between different ventures. So,
24 the substantial questions of interpretation of the Constitution. There has to be something very
25 precise, direct and not too over-broad statements, which may resemble a political debate. I
26 understand, that good part of the arguments made come closer to a political debate, rather
27 than precise statements of infringement of any particular Constitutional right. Why I say that
28 is, placing reliance on two judgments of Your Lordships in the ***Association of Democratic***
29 ***Reforms*** and the ***PUC*** case. That for the purpose of expressing your choice of a candidate,
30 and you need to know the criminal antecedents of a candidate, a specific issue on hand and a
31 concrete right to be exercised. The choice of a candidate. So when you have a right to know
32 under that, you are not asking the Court to declare, that in Article 19(1)(g), the citizens will
33 have a general right to have a knowledge about everything and anything in relation to the
34 affairs of the community. You have a task on hand, namely the choice of a candidate.
35 Therefore, you need to know something about the candidate. Therefore, it follows, it must have
36 the information relevant for informing you as to how you'll exercise your choice. Therefore,
37 the information issue will always be related to an expression with reference to a particular

1 issue on hand. If you may put it like this, information relevant for determination of an issue,
 2 relevant for determination of an issue can be a freedom of expression. And that if there is a
 3 denial of that acquaintance, then we say there is an interference with the freedom of
 4 expression. So somebody calls it mutilation of the thinking process if the information is not
 5 available. So we talk about an issue on hand and a denial of acquaintance of information
 6 forbids your ability to formulate an opinion and to reach a choice. So this scheme on hand is
 7 not concerned with political contributions per se. That's why I think the Court would not get
 8 into the larger questions of where should political contributions come from, with what interest
 9 do they come from, to what extent interest can be regulated. All those issues, I think are
 10 completely alien to the scope of the enquiry in this case. That's why even if Lords were invited
 11 to the say the level playing field, it's only marginally relevant to where one is looking at the
 12 effects of the scheme. Otherwise those concerns, as I said, are completely alien to the narrow
 13 issue, which is presented for consideration before Your Lordships. Because it happens in the
 14 generality of debates on election funding or political funding that one common starting point
 15 is that Electoral Reform is a claim that our current systems somehow adulterates the outcomes
 16 that a purer system would produce. So we're not entering into the debate at all. Whether there
 17 is a purer system and an adulterating system, how do you weigh them. Several imponderables
 18 would come into this question. Both political, social and economical. Therefore, that question
 19 not being relevant for consideration by the Court. I'll read a very interesting statement made,
 20 not directly connected to this, but... when a Court is being asked to get into an arena of
 21 concerns, thoughts and matters and the Courts are asked to say, look, I'll step in and give
 22 something better. These words by famous economist John Maynard Keynes, way back in 1933.
 23 I just give it Your Lordships after I finish reading
 24 this. When the community or even an individual is confronted with difficult choices the
 25 question is in place of what prevails now and if an alternative has to come in, it is not very clear
 26 about that alternative. I am perplexed. So he makes this very interesting statement. 'The
 27 decadent international...' We are not talking about capitalist power. Of course, capitalist power
 28 but the capital today remains a lifeline of the nation. He says this - 'The decadent international
 29 but individualistic capitalism in the hands of which we found ourselves after the World War I,
 30 is not a success. It is not intelligent. It is not beautiful. It is not just. It is not virtuous, and it
 31 doesn't deliver the goods. In short we dislike it, and we are beginning to despise it. But when
 32 we wonder what to put in its place, we are extremely perplexed.' So these are very important
 33 words when any alternative system is sought to be put in place. These questions have to be
 34 asked. So, when we talk of this scheme being put to test on let's say undermining a basic
 35 structure doctrine as Mr. Prashant Bhushan has put in his written submissions, I want to deal
 36 with some of the issues so that straying away from the question for consideration and to
 37 sometimes draw a very broad statement about basic structure can become problematic. It can

1 become too doctrinal also. So I suppose the Court need not be called upon to enter into those
 2 questions at all here. One very inviting thought process comes to all of us, that we tend to say
 3 basic structure doctrine is undermined or is in a way in peril, we tend to lose track of the
 4 features of the Constitution, which are consolidated in the basic structure. There could be an
 5 individual feature which can be undermined or in breach. So it is the architecture of the
 6 Constitution, which brought in and say, basic structure undermined. We have to give very close
 7 attention to whether it can ever happen at all in the way it is stated. I wanted to share this
 8 broad statements and a few more propositions before I take Your Lordships to... just
 9 digressing here for a minute. We talked yesterday about free and fair election and the level
 10 playing field, even though I said they're not relevant at all. I ask myself a question, if the
 11 information which now becomes coded under the scheme, coded in more than one way, is to
 12 be disclosed, and all citizens have a right to access to this information, what is that end which
 13 I will put to use by way of accessing this information? General political debate or determining
 14 which party would do better or we will talk about the *quid pro quo* after the *quid pro quo* event
 15 has occurred? So that's why I'm asking us the question as to what for what end and for what
 16 concrete purpose is access to information, the information is disclosed would become relevant.

17
 18 **CHIEF JUSTICE DY CHANDRACHUD:** We'll come back after lunch.

19
 20
 21 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Sibal, feeling better?

22
 23 **KAPIL SIBAL:** You are the Chief Justice in this country but your sense of empathy is
 24 phenomenal.

25
 26 **TUSHAR MEHTA:** Before the learned Attorney starts, there is a small request My Lord, if I
 27 can make?

28
 29 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, Mr. Mehta.

30
 31 **TUSHAR MEHTA:** My Lord, as I informed Your Lordships, on my request, senior officials
 32 of SBI are here, My Lord. If Your Lordships wish to be assisted in camera, My Lords? If Your
 33 Lordships do not so wish, they can leave. That's my only purpose.

34
 35 **CHIEF JUSTICE DY CHANDRACHUD:** We know we would be averse to hearing them in
 36 camera because then we don't put that to the other side.

1 **TUSHAR MEHTA:** I understand. But as I say My Lord, if I start discussing in public, the
2 purpose is lost. Therefore, I also was...

3
4 **CHIEF JUSTICE DY CHANDRACHUD:** We got the point that has reference to that last
5 line of the Chairperson's letter to you.

6
7 **TUSHAR MEHTA:** Correct.

8
9 **CHIEF JUSTICE DY CHANDRACHUD:** That we have seen. There is a methodology of
10 decoding the certificate.

11
12 **TUSHAR MEHTA:** Which is very complicated in detail, and it leaves several digital
13 footprints at several places.

14
15 **CHIEF JUSTICE DY CHANDRACHUD:** We will leave it at that, as a submission, but we
16 shouldn't be talking to them in the absence of the lawyer.

17
18 **TUSHAR MEHTA:** Please My Lord. Okay.

19
20 **CHIEF JUSTICE DY CHANDRACHUD:** They can still look at it.

21
22 **TUSHAR MEHTA:** Obligated, My Lord.

23
24 **ATTORNEY GENERAL R. VENKATARAMANI:** May I please, Your Lordships?

25
26 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

27
28 **ATTORNEY GENERAL R. VENKATARAMANI:** I tried to broadly take two important
29 distinctions. One, what are the scheme sought to achieve, and what the scheme has not
30 addressed or what it has not done and what it has done. So, then we have some elements of
31 clarity on testing the constitutionality of this scheme, before I go into that. So, we have three,
32 let's say, I assume that, 19(1)(a) Right is available to all citizens and must be made available to
33 all citizens, in order that we participate on an informed basis in a healthy democracy. Too
34 broadly stated, though it may be. And we assume that it is probably, so necessary. Do I say
35 today there is no such statement of law available, except in those two judgments where the
36 statement of law is for the purpose of knowing the antecedents of a country. A specific concrete
37 purpose to be achieved. Unless we say there's larger purposes with a specific concrete purpose,

1 we may have to look at it very differently, but before I dilate on that, I proceed under footing
2 there is such a right available. Therefore anything which may be bearing on the citizen's
3 expression of participation in democracy is a value, is an important value and for that it must
4 know everything which must come to the aid of the citizen to participate, therefore, disclosure,
5 information is integral to that expression dimension. The other value, which the scheme seeks
6 to promote is the confidentiality of the contributors and which is an enabling part of the
7 scheme itself. The enabling part of the scheme is confidentiality of the contributors. It doesn't
8 make a difference between corporate contributors or any other contributors. The scheme
9 treats all contributors equally. It doesn't pick and choose between contributors. So, that value
10 of the contributor's confidentiality and the more important value which the learned Solicitor
11 pointed out, that moving away from a cash, black money, unknown sources scheme to a
12 relatively regulated scheme and which serves the public interest of moving, taking a first or a
13 second or a third, whatever step one may call towards ensuring a greater credibility in the
14 funding process. We look at the question whether *nexa, the quid pro quo* will have an influence
15 which is hostile or adverse to fundamental values of democracy is a different issue altogether.
16 Because that issue in my understanding, which may go into a political party funding, Equality
17 of Opportunity or whether there should be no political party funding at all. These are the larger
18 debates. You want to look at what US Supreme Court has been grappling with, this question
19 in **Arizona**, a case where the Court says, a matching contribution from public funds to
20 publicly finance candidates. The Court says, that places an undue burden on the Freedom of
21 Expression. So, all those things are in the larger political domain. Therefore, the Equality of
22 Opportunity, free and fair elections linked to that Equality of Opportunity, and level playing
23 field, all those concerns in my understanding would require an analysis and evaluation which
24 brings in norms, and new norms for consideration and acceptance by the community and
25 through parliamentary debates. Therefore, I don't think that aspect would probably be even
26 invoked for the purpose of entering...looking at the three values which are in competition in
27 this scheme. The public interest value, the confidentiality or the contributor's value, and the
28 citizens, need to know the information regarding who contributes to whom. Now, I ask myself
29 a question, so how do you evaluate or balance these apparently competing, apparently
30 competing values? I don't need to tell Your Lordships, about the three basic principles of
31 proportionality that there must be a legitimate purpose of a law and it must have a rational
32 connection with the object. And the next stage is that, what the law does is must be, to seek an
33 object, must be the least restrictive of all equally effective means. So the balancing test in this
34 context would be in applying all these and in a very involved, facts involved situation like this.
35 It would mean a cost benefit analysis, which would bring greater cost in terms of effectiveness,
36 bringing in effectiveness, credibility, purity and we should not do that. And what kind of
37 benefits will flow from that? That kind of a cost benefit analysis, not necessarily in the

economic and the financial terms, but in an empirical terms. In empirical terms, I don't think that kind of an empirical analysis has been made available to the Court, and that has not been the scope of discussion before the Court. I just gave an example because this kind of a cost benefit analysis, which often comes in the proportionality domain. I'll give a reference to those cases. For instance in Germany, we had, in the province of Bavaria crucifixion was permissible in public schools. So in a complaint given by those who did not believe that. The Constitutional Court of Germany said that, there are two competing rights... the right of one set of people to say, I would not believe in this. The right of the majority of Bavarians, who believed in display of crucifixion as a part of a, either a religious symbol or a cultural symbol. So this balancing between two sets of freedoms. One a negative freedom, one was a positive freedom. This kind of balancing always comes in, when we have very important social concerns in conflict. But some of those balancing can happen at a conceptual level. But very often, even at a conceptual level, it happens, some right to the other, yields to the other right. One right yields to the other right. So the yielding of it should took place, should take place, under what criteria, what norms? Let me differ from the right in question. We'll be talking about this particular aspect of evaluation, the cost benefit analysis of public funding, of funding from any sources, public versus private. Do we have all that kind of said empirical analysis, under norms which can guide the Court? We say this is how we apply this norm. We apply this norm and find this is faulty on that norm. Now, on the other hand, if the Court were to be called upon to create a norm and say, that any funding from any source, more particularly from a corporate source intrinsically is an evil dimension to it, then the Court is called upon to create a norm. That's why I said in the fore note that we are not entering into that domain, but even indirectly, if that idea influences the analysis of the court that could be this problem. I think that idea has been brought in to probably call out the debate, saying that this issue is intrinsically an evil matter that, therefore keep that in mind. Therefore, disclosure will be very, very important. So the nexus between that aspect and the disclosure sought, is somehow sought to be very subtly brought in. And I say, Your Lordships, keep it in mind, that subtle connection, we have to probably severe. Because we are only looking at the three competing values, diverse from all this and say, therefore is a court called upon to apply a proportional test in this, at all, if at all, then how would you go about doing that? I have my brief submissions. It is at Volume 2, Volume 2. Like any reporting, the Bar and Bench Report, it says, the Attorney says, citizen do not have a Right to Know. I don't know where I said it in the submission. Let me read my submission. Your Lordships, could have Volume 2?

CHIEF JUSTICE DY CHANDRACHUD: Yes.

ATTORNEY GENERAL R. VENKATARAMANI: I quickly run through it and then one of the aspects I wanted to probably also address that, in the context of 19(1)(a) and the *Association of Democratic Reforms* and *PUCL* and...

JUSTICE SANJIV KHANNA: Volume 2 of...

ATTORNEY GENERAL R. VENKATARAMANI: Your Lordship, please...

JUSTICE SANJIV KHANNA: Volume 2 is...

ATTORNEY GENERAL R. VENKATARAMANI: Volume 2, is a separate volume Convenience Compilation, Your Lordships would find.

JUSTICE SANJIV KHANNA: Of the Convenience Compilation?

ATTORNEY GENERAL R. VENKATARAMANI: There's a Convenience Compilation.

JUSTICE SANJIV KHANNA: Compilation of [UNCLEAR] prints and documents.

KAPIL SIBAL: Volume 2, PDF 10.

ATTORNEY GENERAL R. VENKATARAMANI: Page 10.

KAPIL SIBAL: Volume 2, PDF 10.

ATTORNEY GENERAL R. VENKATARAMANI: My Lord Justice Khanna has got it? I'll be in the course of reading submissions making it...

CHIEF JUSTICE DY CHANDRACHUD: Mr. Attorney, we have read the submissions. Is there something that you want to highlight in particular, in the submissions?

ATTORNEY GENERAL R. VENKATARAMANI: Yeah, as I read a few parts of the submissions... I thought, in my notes I kept what probably I would be talking about. Lordships kindly look at paragraph 5 of this submission, because the first four paragraphs, like the kind of an introduction to. We don't have to go into the larger question of how the emanation of political parties and how as a 19(1)(c) associations. It comprehends a variety of aspects of political party. It's supporters, believers, ideology and so on and so forth. Therefore, in a

1 contribution to a political party comes in, either from corporate or any other individual, it did
 2 not go under the colour of we are *quid pro quo* dimension. A person who suppose, a free
 3 market economy and find a free market economy, which is propagated and supported by a
 4 political party, declines my support. So beyond the ideology, the other considerations which
 5 bring about affinity between a contributor and a political party. And as I saw the tabular
 6 statement of all those contributors, it has all those small scale industries, wide range of small
 7 scale industries. And we can't be fitted in the *quid pro quo* dimension at all. That's why I said
 8 the scheme doesn't talk about a particular class of contributors. I would probably be right in
 9 saying that a scheme is a regulatory within the broader concept of regulations Article 19(2).
 10 While an argument has been raised that a Right to Know, 19(1)(a), cannot be subjected to any
 11 restrictions under 19(2), as they stand. And argument has been stated in the written
 12 submission, though not been explained as how it really can happen. So I proceed in the footing
 13 that in principle, the concept of regulation can flow from any one of those 19(2) to 19(6). If one
 14 is right in saying that Derivative Rights, or Penumbral Rights. The way of looking at a right
 15 can be seen beyond the text of the right. If that is possible, I suppose implicitly and if it's also
 16 correct in saying there could be no Right without a restriction. And I'm sure no court will say,
 17 I will postulate a Right, but I will not visualize the restriction on the right. If that is so the
 18 regulatory scheme under the 19(2) to 19(6) can contemplate such regulations as with advance,
 19 the purpose of the scheme. That's what I tried to state in the paragraph 5. So we are talking
 20 about moving from an unregulated system to a regulated system. So when you move from an
 21 unregulated system to a regulated system, the lawmakers may look into various aspects of how
 22 that regulation can minimally be, and what kind of regulation would achieve the object? As
 23 we've been explained in the forenoon, the various aspects of regulations fall into one composite
 24 basic principle. If that basic principle is confidentiality, which radiates in different directions,
 25 I find that the challenge to what has been stated under 29(C) of the Representation of People
 26 Act or the enabling part under Section 31 of the RBI Act, we all get connected by one common
 27 thread. Why have we amended this law? This law, that law. The common thread is
 28 confidentiality. And the enabling part falls from Section 31 of the RBI Act. Once you enable
 29 them, how do you go about regulating? That thought process triggered, which is those
 30 connected legislation which need to be addressed. For all those connected legislations which
 31 have a proximity to the question of moving from a level unregulated to a regulated system. So
 32 they were addressed by this scheme and by the Finance Act, which looked at each one of the
 33 amendments. Therefore, I don't think one can say that I'll look at each one of the statutes in
 34 isolation and call them into question. So the approach that I will look at the Representation of
 35 People Act where the proviso says something. I will look at it in isolation and say, this bad, I
 36 look at the Foreign Contribution Act and isolation that is enabling foreign direct investment
 37 through a subsidiary company and so on so is absurd manifestly, arbitrary. So, this isolated

1 understanding of each of the legislation, I think in my understanding is flawed, fundamentally
 2 flawed. Because, I think the common thread is, one important common thread is about
 3 confidentiality. I will just quickly read a few more paragraphs in this, my written submissions.
 4 Paragraph 6. The scheme does not impinge upon any existing right. I put it like this,
 5 constitutional or otherwise, of any person and cannot be said to be repugnant of any right
 6 under Part 3 of the Constitution. My Lord, The Chief Justice raised a question yesterday. These
 7 are all statutory creations. A right came. A norm came. A disclosure came. It went away. What
 8 came by statute has gone away by statute. So, if there's a restraint upon disclosure it has been
 9 taken away by a statute. In that context, if all these, even our disclosure under the Section 182,
 10 of the Companies Act came by way of an amendment of a Companies Act, unless one is
 11 persuaded to say, and one is also able to accept that proposition, that by reason of the statutory
 12 amendments, you acquired a right to have it retained as part of a constitutional scheme and
 13 therefore, any change in the... this legislation for any purpose whatsoever, including a public
 14 interest purpose, an important regulatory purpose, regardless of all that, that will be put to
 15 test. I don't know whether it can be stretched to that extent. To a debate from 1958 onwards
 16 and the Companies Act '69, one way, and then in '85, another way of looking at it. The debates
 17 in the Parliament [UNCLEAR] yesterday to a very multi, kind of discussion that took place in
 18 the Parliament. So, I'm not sure whether anybody can or can't with the proposition, that as a
 19 product of the statutory changes certain inalienable, indestructible, inviolable rights occurred
 20 and citizens have arrived to ensure that they are not tinkered with. That amount to enhancing
 21 all these statutory changes, amendments, statutory creation, to the level of a constitutional
 22 principle. You may just read a couple of more paragraphs. Paragraph 7, Your Lordships,
 23 kindly, the petitioners seek a declaration, though not the declaration is expressly sought in the
 24 petitions but I proceed under footing, they want a declaration. The citizens have a right to
 25 know, as an aspect [UNCLEAR] a certain Right to Freedom of Expression. Based on such a
 26 declaration, it is canvassed that the right to have access to the details of contributions of the
 27 political parties must follow. Consequently, the confidentiality facilitated under a scheme is
 28 said to be impermissible. The above submissions are refuted on the following basis. Firstly,
 29 there can be no general right to know anything and everything without being subjected to
 30 reasonable restrictions. Secondly, the right to know as a necessary, as necessary for expression
 31 can be for specific kinds of purposes and not otherwise. Arguments were raised yesterday
 32 about shell companies and information is also so did. Lordships, yesterday that the
 33 Government has taken, I think is continuously on the watch and vigil about shell companies.
 34 Two documents have been placed for Your Lordships kind consideration. I don't think I need
 35 to take Your Lordships into those, each one of those statues and analyse them for the purpose
 36 of understanding, what they propose to do and what they fail to do, and all that. In view of my
 37 larger submission, that they're all connected to one common thread, namely confidentiality.

1 Then, kindly come to paragraph 11. Again it's a facet of my submission in paragraph 7. The
 2 judgments in so and so, so and so were in the context of making informed choices about
 3 electoral candidates and knowing their antecedents. Information limited to such knowledge,
 4 so as the specific kind of citizen, choice of electing candidates free from blemish, Right to
 5 Know, for specific rightful expressions, was thus conceived. From that it cannot be said, the
 6 Right to Know is for general [UNCLEAR] or brought ins necessarily follows. Therefore these
 7 judgments cannot be read as such that, a citizen has a Right to Know that under Article
 8 19(1)(a), regarding funding of a, as a Right to Information Article 19(1)(a), regarding funding
 9 of a political party. If there is no such Right in the Article 19(1)(a)...

10
 11 **JUSTICE B.R. GAVAI:** We have carefully gone through all your submissions.

12
 13 **ATTORNEY GENERAL R. VENKATARAMANI:** Your Lordship, please Sir?

14
 15 **JUSTICE B.R. GAVAI :** We have carefully gone through your written submissions. If you
 16 want to just...

17
 18 **ATTORNEY GENERAL R. VENKATARAMANI:** As I read a couple of them, I want to
 19 make some explanations about it. So the further question of restrictions has not arisen in
 20 19(2). Kindly, turn to the next paragraph, to the, why we talk about reading the *PUCL* and the
 21 *Association of Democratic Reforms* judgment in the way they ought to be read. The
 22 Court proceeded on borrowing what *Justice Douglas* talked about the Penumbral Rights
 23 and the *Griswold vs Connecticut*. I suppose that the issue of Penumbral Rights and
 24 reading into 19(1)(a), in the context of General Right to Know about political funding may be
 25 misconceived. I just want to read a couple of paragraphs from *Maneka Gandhi* and the
 26 concept of peripheral rights and how we have looked at it. That judgment Your Lords, will find
 27 in Volume 2...2B.

28
 29 **JUSTICE SANJIV KHANNA:** Page?

30
 31 **CHIEF JUSTICE DY CHANDRACHUD:** Drafts, we'll read them later, Mr. Attorney.

32
 33 **ATTORNEY GENERAL R. VENKATARAMANI:** Your Lordships can see, Volume 2, 2B.

34
 35 **CHIEF JUSTICE DY CHANDRACHUD:** What paras would that be?

36
 37 **ATTORNEY GENERAL R. VENKATARAMANI:** Paragraph 32 to 34.

CHIEF JUSTICE DY CHANDRACHUD: We'll have a look at it, because that discussion on the Penumbral Rights, we'll look at it.

ATTORNEY GENERAL R. VENKATARAMANI: Right. First sentence in paragraph 33, which is at page 65, of this volume. Just that one sentence. We cannot therefore accept the theory that a peripheral or concomitant right, which facilitates the exercise of a named Fundamental Right, or gives it meaning and substance, or makes it exercise effective, is itself a guaranteed right included with the named Fundamental Right. That's why, I was...

CHIEF JUSTICE DY CHANDRACHUD: But this logic has also now undergone a change after *Puttaswamy*. *Puttaswamy* is nine judges. But there is no Right to Privacy. There is no Right to Privacy expressly recognized by the Constitution. We read in the right, right to lie, liberty, dignity, the preamble values.

ATTORNEY GENERAL R. VENKATARAMANI: Those probably will stand in a broader conspectus. The Court will draw a classification among those rights where this kind of a broader reading, the effects of it a constitutional purpose. It was kind of a different footing. I do not know whether this Statement of Law is indirect conflict with *Puttaswamy*. It may not be.

CHIEF JUSTICE DY CHANDRACHUD: Mr. Attorney, we'll have a look at the... What else is now in your submission? Any particular submission that you have missed?

ATTORNEY GENERAL R. VENKATARAMANI: Yeah, in paragraph 15.

CHIEF JUSTICE DY CHANDRACHUD: That you have made a point, that the scheme extends the benefit of confidentiality to the contributor.

JUSTICE B.R. GAVAI: [INAUDIBLE] learned .. acknowledges the ...[UNCLEAR]

ATTORNEY GENERAL R. VENKATARAMANI: Just look at the second part of the sentence. Therefore, I say this scheme does not fall of any existing right. So, a Constitutional Court reviews state action only. If it impinges upon existing right and not because state action has not provided for a possible right or expectation howsoever desirable. So even if you go to the extent of saying 19(1)(a), in the context of knowing this is desirable, you probably will not fault it on that ground. And that's what I repeated in paragraph 16.

CHIEF JUSTICE DY CHANDRACHUD: Your last point really in para 18, is that when the court proceeds to declare an aspect as part of a right, it will be in tune with separation of powers with the subject of reviewing or testing a law. It should be relegated to public and parliamentary debate. Declaring an aspect as a part of a declared right does not impinge the separation of power. For instance, we have said that sexual orientation is implicit in Article 15. That does not impinge on separation of powers. If the Court were to laid down a legislative remedy, that impinges on this.

ATTORNEY GENERAL R. VENKATARAMANI: This Your Lordship, you are talking about laying down a norm.

CHIEF JUSTICE DY CHANDRACHUD: But finding a right in a Constitution, finding a right in a Constitution...

ATTORNEY GENERAL R. VENKATARAMANI: I don't say that.

CHIEF JUSTICE DY CHANDRACHUD: We have said about Right to Education. Before it even became part of part 3, we said the Right to education was a part of...

ATTORNEY GENERAL R. VENKATARAMANI: But when you lay down a norm which probably would require an analytical framework and weighing in fine scale, the variety of concerns and interest...

CHIEF JUSTICE DY CHANDRACHUD: No, we have an analytical framework.

ATTORNEY GENERAL R. VENKATARAMANI: ... beyond reading into a right.

CHIEF JUSTICE DY CHANDRACHUD: No, we have a framework today. We are not creating a framework. We are testing the validity of the framework.

ATTORNEY GENERAL R. VENKATARAMANI: The framework available today is in the context of the scheme. This particular scheme. There is no framework with reference to which one can say the scheme is unconstitutional. The only fulcrum is 19(1)(a), that I have a Right to Know.

1 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you, Mr. Attorney General. I think we've
2 understood the submission. Should we close here? So that we'll give a little time to Mr. Amish
3 Sharma and then rejoinder.

4
5 **ATTORNEY GENERAL R. VENKATARAMANI:** I shall just take a few more minutes. I
6 know. I understand that time for rejoinder is important. Just a few more propositions of how
7 you test a law generally. These are well known Statements of Law. Attempt was made to show
8 that...

9
10 [NO AUDIO]

11
12 Let me quickly read these two, three statements about Statements of Law, and how do you
13 construe.

14
15 **JUSTICE SANJIV KHANNA:** We have gone through your written submissions. If
16 anything, else to be added to those different submissions, I thought whatever you wanted to
17 express yourself, you have expressed yourself.

18
19 **ATTORNEY GENERAL R. VENKATARAMANI:** I'll do not. I am just on my way of
20 concluding. Much was said that the ruling party gets the best advantage of this. That's not a
21 consequence of the scheme even unintentionally. Even if there's an unintended consequence,
22 it is not an intended consequence. In an unintended consequence court will not strike down a
23 law, on the basis something which happens...

24
25 **JUSTICE B.R. GAVAI:** That we have, learned Solicitor has already argued. Really because
26 the..

27
28 **ATTORNEY GENERAL R. VENKATARAMANI:** Unintended consequence is not the
29 reason to strike down the law.

30
31 **JUSTICE B.R. GAVAI:** Because the dividend is the equivale of being ...

32
33 **ATTORNEY GENERAL R. VENKATARAMANI:** I just want to give those two or three
34 judgments on that right from Express newspapers, 1954 onwards...

35
36 **JUSTICE SANJIV KHANNA:** But Attorney, the [UNCLEAR] has made it very clear, that
37 this has been true right from the beginning. So, the effect thereof, we will examine that.

1
2 **ATTORNEY GENERAL R. VENKATARAMANI:** That's good.

3
4 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you Mr. Attorney, thank you. Mr. Amit
5 Sharma?

6
7 **ATTORNEY GENERAL R. VENKATARAMANI:** Those four five judgements, I will put
8 them along with a note.

9
10 **CHIEF JUSTICE DY CHANDRACHUD:** Please give us a separate note, we can look at.
11 Yes, Mr. Sharma? Mr. Sharma, how much have you collected by way of... you are not the State
12 Bank of India but in terms of the record which you have, what is the extent of the total quantum
13 of Electoral Bonds, which have been subscribed since the beginning?

14
15 **MR. AMIT SHARMA:** That's in a sealed cover, My Lord. So, we have not opened that cover
16 at all. Because that was directed. This Honourable Court had directed that to be in the sealed
17 cover and if My Lord desires that sealed cover is there, My Lords, can have, peruse it. But we've
18 not opened it. We can.

19
20 **JUSTICE SANJIV KHANNA:** Mr. Sharma, actually, the details of the bonds are available
21 with you. Total quantum of bonds is available with you? Quantum of bonds given to the...

22
23 **MR. AMIT SHARMA:** Yes, My Lords.

24
25 **JUSTICE SANJIV KHANNA:** That is there. Do we get any particular data? And is the data
26 up to date, that is till, at least till March 23?

27
28 **AMIT SHARMA:** No, My Lords, that's not there with us. We have only till...In fact, there was
29 a query by this Honourable Court, My Lords. I went through the record. There was one order
30 passed by this Honourable Court which My Lords, had read 13 and 14 paragraph of 2019,
31 judgment separately. We took it as if it's to be read jointly.

32
33 **CHIEF JUSTICE DY CHANDRACHUD:** No, it was very clear.

34
35 **MR. AMIT SHARMA:** I may just point out.

CHIEF JUSTICE DY CHANDRACHUD: 13 relates to data as of the date of the order. But we didn't freeze the data which you had to maintain as of the date of the order. You had to continue to collect the data.

MR. AMIT SHARMA: If, My Lords will kindly see...

JUSTICE SANJIV KHANNA: Mr. Sharma you should have asked for clarification.

MR. AMIT SHARMA: Order passed till 2021...

CHIEF JUSTICE DY CHANDRACHUD: You never came back to us, to ask us whether we want continuing data or frozen data as of the date of issuance.

MR. AMIT SHAMRA: The occasion could not arise My Lords, because of the order passed by this Honourable Court subsequently. On 26th of March 2021. And My Lords will find that in the, at page... It's a EB Final, My Lords, which was filed by the Petitioner's. And that's at page 34, My Lords, that was passed in one of the interlocutory applications filed by the Petitioners.

JUSTICE SANJIV KHANNA: Volume 3?

CHIEF JUSTICE DY CHANDRACHUD: Page 505.

JUSTICE J.B. PARDIWALA: Which page?

AMIT SHARMA: I will just tell. My Lords, they have, I don't think that has been filed in the volumes, that's missing. But one of the initial volumes file that's called EB Final, which I received through email. That, was filed on 5-4-2023, by the Petitioner. That's at page 34 of this. And My Lords will kindly see this order and the relevant paragraph in this order, which I would like My Lords to read is... Kindly, see para 19, My Lords.

JUSTICE SANJIV KHANNA: Of the order?

AMIT SHARMA: Order dated 26th March, 2021. Which was filed, which was passed in interlocutory application number, 183625 of 2019, in the present writ petition.

JUSTICE SANJIV KHANNA: 26 March, 2000... what?

AMIT SHARMA: 21 My Lords, 2021.

JUSTICE SANJIV KHANNA: Is there, at the volume which you had mentioned also?

KAPIL SIBAL: Volume 3505.

JUSTICE SANJIV KHANNA: Yes. Please.

KAPIL SIBAL: And para 19 is at page 519, which he wants Your Lordships to read.

AMIT SHARMA: My Lords it's took note of the entire earlier directions. This order takes note of the directions passed by this Honourable Court, pursuant to which the compliance done by the Election Commission of India, and then further, para 19. This was a second application which was preferred by the Petitioners. The first one was rejected and thereafter the second application on the same ground. That's also discussed.

JUSTICE SANJIV KHANNA: Where is the discussion with regard to paragraphs 13 and 14?

AMIT SHARMA: My Lords will kindly see in...

JUSTICE SANJIV KHANNA: This was an application for stay, if I'm not...

CHIEF JUSTICE DY CHANDRACHUD: For stay.

AMIT SHARMA: That's right.

CHIEF JUSTICE DY CHANDRACHUD: Because a fresh window was opening up and Mr. Prashant Bhushan served a stay at that stage on collection of any further amounts.

AMIT SHARMA: That's right.

CHIEF JUSTICE DY CHANDRACHUD: And the distribution of any further Electoral Bond.

1 **AMIT SHARMA:** That's right. And para 19, says that as far as the information to the Election
2 Commission is concerned, the interim order passed by this Court on 12-4-2019, takes care of
3 the same. In the reply filed by Election Commission on 3-2-2020 to IA number so and so, of
4 2019. It is stated by them that Election Commission of India has received sealed covers from
5 various political parties, National, State and registered and unregistered parties. In Annexure
6 C-1 to the reply filed by so and, Election Commission of India, provided the list of political
7 parties who have filed necessary details as per the order dated 12-4-2019. The date on which
8 Election Commission of India received. So... perhaps, this may be a reason My Lords, that, but
9 we are...We bow down if there is any direction we'll provide it My Lords. There's no difficulty
10 on that.

11
12 **JUSTICE SANJIV KHANNA:** You should have got the data. You should have got the data,
13 when you are coming to the court.

14
15 **AMIT SHARMA:** If I may say, My Lords will kindly also see para 13 and 14 once again.

16
17 **JUSTICE SANJIV KHANNA:** Please, Mr. Sharma this is not what was, we read out that
18 order. That day *prima facie* all of us had expressed the view and we expected you to come back
19 with that data.

20
21 **AMIT SHARMA:** We can provide it during the... maybe in a short time, I'll instruct the
22 Commission My Lords, that...

23
24 **JUSTICE SANJIV KHANNA:** And is the data right up till 2023 and March 23 now
25 available?

26
27 **AMIT SHARMA:** We'll seek the data from all the political parties, because it has to have a
28 details My Lords.

29
30 **JUSTICE SANJIV KHANNA:** What's the time limit when the data is to be given every year?
31 Every financial year it's to be given? What's the time limit... what's the deadline for that?

32
33 **AMIT SHARMA:** The data is not to be given My Lord.

34
35 **JUSTICE SANJIV KHANNA:** With regards to the returns filed.

36
37 **AMIT SHARMA:** Annual returns. Yes, My Lords.

JUSTICE SANJIV KHANNA: When is that to be given?

AMIT SHARMA: My Lords before the financial year end.

JUSTICE SANJIV KHANNA: That means 2024?

AMIT SHARMA: That's right.

JUSTICE SANJIV KHANNA: 31st March, 2024?

AMIT SHARMA: Six months before that.

JUSTICE SANJIV KHANNA: Six months...

AMIT SHARMA: Six months after the financial year.

JUSTICE SANJIV KHANNA: So, six months are over? September they got over. So you must have got the data?

AMIT SHARMA: Not the data My Lord, that's what I'm trying to say.

JUSTICE SANJIV KHANNA: Whatever the...

AMIT SHARMA: Only the quantum.

CHIEF JUSTICE DY CHANDRACHUD: After 31st of March 2022... 2023 you have the data.

AMIT SHARMA: We have my Lords, but we...

CHIEF JUSTICE DY CHANDRACHUD: You would have the data, you ought to have the data.

AMIT SHARMA: Only the total quantum.

1 **CHIEF JUSTICE DY CHANDRACHUD:** Right, you have the total quantum, quantum of
2 Electoral Bonds.

3
4 **AMIT SHARMA:** Yes, that we'll have.

5
6 **CHIEF JUSTICE DY CHANDRACHUD:** And, what is the bifurcation between different
7 political parties?

8
9 **AMIT SHARMA:** My Lords, that...

10
11 **CHIEF JUSTICE DY CHANDRACHUD:** Has to be, because it's...

12
13 **AMIT SHARMA:** We'll have to pull it... with all the... on...yes Sir.

14
15 **CHIEF JUSTICE DY CHANDRACHUD:** Parties have to give you separate contribution
16 report.

17
18 **AMIT SHARMA:** All the recognised political parties My Lords, and registered, whether
19 registered or not, we have...

20
21 **CHIEF JUSTICE DY CHANDRACHUD:** So, we'll have a look at your data, you can place
22 the data. Now tell us one thing, what was the basis on which the Election Commission had
23 raised an objection to this scheme? Can you tell us, what the nature of your objection was?

24
25 **AMIT SHARMA:** My Lords, kindly see, there are two letters that we had written My Lords,
26 to the Ministry of Law. Kindly see these letters. There are two letters which are dated 15th of
27 March.

28
29 **TUSHAR MEHTA:** I didn't deal with that submission, My Lord. But I have the original file
30 with me. RBI and EC, after the correspondence, after their letters, there were meetings and
31 meetings. And thereafter My Lord, consensus decision was taken. There were meetings after
32 the letters. If Your Lordships would like to peruse, I can show that file. My Lord, the original
33 file is there. But that's not an end of the matter. We thereafter discussed, their concerns were
34 taken care of. There misgivings, where it was at the highest level. The meetings were attended
35 by the Governor and Minister etc.

1 **AMIT SHARMA:** That's come out in the rejoinder of the Union also that there were meetings
2 which happened after the deliberation.

3
4 **CHIEF JUSTICE DY CHANDRACHUD:** What is your objection and to what extent it was
5 assuage?

6
7 **AMIT SHARMA:** One of the concern that we had My Lords is that there are three categories
8 basically My Lords are aware. One is below 2000, the other is between 2 to 20, and the third
9 is My Lord, I am not talking about the Electoral Bond for a moment. I am talking about the
10 general contributions which happens. So there are broadly three categories. Below 2K,
11 between 2 to 20 and above 20. Now, as far as, above 20 is concerned, it is to be done mandatory
12 by way of ECS. Either by demand draft cheque or ECS. So that's not an issue. We get the entire
13 details. As far as these other previous two categories are concerned. Less than 2000, it can be
14 done in cash and there are no details about it. We are mostly concerned with the second
15 category, that is between 2000 to 20,000. Now there, there is no provision given. Either it can
16 be done by cash, it can be done by ECS, it can be done by cheque or Draft.

17
18 **JUSTICE SANJIV KHANNA:** No, it was said that after amendment to 2017 under the
19 Income Tax Act. If it is between 2 and 20, then it will be treated as income, which is not
20 allowable, which will be then taxable in the hands.

21
22 **AMIT SHARMA:** Income Tax has that but vis a vis, Income Tax, the RP Act 29 C, that
23 amendment or that change, have not....

24
25 **JUSTICE SANJIV KHANNA:** Under your rules, you have not made a stipulation?

26
27 **AMIT SHARMA:** It has not happened.

28
29 **JUSTICE SANJIV KHANNA:** It has not been stipulated that between 2 and 20, you please
30 specify? And is there also any rule with regard to multiple payments by the same person?

31
32 **AMIT SHARMA:** No, there's no rule as such.

33
34 **JUSTICE SANJIV KHANNA:** There's no such rule?

35
36 **AMIT SHARMA:** No, There's no rule, any persons.

1 **JUSTICE SANJIV KHANNA:** But do you have data with regard to 2 and above 2 and
2 between 20?

3
4 **AMIT SHARMA:** We don't have a data. That's the difficulty because...

5
6 **JUSTICE SANJIV KHANNA:** You have data below 20?

7
8 **AMIT SHARMA:** Above 20, of course, we have.

9
10 **JUSTICE SANJIV KHANNA:** Above 20 you have the particulars, below 20 it's just a lump
11 sum amount?

12
13 **AMIT SHARMA:** We receive a contribution report every year. Now in that contribution
14 report we get the quantum as to how much in total, a particular political party has received the
15 amount above 20. Now what...

16
17 **JUSTICE SANJIV KHANNA:** Have you made any study or analysis of the data of dealing
18 with the Corporate Bonds and how it's impacted the funding of political parties?

19
20 **AMIT SHARMA:** I'm not aware because I don't think, but I have to seek instructions. I don't
21 think, I'll have to seek instructions on that. I don't know whether there has been some ongoing
22 study on that or not.

23
24 **CHIEF JUSTICE DY CHANDRACHUD:** Now Volume 4, page 467 was your letter of 26th
25 of May 2017. In what manner were these concerns assuaged?

26
27 **AMIT SHARMA:** Kindly if My Lord will see this 26th of May. The first is My Lords about
28 that section that I just spoke about Section 29-C, that we wanted that same principle, same
29 provision, which is there in IT Act to be brought into 29-C, so that we also get to know. So that
30 was one concern, which we had highlighted and which is now contribution above 2K is now
31 included, should be included, My Lords in 29-C. So that there will be a proper quantification
32 as to how much is in that bracket, how much is coming with a particular political party as a
33 donation. Which we don't have as of now. There is no breakup of that. We only get the total
34 amount that this is the amount which we have got in that particular category. So we have no
35 data on that and we don't know the source also.

36
37 **CHIEF JUSTICE DY CHANDRACHUD:** 12th April '19, right?

MR. AMIT SHARMA: 12th April '19.

CHIEF JUSTICE DY CHANDRACHUD: Volume 1, page 15. 12th of April '19 Order.
Volume 3?

COURT MASTER: Volume 525.

JUSTICE SANJIV KHANNA: As per you don't have data after, 2019.

AMIT SHARMA: No My Lords, unfortunately, we don't have, but if My Lords direct then I'll
instruct the Commission and we'll.... .

JUSTICE SANJIV KHANNA: Our direction is already there.

AMIT SHARMA: We can get the latest, till the last window.

JUSTICE SANJIV KHANNA: Till 23.

CHIEF JUSTICE DY CHANDRACHUD: 23. All the data, as of the latest.

Mr. AMIT SHARMA: The latest, the last.

CHIEF JUSTICE DY CHANDRACHUD: As of 31 March 2023, and submit it to us.

AMIT SHARMA: We'll do that.

CHIEF JUSTICE DY CHANDRACHUD: And in fact, you can even give it to us, say up to
the 30th of September, if there is data.

AMIT SHARMA: Till the latest My Lords, whatever we have, till the last that we have.

JUSTICE SANJIV KHANNA: You won't be having, you will have to....

AMIT SHARMA: We'll have to...

JUSTICE SANJIV KHANNA: Either you get it from the political parties or you will get it from the...

CHIEF JUSTICE DY CHANDRACHUD: State Bank of India.

JUSTICE SANJIV KHANNA: State Bank of India.

AMIT SHARMA: Either of two.

CHIEF JUSTICE DY CHANDRACHUD: We'll not ask SBI to reveal the identities of the donors at this stage, that nobody is interested in the present stage. But we would like..

[NO AUDIO]

...Order we said, just and proper interim direction would be to require, all political parties who have received donations to Electoral Bonds, to submit to the Election Commission of India in a sealed cover. Detailed particulars of the donors as against each bond, the donors will also come in here. The amount of such bond and the full particular or the credit received against each such bond. So you give us the data that you have up to 30th of September.

AMIT SHARMA: That can be Your Lordships. Because the details of the donor, that's why in sealed covers. Otherwise, data can be... quantum can be..

CHIEF JUSTICE DY CHANDRACHUD: Just show us what you have got up to now... 2019. Keep it in the custody of the court. They have given separate sealed covers for each political party.

KAPIL SIBAL: [UNCLEAR]... to five years.

TUSHAR MEHTA: Someone may have to collate, to assist Your Lordships from registry or whichever authority.

CHIEF JUSTICE DY CHANDRACHUD: We are only dealing with a constitutional point. This has no bearing on how we decide the constitutional issue.

JUSTICE SANJIV KHANNA: This was really, mean, suppose a writ petition is allowed, it should not be then confronted with the situation that no details can be made available.

TUSHAR MEHTA: No, I was on a different point. This might possibly have everything received by everyone.

JUSTICE SANJIV KHANNA: No, no separately. It is separate by each political party.

TUSHAR MEHTA: Then there is no coalition also.

JUSTICE SANJIV KHANNA: Coalition is already done.

KAPIL SIBAL: The order is to the political party.

JUSTICE SANJIV KHANNA: No, the order is to both. I don't think political parties or party..

KAPIL SIBAL: Both. That's right. All of them.

JUSTICE SANJIV KHANNA: They have to get it from the political...because they are the ones who are...

KAPIL SIBAL: Yes, Of course.

CHIEF JUSTICE DY CHANDRACHUD: [INAUDIBLE] Mr. Sharma, is there anything you want to add?

AMIT SHARMA: That's the only concern that we had My Lord. And this IT Act concern, we had raised it before the Electoral Bond in 2016 itself, which we have mentioned it in our counter affidavit also. So that was the.

TUSHAR MEHTA: I didn't digress Your Lordships on how we addressed their concerns, et cetera because it was more a consultative process with them. After having received that...

CHIEF JUSTICE DY CHANDRACHUD: We have noted that fact that you had the...[UNCLEAR]

TUSHAR MEHTA: After that EC can't be taken lightly.

1 **JUSTICE SANJIV KHANNA:** You have any... does the EC also have any idea what was total
2 expenditure incurred in the last election?

3
4 **AMIT SHARMA:** That we will have, total expenditure, yes. Because there are three heads
5 that we receive the accounts. One, as I said...

6
7 **JUSTICE SANJIV KHANNA:** As such political party expenditure is concerned, do you get
8 data with regard to that also? Separately?

9
10 **AMIT SHARMA:** We get data of every candidate who has...

11
12 **JUSTICE SANJIV KHANNA:** Candidates will not be suffice because political parties...

13
14 **AMIT SHARMA:** As far political parties are concerned My Lord, we don't get the
15 expenditure of a political party in a particular election, how much they have spent. It is
16 candidate specific.

17
18 **JUSTICE SANJIV KHANNA:** Then your data is incomplete.

19
20 **AMIT SHARMA:** Candidates specific because that's...

21
22 **JUSTICE SANJIV KHANNA:** So, you don't get the data with regard to all the political party.

23
24 **AMIT SHARMA:** The total the political party spends, that maybe...

25
26 **JUSTICE SANJIV KHANNA:** No, that should be with the Income Tax Department, for
27 sure?

28
29 **TUSHAR MEHTA:** Possibly, it may be. I am not aware of that.

30
31 **JUSTICE SANJIV KHANNA:** I'm asking him because he's the one who know that.

32
33 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Prashant Bhushan, 15 minutes in rejoinder
34 for you?

35
36 **PRASHANT BHUSHAN:** Can you give me just 20 minutes. I'll finish by 3:30.

1 **CHIEF JUSTICE DY CHANDRACHUD:** But now we have 50 minutes. So, you, Mr. Sibal,
2 Mr. Hansaria and ...5 mins for all.

3
4 **PRASHANT BHUSHAN:** 15 minutes extra is necessary.

5
6 **CHIEF JUSTICE DY CHANDRACHUD:** That we'll wrap up today.

7
8 **TUSHAR MEHTA:** My Lord, to answer Your Lordship's query. The political parties
9 expenditure is a part of their annual accounts, which is filed with Election Commission.

10
11 **AMIT SHARMA:** I stand corrected, My Lord. We have the data of the political parties. We
12 have the data. I stand corrected.

13
14 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, Mr. Bhushan. What do you have to say?

15
16 **PRASHANT BHUSHAN:** So the first argument of the Solicitor was, that because of these
17 amendments, the volume of cash which is coming to political parties, which he says are maybe
18 black money or is likely to be black money that has gone down.

19
20 **CHIEF JUSTICE DY CHANDRACHUD:** No, that's not his argument. He doesn't make a
21 quantitative statement. His contention is that this was an effort which was made to bring into
22 the accountable channels, what is otherwise completely beyond the fold of accountability
23 because the earlier schemes had not worked.

24
25 **PRASHANT BHUSHAN:** So, let me just deal with that. Firstly, it did not close the cash
26 channel. The amendment has left open the cash channels, the only change that has been made
27 is that for getting income tax exemption, that 20,000 has been brought down to 2000, that's
28 all. Otherwise, donations up to, cash donations up to 20,000 can be given to political parties
29 and they are not required to be reported. Quite apart from the fact that, actually 20,000 or
30 2000 does not make any practical difference because, all that the political party declares is, "I
31 have received X crores as cash donation." Which are below 20,000, they used to say below
32 20,000 earlier. Now, if they want to avail of income tax exemption, they say it's below 2000.
33 So, they say that we have received whatever, 100 crores, 500 crores by way of petty cash
34 donations. Earlier petty meant below 20,000 now petty means below 2000, if you want to
35 avail income tax exemption. Practically it makes no difference in my respectful submission to
36 the availability of cash to political parties or the ability of individuals to give cash to political
37 parties. Practically that 2000, 20,000 makes no difference. Now...

1
2 **CHIEF JUSTICE DY CHANDRACHUD:** That will not impinge upon the validity of the
3 scheme.

4
5 **PRASHANT BHUSHAN:** Yes, I know. My Lord, they are saying that this whole exercise was
6 to bring down the element of cash in the economy. They say cash is equivalent to black money.
7 The object of the exercise was to make political funding of parties to be... to come more through
8 banking channels rather than cash. This, they say, was the stated purpose of this whole
9 bringing in Electoral Bond, one of the stated purpose.

10
11 **JUSTICE SANJIV KHANNA:** Mr. Bhushan, there will be slight difficulty, even if it is not
12 happened, probably the data may support you. The cash channel may not have come down.

13
14 **PRASHANT BHUSHAN:** No, cash did come down. I'm not saying cash didn't come down.
15 But the reason why, it's important to understand why cash came down.

16
17 **JUSTICE SANJIV KHANNA:** Mr. Bhushan, there are three four arguments on which we
18 want direct answers. One, is that the intention was to ensure that the money comes through
19 regular banking channel. There's a KYC required.

20
21 **PRASHANT BHUSHAN:** Yes.

22
23 **JUSTICE SANJIV KHANNA:** Which is not there as far as payment...

24
25 **PRASHANT BHUSHAN:** Cash.

26
27 **JUSTICE SANJIV KHANNA:** Cash is concerned. And also, even if it is coming through the
28 bank accounts, the KYC by the second KYC at the time when the bond is purchased, is the
29 second added advantage.

30
31 **PRASHANT BHUSHAN:** All right, let's assume that's that.

32
33 **JUSTICE SANJIV KHANNA:** Number three, their contention is, that as far as payment is
34 concerned, the person who's made the payment is concerned, the need to know the name of
35 the donor is, has been protected, the confidentiality of the donor has been protected for one,
36 two, three, four reasons. And therefore, when you are examining the reasons you'll have to

1 take into account what was the intent behind the...that and not by counterargument which
2 may be...And there is always been a conflict between confidentiality and declaration also.

3
4 **PRASHANT BHUSHAN:** So, My Lords...

5
6 **JUSTICE SANJIV KHANNA:** Both of them have their pluses or minuses.

7
8 **PRASHANT BHUSHAN:** To answer our argument, that these changes defeat these citizen's
9 right to know about who's funding the political parties because they introduced another
10 anonymous source of funding. Now, the answer given by the Solicitor to that is, that well, it
11 had an objective. Now, these are two conflicting things. They say the objective was to limit
12 black money or cash money coming to political parties or to reduce that. And therefore, we
13 introduce these Electoral Bonds because many individuals or companies do not want to be
14 known that they are the donors to these political parties because they fear victimization. So,
15 that was what the Finance Minister then stated, that's the argument also of the Solicitor, that
16 there was an objective behind this. Now, what I am pointing out is, that if the objective was to
17 choke off cash donations, cash donations have not been choked off.

18
19 **CHIEF JUSTICE DY CHANDRACHUD:** But that was not the object at all. The object, as
20 the Finance Minister says in that article and that's probably an indication, was to add some
21 element of transparency. That's what Mr. Jaitley said, that it will enhance transparency to a
22 significant extent and we would add two separate phrases which have been in use. That's the
23 point. You are right. In the earlier, in the earlier regime absent this, it was purely cash based.
24 You had those option voluntarily contributions. You had Electoral Trusts.

25
26 **PRASHANT BHUSHAN:** Not just that you had direct cheque donations, etc. That is

27
28 **CHIEF JUSTICE DY CHANDRACHUD:** A cash based scheme, an unaccounted scheme
29 proceeds on anonymity.

30
31 **PRASHANT BHUSHAN:** Yes.

32
33 **CHIEF JUSTICE DY CHANDRACHUD:** According to you there's continued anonymity.

34
35 **PRASHANT BHUSHAN:** But it continued that anonymity of cash.

1 **CHIEF JUSTICE DY CHANDRACHUD:** But there is one change that the Electoral Bonds
2 have brought whatever is contributed to the Electoral Bond in the form of accounted
3 transactions within the normal banking funds.

4
5 **PRASHANT BHUSHAN:** Now the question. So, that's the second limb of the argument that,
6 this reduces black money flowing into political parties because it's coming through banks.
7 Ultimately...

8
9 **CHIEF JUSTICE DY CHANDRACHUD:** Whether it reduces or not, to in my mind is
10 relevant to the validity of this scheme.

11
12 **PRASHANT BHUSHAN:** All right.

13
14 **CHIEF JUSTICE DY CHANDRACHUD:** The scheme may be wholly unsuccessful, but it
15 may still be a constitutional valid scheme.

16
17 **PRASHANT BHUSHAN:** Then that is no response to my original submission, which is, that
18 it defeats a constitutional right of citizens to know who is funding these political parties? That's
19 a fundamental right, which Your Lordship has recognized under 19(1)(a). And if what is being
20 argued, that the object of this bringing in Electoral Bonds was to reduce cash and reduce black
21 money, so to say, and bring in only accounted money through bank, banking channels to
22 political parties. If that's the argument, then I'm just pointing out that that's not entirely
23 correct for the reason. Firstly you can still give cash. There is no bar today which has been
24 placed on cash. All, the only change that has been made is, simultaneously...

25
26 **CHIEF JUSTICE DY CHANDRACHUD:** How do you put a bar on cash? It's a third
27 economy. Much as you may impose a bar in cash, it's illegal, but you do have a third economy,

28
29 **PRASHANT BHUSHAN:** That's the point My Lord, that it could easily have been done that
30 all receipts of political parties, at least of political parties will have to be accounted. Whether
31 it is cash or not. All cash also, any money being received...you could have done two, either of
32 two things. One is to say, the cash is totally prohibited. You have to take through banking
33 channels. This is one option. The other is, even if cash, even if you take cash irrespective of the
34 amount, even if it is Rs 100, Rs 50...

35
36 [NO AUDIO]
37

Even the RBI when it dealt with this Electoral Bonds, when it responded to Electoral Bonds, they said that if your object is to make political funding go through banking channels, there are existing instruments of cheques, drafts, bank transfers, etc. which are available. Why are you introducing this anonymous instrument? This will allow, because as I pointed out, it's not that black money cannot come in through Electoral Bonds, though it will come in through banking channels. The example that I had given in my initial submissions was, suppose as has been done that you by, under invoicing, over invoicing etc, you siphon out some funds, X crore for X thousand crores to tax saver. From there you have a company to which you have deposited. That's all black money. It's over invoicing, under invoicing money which has been siphoned out to those tax savers. You set up a subsidiary of that foreign tax saving company in India. It's a subsidiary under the FCRA changes. It was argued FCRA is not in question here, but FCRA changes have been challenged in this very petition also 2016, by which the availability of even subsidiaries of foreign companies to donate to political parties was brought in. And whether or not Your Lordship decides on the validity of that or not, Your Lordship have to keep in mind the fact that simultaneously that route was opened up. The route of subsidiaries of foreign companies donating to political parties was opened up. Now what I am pointing out is black money can still flow through Electoral Bonds in this way. You have converted black money and deposited it into a taxable bank account of some company registered in a taxable. You then transfer that money to, you set up a subsidiary in India, transfer that money to a subsidiary in India. That subsidiary company, because you have removed a limit of 7.5% also, even if it's a shell company.

CHIEF JUSTICE DY CHANDRACHUD: At the constitutional level, this argument won't wash. I tell you why.

PRASHANT BHUSHAN: I am only responding to what was argued, I am not...

CHIEF JUSTICE DY CHANDRACHUD: This will not wash at the constitutional level for the simple reason. The fact that they have been unable to or they did not dry all cash. Sources of funding of political parties is not an answer, is not a ground to challenge the validity of a scheme.

PRASHANT BHUSHAN: I am not using that ground. I am saying that the response of the Government to my grounds, what were my grounds, My Lord? My grounds was Article 19(1)(a) defeats the rights of the citizens to know the funding of political parties. Number two, My Lord, it promotes corruption because it allows, it effectively legalizes corruption because it allows any company to give anonymous kickbacks, legalized anonymous kickbacks to the parties in

power. And I pointed out that the evidence, there is considerable evidence to show that almost all the Electoral Bonds have gone to ruling parties. Vast bulk to the ruling party in the centre, the rest of the ruling parties in the states. And virtually all the Electoral Bonds that have been purchased are in denominator... 94.5% in denomination of 1 crore, and the remaining in denomination of 10 lakhs, virtually nothing below that. Therefore there is good reason to suspect. And I gave two examples also. I'm not saying that Your Lordship should use those examples because those parties, those companies are not before us. But I gave those two examples. One company has declared officially that they gave those Electoral Bonds to ward off excise issues which had arisen with the Government. The other company who has purchased Electoral Bonds worth more than 450 crores from their accounts declared to SEBI has been the recipient of several mining contracts and various other favours..

JUSTICE B.R. GAVAI: You have already argued. You are in rejoinder.

TUSHAR MEHTA: Mining contracts, these are all auctions.

JUSTICE B.R. GAVAI: You are in rejoinder. Don't reargue your case.

PRASHANT BHUSHAN: I'm not rearguing. I'm just pointing out that's my argument. Now, what is the Government's response to that? So how do they answer this question that this defeats these citizen's Right to Information. One answer that they had given. I was coming step by step. One answer that they had given was that there was a competing interest of bringing down cash or bringing down unaccounted money into the donations and finances of political parties. I'm just answering that issue. The other argument that they have made is that there is a right to privacy. That's the argument made at the end. Firstly, the right to Privacy doesn't extend to companies. It's an individual human right. In even in *Puttaswamy*, Your Lordship has laid down that that's an individual's human right. It's not a right of a company. So therefore so far as those amendments which have been made to the Income Tax Act, to the Companies Act, et cetera which anonymize donations by companies to political parties and remove the requirement of declaring who you have donated to or where you have spent this money, that right cannot be invoked for companies. The right of privacy cannot be invoked for companies. And even otherwise if let's assume that there are some individuals who are giving this money. The question is, can those individuals claim a right to privacy, which overrides the Right to Information of citizens? Even under the RTI Act if Your Lordship recalls, there is an exemptions for privacy. There is an exemption for personal information. But that exemption stated, that only that personal information which has no bearing on public affairs, and which cannot be overridden by public interest, is exempted. If there is a public interest override even

that information is not exempted. So in my respectful submission, that privacy argument cannot be used to say, that my right to privacy about which political party I'm donating to, overrides the citizen's right to information. To know about who the political party is getting funded from. So, that right in a democracy clearly would override even if there is a right of privacy of an individual. Of course, companies don't have that right but even if an individual has that right of privacy about donating what they have donated to political parties in my respectful submission, that is overridden by the citizens' right to information. The other argument that was made was, again on the basis of what the Finance Minister had said, it was argued that this is to prevent victimization. Now, firstly, as Your Lordship pointed out, the Government would certainly know or the party which runs the Government can find out, look this company had purchased Electoral Bonds worth 100 crores we have not received anything from it. Therefore, obviously they have given it to the opposition parties. And therefore that much information which will still allow the Government to victimize that company is always available with the Government. Even if, even if they do not use their control over the State Bank to find out which company has given Electoral Bonds to which party, the argument that was made was that no, there is an elaborate system of protecting that information. It's very simple. Obviously when a person purchases an Electoral Bond, he gives KYC, etc. The bank would have to record that this person or this company has purchased this Electoral Bond and the number of the Electoral Bond would have to be recorded somewhere. Thereafter when a party encashes that Electoral Bond, the party, the number of the Electoral Bond which that party has encashed would have to be recorded. Otherwise, it would make it open for counterfeiting. And therefore, you have to record these two information. So therefore, it's not so difficult. If the Government wants State Bank of India would certainly know. And if the Government exerts sufficient pressure on the State Bank, they can come to know. Even otherwise, the Government would know as to which companies have purchased Electoral Bonds worth how much and that we have not got it.

CHIEF JUSTICE DY CHANDRACHUD: So one point is, of course, you've highlighted the citizen's Right to Know. What is the next?

PRASHANT BHUSHAN: Right to know, that the justification for victimization, et cetera doesn't really apply. In fact, it's only the citizens who are being deprived of this information. Each political party would know, can know, can know and certainly the Government can know. Citizen cannot scan the...

CHIEF JUSTICE DY CHANDRACHUD: Mr. Bhushan, I think the point in rejoinder please.

PRASHANT BHUSHAN: Then My Lord, just two more things. There was an interim order, as Your Lordship saw as per Election Commission.

CHIEF JUSTICE DY CHANDRACHUD: Before April '19.

PRASHANT BHUSHAN: I am respectfully saying because they are going to open Electoral Bonds window for this State Assembly elections any day now. It can be opened tomorrow. It can be opened day after. And again, till today, till March 2022, Electoral Bonds that had been purchased were over 9000, under 10,000 crore. Till today. I understand that the Electoral Bonds that have been purchased in this last one and a half years has been... has taken the total to 13,000 crores. Now, today, if they open the Electoral Bonds, again in this assembly election, again, Electoral Bonds will go. I am respectfully requesting Your Lordship, even if Your Lordship does not stay the issue of Electoral Bonds after today, at least one thing Your Lordship should say that it should be made clear to the parties who are purchasing Electoral Bonds, that these may be subject to disclosure. Because this Court has the power under the scheme also to ask, seek information from the State Bank of India and I am requesting, My Lord, that at the end of this, if Your Lordships hold, if Your Lordships agree with us, that this Electoral Bond is unconstitutional, etc. Then Your Lordships should disclose, as to which company has given to which party, etc. And even if that information has to be obtained from the State Bank of India. And that's why I'm saying that at least today, because last time, same thing happened in that Election Commission appointment case. I had an interim application. I mentioned that interim application on Thursday saying that there is one post vacant of the Election Commission, and the Court is proposing,

CHIEF JUSTICE DY CHANDRACHUD: Except for the difference, except for the fact that after the 12 April 19 order, when you move the fresh IA for stay.

PRASHANT BHUSHAN: That was for that particular

CHIEF JUSTICE DY CHANDRACHUD: That stay was declined by the then three Judge Bench.

PRASHANT BHUSHAN: Yes that was... that stay...

JUSTICE SANJIV KHANNA: Mr. Bhushan, that's why I ask you, what is exactly your prayer? You asking for quashing of the of the scheme?

PRASHANT BHUSHAN: Of course. I'm asking for quashing...

JUSTICE SANJIV KHANNA: Just one minute you're asking for quashing of the scheme or you want that the disclosure should be made?

PRASHANT BHUSHAN: I'm asking for quashing of this scheme.

JUSTICE SANJIV KHANNA: Therefore you had to answer that question.

PRASHANT BHUSHAN: And in case Your Lordships...

JUSTICE SANJIV KHANNA: Mr. Bhushan, just one more question.

PRASHANT BHUSHAN: Yes.

JUSTICE SANJIV KHANNA: The scheme has one advantage. There's a KYC at least, you will accept that there's an advantage in that.

PRASHANT BHUSHAN: Now that's alright if the anonymity is removed, I have no problem.

JUSTICE SANJIV KHANNA: So therefore, if you take... you are arguing on that.

PRASHANT BHUSHAN: I'm saying... I'm challenging this scheme because of the anonymity. Remove the anonymity I have no problem with Electoral Bonds. I'm challenging the anonymity of the Electoral Bond, so that is defeating the Right to Information of the citizens. So what I am saying is...

CHIEF JUSTICE DY CHANDRACHUD: So you are basically pressing for the entire scheme to be set aside and you are also arguing that the amendment should therefore be...

[NO AUDIO/VIDEO]

KAPIL SIBAL: What's the basis My Lords of coming to this conclusion? These Electoral Bonds are meant for a political party to be in power in perpetuity because the amount of money through these means which "are legitimate", will empower that party through capital to

1 influence everything. This is the most unconstitutional, undemocratic, unfair scheme that
 2 destroys the very basic structure of our Constitution. Free and fair elections is the basic
 3 structure of our Constitution. This scheme is neither free nor is it fair. It is not free because
 4 the industrialist cannot say no. It is not fair because in that process the political party in power,
 5 gets the maximum capital and the capital it wants. Not or elections, for other purposes. That
 6 is very dangerous.

7
 8 Incentivising, and I will come to My Lords the main arguments. Incentivising, I won't take
 9 more than few minutes My Lord. I don't want to trouble Your Lordships. Incentivising the use
 10 of banking channels. Of course, you will get this legitimate money through banking channels.
 11 In fact that is the perfectly rational way of enriching yourself. Perfectly rational way, that is
 12 not a justification for empowering yourself. I can understand if there was a correlation
 13 between this and the election process in which you must disclose how much you have spent,
 14 where you have spent. But that cannot be because it is the candidate who is fighting the
 15 election, not the political party.

16
 17 [NO AUDIO/VIDEO]

18
 19 **KAPIL SIBAL:** As far as persecuting the person who has been given the money by that party
 20 to an opposite party, they will be persecuted. Why will they be persecuted? Let me tell Your
 21 Lordships, just to tell Your Lordships what the reality is. A big industrialist, who has enormous
 22 power will give it to all political parties and the party at the Centre will never, never hold it
 23 against that industrialist because everybody's benefitted. The system enjoys this money.
 24 Enormous capital to the party that is at the Centre and small little donations to the others. And
 25 everybody knows about it, it's not a secret. So there'll be no retributions that why did you give
 26 it to that party. Because, you have also got the maximum. Why should there be a retribution?
 27 So, this whole argument that no, there will be a retribution, why have you given to that party?
 28 Suppose I have got 100 crores, I get a 100 crores but the donation shows that he has given 500
 29 crores. I will know that 100 crores come to me 400 crores, they have gone somewhere else.
 30 And if, My Lords, for the 100 crores, the *quid pro quo* is four, five, six instances, then out of
 31 400 crores, why should the retribution be more than just four, five, six instances? The same
 32 logic will apply, same logic will apply. So, why are you protecting those My Lords? And the
 33 most serious part which I said earlier, that I will never be able to go to a Court of Law. What
 34 you are doing is, giving a protection to corrupt transactions by not putting that information in
 35 the public domain because I will never know. So, how do I move forward? Where do I go? I
 36 can't file an FIR because I don't know, I'll be subject to defamation. I can't go to Court. I have
 37 under 156(3), I'll have to go to... I'll have to give some data. I don't have the data. So, what

1 court order are we talking about? Don't shield the process of corruption itself by allowing this
 2 to go on. If you want to deal with corruption, the first thing to do is to quash this scheme. This
 3 is the surest way for political perpetuity. Having said that, just five more minutes. Then My
 4 Lords, the Respondents argue, that EBS is a matter of financial, economic policy. It certainly
 5 is not. It deals with elections. Nothing to do with financial policy.

6
 7 In fact, the EBS and amendments on which it is based changes the very ground rules of the
 8 electoral process, the very ground rules which negate any presumption of constitutionality and
 9 on the contrary, requires heightened judicial scrutiny. That's the answer to that question of
 10 financial and economic policy. Economic policy is a bearer bonds issue because, that way you
 11 can bring black money into the economic system and pay tax on it. Nothing to do can do is to
 12 tell the government this is not the way with it. [UNCLEAR] he says the arguments that making the
 13 identity of donors in an extension of secret ballot, the Right to Vote and donating of funds are
 14 distinct. The Right to Vote a secret ballot, donation of funds cannot ever be secret. Three, he
 15 says there is no uneven playing field. I will demonstrate it yourself with the entire field is
 16 uneven. Fourth, they say the Respondent has distinguished ADR and PC or PUCL on the
 17 ground that the information sought for in those cases already existed and just needed to be
 18 disclosed. In this case, the only reason the information about the identity of donors is
 19 unknown, in the present case is a structural design of the system. You have structured the
 20 scheme in such a way that it's unknown. So My Lords, I really don't want to say anything more.
 21 All I can say is My Lords, and My Lords, what is the public interest that is being served here?
 22 I don't understand what the public interest is. Public interest not to know, not to disclose. And
 23 who are you protecting? For what purpose are you protecting these people? You are actually
 24 protecting yourself, because you know who has donated. It is self-protection, self-
 25 preservation, self-perpetuity. How can the public interest in protecting the identity of donors,
 26 outweigh the public interest in the public's right to know? To be free from corruption? So
 27 politics, as I said, it's impossible for us to get rid of free money, black money. No country in
 28 the world has got rid of it. Let's be clear on it. All Your Lordships can do is to tell the
 29 government this is not the way forward. You want to deal with it, deal with it in a way that is
 30 transparent, that gives us the confidence that it is not for you, it is for the larger public interest.
 31 Thank you very much.

32
 33 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you, Mr Sibal.

34
 35 **KAPIL SIBAL:** Also, I filed rejoinder submissions already to his submissions My Lord. The
 36 Court Master may just upload them.. All that I have said to Your Lordships is dealt with that
 37 in what, twelve pages.

CHIEF JUSTICE DY CHANDRACHUD: Just give a copy.

KAPIL SIBAL: I will give you a copy because I didn't want to take too much time to read them. There are others also. I'm deeply obliged.

SHADAN FARASAT: My Lords, the core of our challenge is to the statutory provisions, which prevent public disclosure. Those are the statutory amendments. The Scheme follows based on those amendments, namely, amendment to section 29-C of the Representations of People Act and Section 182 of the Companies Act. Those were the public disclosure provisions. The scheme, once a public disclosure comes in the Scheme, there is no real Scheme to survive. This is to answer My Lord Justice Khanna's question, 'What are we challenging?' We are challenging those two statutory provisions because once that goes, the scheme itself collapses. The basis of the scheme is non-public disclosure. My Lords, with that, I would submit, why do we need in rejoinder two points only. Why do we need public disclosure. Number one, as the US Supreme Court said in *Buckley versus Valeo*, a political party may represent anything to the electorate. It may self-ascribe any label to itself to the electorate. But one of the best ways of determining what the party is about is where or who it is going to be most responsive to, is where it gets its funds from. If that aspect itself is removed from the public domain, so A party can say X, take the money from Y, or other interest and the public has no way of knowing. So public information is necessary for voter to form its view into voting. That is a substantive right to Vote as an informed Right to Vote, and therefore, that information as to who has given you money to, so that the voter can match what you are saying. Are you taking money? Are you a Green Party? You're claiming to be a Green Party but taking money from oil interest? There are n number of examples. So that is one interest which is necessary. Second My Lords, the question fell from the Court yesterday to the Government that how will you prevent *quid pro quo*? *Quid pro quo* has been used by both sides very broadly. Let me just try and My Lords, bifurcate it. One would be My Lord, policy influence or policy capture. Strictly not corruption. Second will be legislative influence or legislative capture, strictly not corruption, either. The final stage would be corruption or bribery. The only in my respectful submission, the only constitutional safeguard against preventing *quid pro quo* is in fact, public disclosure. One Constitutional Court in South Africa. I just want to place two paras in rejoinder. Normally I wouldn't place paras of a judgement. Only two paras because exact same situation arose in South Africa, and the Constitutional Court of South Africa has said that the only way to ensure that these other things, nothing can be removed in the polity is a complex space. Surely we can't expect a perfect word. But from areas or zones of influence to movement to zone of corruption, that can be prevented by public disclosure. Your Lordships will just have page

6654. 6654, Volume 4, Volume 5. I'm sorry. My apologies. My Lords, the case is titled, quite aptly, '**My vote counts' versus Minister of Justice**. And My Lords, straightaway para 40 at page 6653.

CHIEF JUSTICE DY CHANDRACHUD: What page does the case begin? 66..?

SHADAN FARASAT: 6653, is the relevant portion, Bookmark number 60.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

JUSTICE SANJIV KHANNA: Volume 4, of?

SHADAN FARASAT: Volume 5, My Lord. Volume 5, paragraph 40. The Court has it? The reality is that private funders do not thoughtlessly throw their resources around. They do so for a reason and quite strategically. Some pour in their resources because the policies of a particular party or independent candidate resonate with their world outlook ideology, others do so, hoping to influence the policy direction of those they support to advance personal or sectional interest. Money is the tool they use to secure the special favours or selfishly manipulate those who are required to serve and treat all citizens equally. Unchecked or secret private funding from all, including other nations could undermine the fulfilment of constitutional obligations by political parties or independent candidates, so funded and by extension our nation's rightful place. Then thereafter, our freely elected representatives must thus be so free that they would be able to focus and deliver to their core constitutional mandate. They cannot help build a free society if they are themselves not free of hidden potential bondage or captivation. Now para 42 is important. I'll read only from the third line. Only when there is a risk of being exposed for receiving funding from dubious characters or entities that could influence them negatively for the advancement of personal or sectoral interest, would all political parties and independent candidates be constrained to steer clear of such funders and be free to honour their declared priorities and constitutional obligation. And that risk would enable by a regime that compels the disclosure of information on the private funding of political players. So My Lords, my respectful submission is, public disclosure is the real check. Public disclosure is the real check. And therefore from all the kind of things which happen in politics, from that to moving into the zone of corruption. And in a democracy it's the public which tests the party every day. So effectively, that is the biggest check. Because finally an argument on confidentiality was made, a certain formulation of that was made on privacy. And a comparison was made to right to vote is a secret right to vote, and therefore this by extension you should have a secret right to fund. In effect, if I understood,

1 that was the formulation. Our respective submission is right to vote is your own exercise of
 2 franchise. It's the least level of participation as a political actor in a democracy. The minute
 3 your levels of participation starts increasing. If I want to fund and influence the system as a
 4 whole, of course I cannot be claiming privacy or confidentiality. If I'm holding a public office,
 5 my level of confidentiality of privacy will be restricted to my family zone. So this privacy, even
 6 in respect. Of course, corporations don't have a right to privacy. It's Article 21 right, proviso
 7 Right to Life. So that is out. But even assuming natural persons who may be donating their
 8 right to privacy can certainly, or right to confidentiality, whichever way we frame it, cannot
 9 extend to an area where they will now impact the entire political system and seek to do so
 10 secretly as a matter of right, of course, it cannot be. As we go up the system in terms of our
 11 political influence the Proportionality Doctrine will ensure that your ability to assert
 12 confidentiality or privacy as a right is reduced. Finally, I will just conclude by one quote,
 13 Thomas Jefferson and my learned friend, Mr. Bhatia says, "that the best protection against
 14 victimization is full transparency". So, that, just want to emphasize that. And finally, I would
 15 just like to end with a quote by Thomas Jefferson. He said, "information is the currency of
 16 democracy" and someone added to that quote saying "it's non-disclosure should always be
 17 suspect". I'm grateful My Lords.

18
 19 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you. Yes, Mr....?

20
 21 **NIZAM PASHA:** I apologize for being on the VC, Lordships...

22
 23 **TUSHAR MEHTA:** Basically don't give rejoinders, but I have no objections.

24
 25 **VIJAY HANSARIA:** As an intervener My Lord, technically right. Let me have the..
 26 something to add My Lords.

27
 28 **NIZAM PASHA:** Lordship, I just wish to take five minutes for one of the petitioners.

29
 30 **CHIEF JUSTICE DY CHANDRACHUD:** Let Mr. Hansaria conclude. Yes, Mr. Hansaria.

31
 32 **VIJAY HANSARIA:** The two quotes which my learned friend Mr. Solicitor, started saying,
 33 'practicality requires that I contribute to political parties'. Practicality requires, these are from
 34 the quotation because, now we have the advantage of YouTube and the transcript, requires I
 35 contribute with a degree of confidentiality so that I'm not victimised in future. This is the whole
 36 basis of the scheme. My submission is, we are talking of political parties, we are not talking of
 37 rival groups who are collecting money. And the political parties fight election on the basis of

1 their development activities, maybe on freebies, maybe on caste census, but not My Lord that
 2 we will victimize a political person, a person who does not pay us, at least who's paying
 3 someone else more. The whole foundation is, there is a confidentiality otherwise there'll be
 4 victimization. With great amount of respect My Lord, nobody is coming forward to say, the
 5 rival group will be victimized. The Government is trying to justify it with this contribution,
 6 with confidentiality. And the other justification is, my learned friend has some difficulty in
 7 using the opaqueness or the anonymity. He says, confidentiality. Very well. Confidentiality of
 8 100 or 1000 corporate houses, would it override, the Right of Information of 140 people of this
 9 country?

10
 11 **JUSTICE B.R. GAVAI:** That is already argued.

12
 13 **VIJAY HANSARIA:** No, what they say My Lord is the confidentiality is the key, is the
 14 required. Confidentiality of 100 or 1000 corporate houses is required. But my submission is
 15 right of the citizens would override, overweigh the right of the donors. How can you say the
 16 140 crores people's right, I will not take into account. I'll take into account the right of the 1000
 17 or 5000 corporate houses. Thirdly, the black money Mr. Sibal has given note, I have given a
 18 chart of the RBI guidelines from the RBI source. The amount of money was in 18 lakh crore
 19 cash in 1917-18, when the scheme was introduced and today 2022- 23, it is 33 lakh crores. The
 20 details are given with the page numbers in a tabulated form in a chart to the Court Master.
 21 Just take into account if Your Lordships would, to take that black money has not gone or cash
 22 money has not gone. Fourth, my learned friend, Mr. Mehta said, that what will happen is pre
 23 2017 era and he gave the figures of 2004 to 2014-15, where he did not name, the BJP got 65%
 24 from undisclosed source. Presently also, my chart at page 59 says, in my written submission,
 25 65% is from undisclosed source presented by them. The same amount of undisclosed source
 26 remains even with this scheme. And finally my Lord, as a citizen I may say that my learned
 27 friend, Mr. Mehta said, this was the best solution we found. As a citizen, the best solution
 28 would be no cash donation. My learned friend says, digitization has gone in our country, nine
 29 times more than Europe and US together, five times more than China. Let there be no
 30 digitized... no cash transaction. It will stop. Everybody would know it. I'm extremely grateful
 31 to Your Lordships and it's very difficult...

32
 33 **CHIEF JUSTICE DY CHANDRACHUD:** Yes Mr. Pasha. And the last word for you, Mr.
 34 Pasha.

35
 36 **NIZAM PASHA:** Thank you Your Lordship. I apologize first for being not being present in
 37 person. It was because of an injury. Otherwise I would have been there before, My Lords in

person. Just two very short points with respect to funding through subsidiaries by foreign companies. There has been an attempt to misconstrue the scope of My Lord's order segregating issue. Now, the order that had been passed by My Lords, in which these issues that is segregated, My Lords had said that the Finance Act 2016 under Finance Act 2018 and the amendments it brought about to the FCRA will be placed before a separate bench. Now what was amended in 2016 and 2018 Finance Acts in the FCRA was the definition of foreign source, to exclude, from a foreign source those companies which had foreign investment. However, Lordship, I wish to point out that where we are minus the Electoral Bond Scheme, even assuming those two amendments to the Finance Act stand, is that each foreign source, whether... There are four major sources through which foreign investment comes into the country Lordship. One is foreign direct investment, one is foreign venture capital investment, one is foreign institutional investment, and one is external commercial borrowing. Each one of these Lordships and I have placed the regulatory guidelines and the regulatory mechanism for each of these in Volume 4, along with my written submissions. So, the FEMA External Commercial Borrowing Regulation 2018, the SEBI FVCI Regulations, the SEBI FII Regulations, and the SEBI Non Debt Instrument Regulations, all of which cover ECB, which is external commercial borrowing, FII foreign institutional investor, FVCI foreign venture capital Investors and FDI, which is foreign direct investment. For each of these and I could point out the page numbers of the regulatory mechanisms and the schemes and the regulators who are appointed but very broadly Lordship for FII's, there is a complete disclosure required for the end use of the funds that come in, including which companies they are investing in, that has to be placed before SEBI and the stock exchanges. Same for FVCI, foreign venture capital investors, which is also SEBI regulation, where SEBI is the regulator and the regulatory mechanism requires a full disclosure of where the funds are being placed. For external commercial borrowing, RBI is a regulator. And the external [UNCLEAR].

CHIEF JUSTICE DY CHANDRACHUD: We need not go into this. Thank you.

NIZAM PASHA: No, Lordship, I will just finish my sentence. If it is not for the bond scheme...

TUSHAR MEHTA: Only one line. If Your Lordship permits.

NIZAM PASHA: I will just finish one line Lordship, then I am done with my submissions.

CHIEF JUSTICE DY CHANDRACHUD: To the Election Commission, to get the data in accordance with the order dated 12th of April 2019 for the period ending 30th of September

2023 on 12th, *aisa likh lijiye*. We have heard arguments on behalf of the contesting parties. Arguments are concluded and the judgment is reserved. On 12th of April 2019, an interim direction was issued by this Court to the Election Commission of India. The Election Commission has produced in a sealed packet, the data in terms of the Interim Order as of April 2019. The order of this Court was not restricted to the date on which it was pronounced. If there was any ambiguity, it was necessary for the Election Commission to seek a clarification from this court. In any event, we now direct that the Election Commission shall produce up to date data until 30th September 2023, in terms of the Directions Interim Directions, which were issued on 12th April 2019. This exercise shall be carried out within a period of two weeks, *on or before karlo*. The data in a sealed packet shall be handed over to the Registrar Judicial of this Court.

TUSHAR MEHTA: Lord, only one line, I think I'll be failing in my duty if I don't say this. I was little perturbed when Mr. Sibal said that no there is no possibility of eradication of black money in this country. I am not that pessimistic. My Lord, the way in which digitized payment is increased, it is significant improvement and the country should not be pessimistic. We are in the process and we will eradicate black money.

CHIEF JUSTICE DY CHANDRACHUD: Thank you sir. Thanks to all the Court. Thank you very much.

TUSHAR MEHTA: One more suggestion. It's my suggestion despite My Lord, my saying about SBI, etc., if Your Lordship's conscience desires to be satisfied more, Your Lordships may consider RBI, which is a statutory banker's name. There may be some administrative issues, instead of SBI because they may or may not have presence all over. This is just to show my bona fide.

CHIEF JUSTICE DY CHANDRACHUD: Thank you.

END OF DAY'S PROCEEDINGS