

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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2 **VIJAY HANSARIA:** ...To influence policy making resulting in public... loss of public trust in
3 the governance. These are the four broad parameters My Lord on which my submissions I'm
4 going to develop.

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6 **CHIEF JUSTICE DY CHANDRACHUD:** In loss of public?

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8 **VIJAY HANSARIA:** Loss of public trust in the governance. If you can influence with money
9 power the policy making which results in loss of public trust in the governance.

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11 **CHIEF JUSTICE DY CHANDRACHUD:** So your fourth we will starts from opaqueness.

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13 **VIJAY HANSARIA:** Yes My Lord.

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15 **CHIEF JUSTICE DY CHANDRACHUD:** On the other hand, opaqueness leads to
16 transactions behind an iron curtain, leading to improper influence of money power and allows
17 wealthy contributors to influence policy making, resulting in loss of public trust in governance.
18 That we will take as your fourth.

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20 **VIJAY HANSARIA:** Yes, My Lord, I'm grateful. The advantages of transparency are My
21 Lord, accountability credibility public wealth, healthy democracy...

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23 **CHIEF JUSTICE DY CHANDRACHUD:** That we have taken. Yes, yes.

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25 **VIJAY HANSARIA:** Now with this preface My Lord, may I start the journey My Lord, from
26 where Justice Chagla has said in 58, and the Parliament has thereafter amended various laws
27 to introduce what Justice Chagla has observed in that Bombay 58 Judgment. First is My Lord,
28 could Your Lordship kindly see my written submissions in Volume 1-A page 19, changes made
29 in Companies Act.

30

31 **JUSTICE SANJIV KHANNA:** Sorry, which page?

32

33 **VIJAY HANSARIA:** Page 19 My Lord, Volume 1-A, page 19. It is a complete compilation in
34 Your Lordship drive.

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36 **JUSTICE B.R. GAVAI:** It's a separate volume. Your submissions are in a separate volume.

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VIJAY HANSARIA: Yes, it is a separate volume. My Lords have got it.

CHIEF JUSTICE DY CHANDRACHUD: Just give me one second. I found it. Copy and paste it.

VIJAY HANSARIA: I'm so sorry. Mr. Bhushan has shown to Your Lordships the 58 judgment, where Justice Chagla say that we request the Parliament to look into it. This aspect of transparency and political funding of corporates. Heading of the page 19, My Lord.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

VIJAY HANSARIA: 'Evolution of companies law is on practice of disclosure. And the limit of donation introduced way back in 1960 overturned, no more disclosure required for donation made to political parties through Electoral Bonds.' My Lord, The first change was made by the Companies Act 1960, which inserted Section 239-A in the Companies Act 1956. 293-A. Yes. Look, with this, Your Lordship would find in Volume 4, page 6888, this section. 293-A.

CHIEF JUSTICE DY CHANDRACHUD: Volume 4?

VIJAY HANSARIA: Volume 4, page 6888.

CHIEF JUSTICE DY CHANDRACHUD: All right.

VIJAY HANSARIA: The amendment starts and the relevant section is 6890.

CHIEF JUSTICE DY CHANDRACHUD: 688... at ?

VIJAY HANSARIA: 6890. It's Section 293-A My Lord. It is introduced exactly as advised by the, in the Bombay High Court judgment. Notwithstanding, contained in Section 293, neither any company in the general...

CHIEF JUSTICE DY CHANDRACHUD: You want us to read that Volume 4 now?

VIJAY HANSARIA: Volume 4. Yes, I'm just reading simultaneously.

CHIEF JUSTICE DY CHANDRACHUD: Because you were on your written...

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VIJAY HANSARIA: The relevant sections. My Lord. Volume 4, page 6890. All of Your Lordships have got it? My Lords, have got it? Yes.

CHIEF JUSTICE DY CHANDRACHUD: I was telling Learned Brother Justice Khanna that it's so heartening in our court, everybody is on their iPads and laptops. I mean... [UNCLEAR] the scene changed.

VIJAY HANSARIA: That's only because Lordships insisted. Will impose fines, if we bring papers. So I only got the bare act .

JUSTICE SANJIV KHANNA: Files and the books have gone.

VIJAY HANSARIA: And it's so convenient. Initially...

TUSHAR MEHTA: I'm the most technologically challenged person. But I am also now on the...

VIJAY HANSARIA: All of us My Lord. And we initially thought when we were arguing in Court Number 2, that electricity matter. Your Lordship of insisted that no files.

CHIEF JUSTICE DY CHANDRACHUD: Yes. What a huge matter that was. My God.

VIJAY HANSARIA: Yes, My Lord. And that's the first time when we struggled, we have to get into it and Mr. Ranjit Kumar brought his even SCC. He said that I have to read from my SCC.

CHIEF JUSTICE DY CHANDRACHUD: I remember.

VIJAY HANSARIA: But that's how My Lord...

CHIEF JUSTICE DY CHANDRACHUD: See the books have also gone from the planks. Because we've been able to open up so much space for the bar, for the law clerks, for the members of the public.

VIJAY HANSARIA: Yes, My Lord. For the public and the interns My Lord they are learning a lot.

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CHIEF JUSTICE DY CHANDRACHUD: Yes.

VIJAY HANSARIA: Yes.

CHIEF JUSTICE DY CHANDRACHUD: In fact, I've just told my staff that we now Court Number 4 and 5 will also... 1, 2, 3 we have already done it, but now 4 and 5 we will also... We're just going slow...

VIJAY HANSARIA: Yes.

CHIEF JUSTICE DY CHANDRACHUD: Because we wanted to see how it is working you know. Now we'll do it for 4 and 5 also.

VIJAY HANSARIA: Now I must tell you My Lord, most of the High Courts after Your Lordships last order has gone and started. All... Guwahati High Court, my friend was saying that within a week it is now in the Daily List all these links are there. It needed a push and from Your Lordships which has really worked. Please Your Lordships, page 6890 is the Companies Act, Amendment Act 1960, which introduced Section 293-A and Your Lordships kindly see,- 'Notwithstanding anything contained in Section 293, neither a company in general meeting nor its Board of Director shall...' exactly what Bombay High Court... 'after the commencement of the Companies Amendment Act 1960 contribute to any political party, for any political purpose to any individual or body any amount, or amounts which, or aggregate of which will, in any financial year, exceed Rs. 25,000, or 5% of its average net profit as determined in accordance with provisions of Section so and so... in the financial year preceding, whereafter is greater'. So, My Lord, a complete cap of 5% or Rs. 25,000. Your Lordships would kindly see, Clause 2. 'Every company shall disclose...' This is, My Lord, what is required for democracy... 'in its profit and loss account, any amount or amounts contributed by it under Sub-Section 1 to any political party, for any political purpose, any individual or body, during the financial year to which that account relates, giving particulars of the total contribution contributed, and the name of the party, individual or body to which or to whom the amount has been contributed. If any company makes a default in complying with the provisions of Sub-Section 2, the company and every officer of the company who is in default, shall be punishable with fine with maximum to Rs. 5000'. What a great transparency in the provision, My Lord. And it's hardly an advice given by Your Lordship's court or by a High Court, is completely incorporated in the provisions. Now, after this, page 6895, this section gets amended in 1969. In the same volume, page 6895 is the Amendment of 1969.

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CHIEF JUSTICE DY CHANDRACHUD: How does this 293-A come in?

VIJAY HANSARIA: I'm so sorry, My Lord?

CHIEF JUSTICE DY CHANDRACHUD: When does 293-A come for the first time?

VIJAY HANSARIA: Come in for the first time in 1960.

CHIEF JUSTICE DY CHANDRACHUD: '60.

VIJAY HANSARIA: After the... for 58 judgment.

CHIEF JUSTICE DY CHANDRACHUD: Then comes the 1960...

VIJAY HANSARIA: Then comes in, My Lord, '69 Amendment, which completely prohibits from a corporate donation. Till '60, My Lord, there was no regulated field. You can have in your Articles of Association, etc. '60 it is... regulation has been made as to how and how much you can do it.

JUSTICE SANJIV KHANNA: Mr. Hansaria, just one clarification with regard to 293-A. Rs. 25,000 applies to both A and B?

VIJAY HANSARIA: Yes. Rs.25,000...

JUSTICE SANJIV KHANNA: ...applies to both A and B, or only to B?

VIJAY HANSARIA: No. To any individual... would Your Lordship kindly see. Any political... for any political party to any individual... My Lord...

JUSTICE SANJIV KHANNA: '... for any political purpose to any individual or body. So political party is separate from individual or body?

VIJAY HANSARIA: No, it can be...

JUSTICE SANJIV KHANNA: It applies to both? 5,000 and 5% applies to both A and B, because...

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VIJAY HANSARIA: My Lord, to both.

JUSTICE SANJIV KHANNA: Probably you have taken a printout. So, it may not be absolutely correct.

VIJAY HANSARIA: My Lord, but then it was...

CHIEF JUSTICE DY CHANDRACHUD: Actually, there's a comma. There's a comma after 'financial year'. That comma will seem to indicate that that exceed will apply to both.

VIJAY HANSARIA: It will apply to both, My Lord, A and B.

JUSTICE SANJIV KHANNA: It will apply to both A and B.

CHIEF JUSTICE DY CHANDRACHUD: Absolute...

TUSHAR MEHTA: Page *kaunsa hain?* Page? Page?

VIJAY HANSARIA: Page 6890, Volume 4.

CHIEF JUSTICE DY CHANDRACHUD: Otherwise, for political parties, there'll be a complete ban.

JUSTICE SANJIV KHANNA: Complete ban. There's a complete ban.

CHIEF JUSTICE DY CHANDRACHUD: They didn't impose a ban, but they said 25,000 or 5%.

VIJAY HANSARIA: Yes, My Lord.

CHIEF JUSTICE DY CHANDRACHUD: Then came the 1969 Amendment.

VIJAY HANSARIA: '69, Amendment. 6895, which imposed a complete ban. Which imposed a complete ban.

CHIEF JUSTICE DY CHANDRACHUD: 6895, right?

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VIJAY HANSARIA: My Lord.

JUSTICE B.R. GAVAI: There is a reference to it in today's Times of India.

VIJAY HANSARIA: For Section 3, My Lord, of 69 Amendment. 'For Section 293-A, the following shall be substituted, namely, notwithstanding anything contained in the provisions of this Act, neither a company in general board meeting, or its board of directors shall, after the commencement of the Companies Act Amendment, 1969, contribute any amount or amounts to any political party, for any political purpose, or to any individual. If a company contravenes, then punishable with fine, or an imprisonment even'. Your Lordships will see, Sub-Section 2, Clause 2. 'It contravenes every officer of the company who is in default, shall be punishable with imprisonment for a term which may extend to three years and fine'. So, a complete ban is imposed, My Lord, in '69.

CHIEF JUSTICE DY CHANDRACHUD: Yes. Then?

VIJAY HANSARIA: Now, this ban is removed in 1985, page 6897. That Companies Act Amendment Act, 1985. 6897. Now what My Lord, Justice Khanna, said, My Lord, it is clear from this section now that it applies to both Clause A and B.

CHIEF JUSTICE DY CHANDRACHUD: The ban is removed.

VIJAY HANSARIA: 293, My Lord, which is substituted, namely notwithstanding, contained in any provisions of this Act, no government company, and no other company which has in existence for less than 3 financial years. Now, you cannot just create a sell company and contribute. So it has to be 3 years old at least, shall contribute any amount of amounts directly or indirectly to any political party or any political purpose to any person. A Company not being a Company under Clause A or B under subsection or may contribute any amount, directly or indirectly to any political party or in so and so, provided that the amount as the case may be in aggregate of the amounts may be so contributed by a company in any financial year shall not exceed 5% of average profit determined in accordance with the provisions of Section 349 and 350 during the 3 preceding financial years. Contribution is restricted to 5%. Now the Companies Act 2013 comes which is in the same volume at page 22.

JUSTICE B.R. GAVAI: Page 22?

1 **VIJAY HANSARIA:** This provision of 1985 continues My Lord, till the New Companies Act
2 comes in 2013 and set Volume 4, page 22 and 23 relevant is 23. Section 182.

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4 **CHIEF JUSTICE DY CHANDRACHUD:** Page 23 right?

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6 **VIJAY HANSARIA:** Page 23. Section 182 is the new section for old 397-A. Sorry 293-A.

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8 **JUSTICE B.R. GAVAI:** This is in 2013?

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10 **VIJAY HANSARIA:** My Lord, 2013 Act, yes, and that Your Lordship get a 22 Companies Act
11 2013 yes. Section 182. Prohibition and restrictions regarding political contributions
12 notwithstanding anything, contain any other provisions of this act, a company other than a
13 government company and a company which has been existing for less than 3 financials may
14 contribute any amount directly and indirectly to political party, provided that no such
15 contributions shall be made by a company, unless a regulation authorizing by making such
16 contribution is passed by Board of Directors, and such regulations will be subject to further
17 provisions as deemed necessary, etc.. Then My Lord, 2, without prejudice to generality of
18 subsection one, a donation or subscription or payment which is caused to be given by a
19 company, on its behalf or on its account of a person to its acknowledgment shall carry on any
20 activity at a time such a donation description is given....Clause 3 is relevant My Lord. Every
21 Company shall disclose, this is what has been given a go by My Lord, in its profit and loss
22 account, the total contribution, total amount contributed by it under this section during the
23 financial...My Lord this is the amended section of 2017. Unamended section Lordships would
24 get in Mr. Bhushan's compilation which is in Volume 1. Would Your Lordships kindly come to
25 Volume 1 for a minute?

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27 **JUSTICE SANJIV KHANNA:** Just one minute, this is 182 at page 23 is what?

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29 **VIJAY HANSARIA:** It is the Companies Act My Lord.

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31 **JUSTICE SANJIV KHANNA:** 2013?

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33 **VIJAY HANSARIA:** 2013 as amended in 2017. I'm so sorry My Lords. But that unamended
34 provision is not there, at least in Mr. Bhushan's compilation, Volume 1

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36 **JUSTICE SANJIV KHANNA:** This is after the bonds?

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1 **VIJAY HANSARIA:** After the bond. Yes, My Lord,

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3 **JUSTICE SANJIV KHANNA:** Which is volume 1 now. We go to Volume 1 now, 182 is in
4 volume 1.

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6 **VIJAY HANSARIA:** Your Lordships, would give me a minute that is Companies Act is not....
7 yes. Page 7 Volume 1 My Lord, Volume 1, page 7... Volume 8.

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9 **CHIEF JUSTICE DY CHANDRACHUD:** Page 8.

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11 **VIJAY HANSARIA:** Page 8. Yes My Lord. 182(3) is very important My Lord. Page 8. I'm
12 so...

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14 **CHIEF JUSTICE DY CHANDRACHUD:** So the original Section 182 had this cap of the
15 requirement of three years existence and seven and a half percent of its average net
16 [UNCLEAR].

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18 **VIJAY HANSARIA:** My Lord, My Lord and contribution by Electoral Bond not to be
19 disclosed 3(A). My Lord may I just see...My Lords...

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21 **CHIEF JUSTICE DY CHANDRACHUD:** Are we going to the Electoral Bond right now?
22 We are looking at...

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24 **VIJAY HANSARIA:** No, no, I'll come to it not because that is the proviso which says that
25 any bond issued under the Government...

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27 **CHIEF JUSTICE DY CHANDRACHUD:** Will not be disclosed...

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29 **VIJAY HANSARIA:** ...will not be required to be disclosed.

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31 **CHIEF JUSTICE DY CHANDRACHUD:** We are now looking at the Act as it, originally.

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33 **VIJAY HANSARIA:** Yes My Lord.

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35 **CHIEF JUSTICE DY CHANDRACHUD:** Let's not go to the Electoral Bond right now.

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37 **VIJAY HANSARIA:** Let's not go into that.

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CHIEF JUSTICE DY CHANDRACHUD: Trying to understand legislative prior to Electoral Bonds.

VIJAY HANSARIA: Yes My Lords, I'm correct. I'm grateful to Your Lordships.

CHIEF JUSTICE DY CHANDRACHUD: So we'll look at Page 8.

VIJAY HANSARIA: Page 8.

CHIEF JUSTICE DY CHANDRACHUD: The first one.

VIJAY HANSARIA: Left hand column.

CHIEF JUSTICE DY CHANDRACHUD: The left hand column. Three things, 182(1),- 'Proviso requires it shall not exceed seven and a half percent...

CHIEF JUSTICE DY CHANDRACHUD: Right.

VIJAY HANSARIA: ...of its average net profit for the three financial years'. That is the requirement Number 1. Requirement Number 2 is 182(3), -'Every Company shall disclose in its profit and loss account any amount or amount contributed to any political party during the financial year.' It relates... Now next is important, - 'giving particulars of the total contribution made and the name of the party to which such amount has been contributed'. So My Lord, 2013 Act.

CHIEF JUSTICE DY CHANDRACHUD: Right.

VIJAY HANSARIA: Now, three things, 7.5%, and particulars of the party to which you contributed. Now I come, 2013 to complete the scheme of the Companies Act My Lord.

CHIEF JUSTICE DY CHANDRACHUD: We now look at the 2017?

VIJAY HANSARIA: '17, My Lord, on the right hand column.

CHIEF JUSTICE DY CHANDRACHUD: Which...

1 **VIJAY HANSARIA:** Which first, it deletes the requirement of 7.5%. Proviso is deleted.

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

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5 **VIJAY HANSARIA:** Sub-Section 3 is substituted My Lord. Sub-section-3 is substituted...

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

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9 **VIJAY HANSARIA:** And the substituted section says, 'Omits the requirement of giving
10 particulars of the amount and the name of the party to which has been contributed'.

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12 **CHIEF JUSTICE DY CHANDRACHUD:** Yes. We got it.

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14 **VIJAY HANSARIA:** Subsection 3, is inserted to 182. May I read that? 3(A), is inserted,-
15 'Notwithstanding anything contained in Sub-Section 1, the contribution under this section
16 shall not be made except by way of account payee cheque drawn on a bank or an account pay
17 bank draft for use of electronic system through a bank account.', So My Lord very [UNCEAR]
18 you cannot make cash payment basically. 'Provided that a company may make contribution
19 through an instrument issued pursuant to any scheme notified under any law for the time
20 being enforced for contribution to political parties.' So, Sub-Section 3 substituted, delete the
21 requirement of giving the particulars of the political party.

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23 **JUSTICE SANJIV KHANNA:** Just one minute.

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25 **VIJAY HANSARIA:** I'm so sorry.

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27 **JUSTICE SANJIV KHANNA:** Even if it's deleted there is no other requirement, there is no
28 mandate that it should not be disclosed.

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30 **VIJAY HANSARIA:** Yes, My Lord. There was a mandate you must disclose. Now that
31 mandate is gone.

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33 **JUSTICE SANJIV KHANNA:** See, the accounts under the Companies Act are maintained
34 for the purpose of ascertaining the real income. These are different from the Income Tax
35 accounts.

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37 **VIJAY HANSARIA:** Yes.

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JUSTICE SANJIV KHANNA: Normally under the Companies Act, the tendency is to overstate the profits, because then you get more credibility in the market.

VIJAY HANSARIA: Yes, more funding.

JUSTICE SANJIV KHANNA: You have more access to credit. Whereas, it's opposite in the Income Tax Act. There, there is a tendency to...

VIJAY HANSARIA: The tendency is to reduce so that you pay less tax.

JUSTICE SANJIV KHANNA: You save tax. But in this case, even if it is deleted, you have to disclose the amount which has to be paid. 2) There is a requirement for the Board of Directors' Resolution to be passed. The Boards of Directors' Resolution will contain the name of the political party or may not contain the name of the political... But there is no express bar to not disclose.

VIJAY HANSARIA: No, there is no bar My Lord, but there is no requirement. If the law has been changed My Lord, the requirement is deleted. Presumption would be, it's not required to be disclosed. The interpretation would be... otherwise, the substitution of Section 3 is meaningless, My Lord. Substitution of Section 3 is, by with a new Sub-Section, that you delete the requirement...

JUSTICE B.R. GAVAI: What is new Sub-Section 3?

VIJAY HANSARIA: Sub-Section 3 is My Lord, substituted on the right-hand side.

CHIEF JUSTICE DY CHANDRACHUD: Page 8?

VIJAY HANSARIA: Page 8. All of Your Lordships...

CHIEF JUSTICE DY CHANDRACHUD: 'Every company shall disclose in its profit and loss account, the total amount contributed by it under this section during the financial year.

VIJAY HANSARIA: That's all My Lord. Yes. The contributed tax amount...

CHIEF JUSTICE DY CHANDRACHUD: The words 'any' is...

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VIJAY HANSARIA: And, 'any amount or amounts'.

CHIEF JUSTICE DY CHANDRACHUD: It just says, instead of 'any', it says 'total amount contributed by it under this section'. The earlier provision was, 'any amount or amounts contributed by it to any political party during the financial year'. The reference to a political party is taken away first in 182(3). And it just says any amount contributed under this section. Secondly, what is deleted is 'giving particulars of the total amount contributed' and 'the name of the party to which such amount has been contributed'.

VIJAY HANSARIA: 'Name of the party'. They just say I contributed for political parties, X amount.

JUSTICE SANJIV KHANNA: By inference, it can be implied inference, it can be drawn that the name need not need not be disclosed.

CHIEF JUSTICE DY CHANDRACHUD: Need not be disclosed.

VIJAY HANSARIA: Yes, not required. That's the whole purpose of this. And when Your Lordships see this...

TUSHAR MEHTA: The party needs to be disclosed... no name of the amount to be disclosed.

CHIEF JUSTICE DY CHANDRACHUD: The total amount.

VIJAY HANSARIA: X amount is to be paid for political... X amount is paid for political contribution. That's all My Lord. Because, 182(1)...

CHIEF JUSTICE DY CHANDRACHUD: You merely say that I have contributed 100 crores for political contribution.

VIJAY HANSARIA: That's all.

CHIEF JUSTICE DY CHANDRACHUD: But, you don't have to either give a bifurcation or name the party to whom you are....

VIJAY HANSARIA: Yes, My Lord, yes.

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CHIEF JUSTICE DY CHANDRACHUD: So it becomes now, an anonymous...

VIJAY HANSARIA: Completely My Lord. And, because you get tax exemption. 80GGB. You get the complete of whatever you have contributed to political... political contribution.

JUSTICE SANJIV KHANNA: Otherwise, it won't be covered by 37, until somebody claims...

VIJAY HANSARIA: 100%, My Lord. To a charitable trust we get 50% under 80G. And there is a cap that I can contribute only 10% of my income, for a 50%...

JUSTICE SANJIV KHANNA: For charitable purpose.

VIJAY HANSARIA: There's a cap for a charitable purpose. To political parties, I can contribute any amount and get 100% deduction.

CHIEF JUSTICE DY CHANDRACHUD: Alright, we got that.

VIJAY HANSARIA: Yes, My Lord. And proviso, Your Lordship has seen.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

VIJAY HANSARIA: Now Your Lordships may come back to my submission. This is what the Companies Act Amendment has done.

CHIEF JUSTICE DY CHANDRACHUD: So now we are in Volume 4?

VIJAY HANSARIA: Volume 1(A), again are my submissions.

CHIEF JUSTICE DY CHANDRACHUD: Yes, yes, of course.

VIJAY HANSARIA: Page 20 and 21 are my submissions on what has happened to these changes.

CHIEF JUSTICE DY CHANDRACHUD: 19 now.

1 **VIJAY HANSARIA:** Yes, My Lord. Your Lordship has seen...

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3 **CHIEF JUSTICE DY CHANDRACHUD:** We have seen 20.

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5 **VIJAY HANSARIA:** 16, 17 and 18. Your Lordship has noted it from Volume 4, the changes
6 made.

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8 **CHIEF JUSTICE DY CHANDRACHUD:** Would you like to read para 19, Mr...

9

10 **VIJAY HANSARIA:** May I read para 19 My Lord?

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** I think that's your submission.

13

14 **VIJAY HANSARIA:** Yes, that's my submission, Your Lord. 'Thus, the companies all along,
15 since 1960 till 2017, have been mandatorily required to disclose not only the amount
16 contributed, but also the name of the party to which contribution is made. Further, there has
17 always been restrictions, such as the ceiling, that the contribution shall not exceed the
18 prescribed limit, 5% under the Companies Act, 7.5% under the Companies Act 2013, of the
19 average profit of the last past three years. By virtue of the said condition, it was ensured, that
20 the shell companies were not able to make contribution to political parties. The above
21 conditions of this helped to ensure transparency in political funding. The fact that such
22 provisions... said provisions of Section 293-A, equivalent to Section 182... helped to achieve
23 the objective of the transparency, has been acknowledged by this Honourable court in the case
24 of common cause My Lord, I've given the paragraphs and give it to what should the paragraphs
25 of this judgment. It is pertinent to note that, when Finance Bill 2017 was initially presented,
26 there was no proposal to dispense with the aforesaid conditions. However, the Finance Act
27 2017, amended Section 182 and conditions to disclose the name of the party and the ceiling of
28 the amount permissible contribution was dispensed with. After the commencement of the
29 Finance Act 2017, now, My Lord, what is the position now? A. Company is now required is,
30 now only required to disclose in its profit and loss account the total amount contributed by it
31 without being required to disclose the name of the party to which the amount is being
32 contributed. Thus, the company may only require to declare that X amount has been donated
33 without any details, which makes it impossible to trace as to which party is being funded. Even
34 the shareholders may not know, funded to which the corporate entity making the corporate
35 funding vulnerable to gross misuse and abuse. There is no ceiling on the contribution made
36 does the contribution may be made *dehors* his property, shell companies, as well as loss
37 making companies can make contributions to a political party.

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CHIEF JUSTICE DY CHANDRACHUD: One level, all this has been regulated by statute.

VIJAY HANSARIA: My Lord.

CHIEF JUSTICE DY CHANDRACHUD: Right from 1956, the nature of the regulation has been by statute. The only point is this, absent and enabling provision in the statute, namely, the Companies Act, no Company can donate for political purposes at all. Right?

VIJAY HANSARIA: Yes.

CHIEF JUSTICE DY CHANDRACHUD: So, though, at a certain level or at first blush, this is regulated by statute. It is conferred by statute, can be taken away by statute. All right? No implication of a fundamental right can arise. So, for instance, just wait a minute, this may not be against you. Suppose there is no provision in the 1956 act at all for political contribution, what should be the consequence? Consequence is not that companies are free to donate for political purposes, untrammelled by any other provision. The 1956 Act for the first time when that enabling provision came provided. In fact, initially, there was a complete ban. 1960 was 5% of the net profits or Rs. 20,000. Absent that provision, you could not have contributed at all. Then comes the ban in 1969. Ban is lifted in 1985. So, though it is a matter of statutory regulation, absent and enabling provision, a company cannot contribute to political purposes. So, if the constraint subject to which those contributions are permissible are lifted by the Legislature, they are amenable to be tested under Article 14.

VIJAY HANSARIA: Article 14. Yes, My Lord. And it is manifestly arbitrary. My Lord. There are two reasons which are given.

CHIEF JUSTICE DY CHANDRACHUD: So it's not just a question of what the Legislature enacts, it can take away.

VIJAY HANSARIA: It is not like that.

CHIEF JUSTICE DY CHANDRACHUD: When you are making an enabling provision or contribution and taking away the restraints on companies that taking away the restraints is amenable to be tested...

1 **VIJAY HANSARIA:** It is amenable to be tested and manifest arbitrary because there are 2
2 objects which are given to give transparency. I'll show to Your Lordship, that only two objects
3 which are given My Lord, for amending this.

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** This transparency and other things should not
6 repeat because that your predecessors all argued.

7

8 **VIJAY HANSARIA:** Very well. So it is amenable to be tested.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** This is very valuable because you have given us
11 the complete legacy. Now what do we...

12

13 **VIJAY HANSARIA:** I'm grateful My Lord.

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** Now, what do we do from here?

16

17 **VIJAY HANSARIA:** Your Lordship, would see similar changes in the Income Tax Act.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** All right, let's see the Income Tax Act.

20

21 **VIJAY HANSARIA:** Yes, My Lord, which are in page 12 of my same compilation. May I read
22 this is 70. 83 yes. Heading D, page 12.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** D, yes.

25

26 **VIJAY HANSARIA:** 'Evolution of income tax benefits in the context of political parties...'
27 I'm so sorry. May I My Lord?

28

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

30

31 **VIJAY HANSARIA:** 'Evolution of Income Tax...', Page 12, of Volume 1(A),- '...benefit in the
32 context of political for amendment to not to keep the records and yet granting tax benefit in
33 contradiction to the initial objects behind introducing such benefits.' Now,-'Section 13-A was
34 introduced in the Income Tax Act 1969 in 1978 whereby the income of a political party *inter*
35 *alia* from contribution receipt was exempted. The exemption was provided to adjust the issues
36 that such taxation of their income reduces their disposable funds adversely affecting their
37 capacity to finance their activities from the legitimate source of income.' Then I have quoted

1 the objections reasons. Your Lordships may just skip over and see the top of it page 13. Now
2 that was regarding the Companies Act. Now this is regarding the political parties. Heading up
3 Page 13,- 'Exemption will not be allowed unless the political parties maintains proper books
4 of account, records the name and addresses of every person who has made voluntary
5 contribution of...
6

7 **CHIEF JUSTICE DY CHANDRACHUD:** This is the statement of [UNCLEAR]. You're
8 reading the statement of...?
9

10 **VIJAY HANSARIA:** I'm reading the Statement of Reasons My Lord. Then I'll come to the
11 Section My Lord. I'll just... 'An Accounts Political Audited by the Chartered Account, and then
12 Section 13-A, inserted by 1978,- 'Special provisions regarding to income of political parties,
13 any income of political party which is chargeable under the head interest of securities or
14 interest from other sources, or any income by way of voluntary contribution received by a
15 political party from any person shall not be included in the total income of the previous year
16 of that political party provided'. Now My Lord, it's in the exempted is provided, these provisos
17 are important. 'Such political party keeps and maintains such books of account and other
18 documents as you enable the Income Tax Officer to properly deduce its income therefrom',
19 Your Lordships has seen yesterday, Mr. My learned friend Farasat said one DV cannot... KV
20 has given 1 lakh and that is exempted My Lord without details. My submission would be My
21 Lord the, when it comes to the scrutiny of the political party's income, nobody applies its mind.
22 The Income Tax Officer should have said you are required to disclose details, except cash of 1
23 KV , of 1 lakh Rupees. Page 5553. My learned friend Mr. Farasat, had showed that to Your
24 Lordships. And that is accepted, whereas the requirement of Income Tax Act said that,- 'You
25 must show books of account so that the Income Tax Office properly dissuaded income from',
26 second,- 'In respect of such transaction in excess of Rs. 10,000, such political party keeps and
27 maintains a record of the contribution and the name and addresses of the person who made
28 the contribution'.
29

30 **CHIEF JUSTICE DY CHANDRACHUD:** What is the next? Thereafter what is the change
31 made?
32

33 **VIJAY HANSARIA:** Yes My Lord. And this, than political parties... Then this has been
34 changed in 2003.
35

36 **CHIEF JUSTICE DY CHANDRACHUD:** Where is that?
37

1 **VIJAY HANSARIA:** Next page My Lord, page 14. And My Lord I have quoted the Statement
2 of Objection Reasons that may not be, Your Lordships may not... or I can read that because
3 2003 has a large number of changes in the Income Tax Act, and the Electoral Bond Trust, I'll
4 invite Your Lordships attention as it came, it was introduced. To keep the identity of the donor,
5 which is being said corporate houses to be secret, not to go in public domain, etc. The purpose
6 of one of the thing is that has been taken care of by Electoral Trust. In 2003 Amendment, My
7 Lord the objection reasons, Law Minister statement is quoted, Your Lordships can skip over
8 that. I've given the reason My Lord, as the bold portion. May I read at page 15? The bold
9 portion. Middle of it.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** [UNCLEAR] Let's read this para 10. It sums up
12 what happens.

13

14 **VIJAY HANSARIA:** Yes, My Lord, para 10.

15

16 **JUSTICE SANJIV KHANNA:** Till 2003, there was no equivalent of 80GGB and 80GGC?

17

18 **VIJAY HANSARIA:** Please, Your Lordships.

19

20 **JUSTICE SANJIV KHANNA:** So, at that time, therefore, there will not... these donations
21 will not be covered by Section 37 of the Income Tax Act.

22

23 **VIJAY HANSARIA:** Yes, My Lords. Now, Section 38...

24

25 **JUSTICE SANJIV KHANNA:** 37 is the expenditure clause. It will not be covered, it's not
26 wholly...

27

28 **VIJAY HANSARIA:** The donor will not get the exemption.

29

30 **JUSTICE SANJIV KHANNA:** Donor will not get the exemption.

31

32 **VIJAY HANSARIA:** Yes. The political parties receiving My Lord...

33

34 **JUSTICE SANJIV KHANNA:** They are exempt.

35

36 **VIJAY HANSARIA:** Their income is exempted, provided those conditions are met. But the
37 donor will not get it.

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JUSTICE SANJIV KHANNA: Donor, it was not treated as expenditure in the hands of the donor.

VIJAY HANSARIA: Please, Your Lordships. And, 80GGB and 80GGC, would Your Lordships see this section. It's not available on record, I have given the...

CHIEF JUSTICE DY CHANDRACHUD: *Woh upload karo*, 80GGB and 80GGC.

VIJAY HANSARIA: I have given in the... My Lord, may I just read the summary of it and in the meantime?

CHIEF JUSTICE DY CHANDRACHUD: Yes.

VIJAY HANSARIA: Yes, My Lord, may I read para 10? 'Made the following major amendment. 80GGB and 80GGC was inserted to provide that...' I'm so sorry. 'Section 80GGB and GGC were inserted in the Income Tax Act to provide that the contribution made to the political parties shall be deductible, that is, whatever is the amount contributed, a deduction is admissible to the expenditure or for that amount so contributed, could be available to the donor under the Income Tax Act. This was intended to incentivize persons to give donations to the political parties by cheque, and these donations were also disclosed under the Companies Act', Your Lordship has seen. My Lord, may I just pause here? And Section 80GGB. May I read that? It is there in Your Lordship's screen. Your Lordships would get in the footnote inserted by Act 46 of 2003. 'Deductions in respect of contributions given by companies to political parties. In computing the total income of an assessee, being an Indian company, there shall be deducted any sum contributed by it in the previous year to any political party'. Let's stop here. That is in 2003. Next part has come My Lord, in 2017... or 2009, that is the Electoral Trust. I'll come to that a little later My Lord. And 80GGC, that is Companies... GGB is company, and GGC is individual. 'Deduction in respect of contributions given by any person to political parties in computing the total income of an assessee being a person, except local authorities, so and so... to any political party'.

CHIEF JUSTICE DY CHANDRACHUD: All right, so we got this 80GG.

VIJAY HANSARIA: So, My Lord, in 2003, exemptions are given to the donors also. So, we can donate any amount of money under exemption My Lord. Now comes 2009, that the scheme of Electoral Trust is introduced by inserting Section 13-B.

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JUSTICE B.R. GAVAI: In which year?

VIJAY HANSARIA: Section 13-B, My Lord, 2009. 'Any voluntary contribution received by an Electoral Trust shall not be included in the total income of the previous year of such trust. If such Electoral Trust distributes to any political party registered under Section 29-A of the Representation of the People's Act, during the previous year, 95% of its aggregate donation received by it during the previous year, along with the surplus, etc.' May just explain this scheme, My Lord? So, five companies can create an Electoral Trust. You may donate... The company makes a contribution to the Electoral Trust. It reflects that, I have made a contribution to the Electoral Trust loss My Lord. Those pages are here My Lord unfortunately to an Electoral Trust the company's account will show that only and the Electoral Trust must make 95% of its contribution to the political parties. It gets My Lord, deduction completely. So through that route My Lord, companies can make donation to the political parties and 80 GGB, and 80 GGC is also amended in 2009 to show My Lord, that any donor to the Electoral Trust also gets an exemption.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

VIJAY HANSARIA: And Your Lordships may only make a note. My Lord, Rule 17(C)(A), of the Income Tax Rules. My Lord, makes a detailed provisions about how the Electoral Trust is to function or maintained etc.. account details. So the scheme is My Lord, in 2009 you make an Electoral Trust. Company makes donation to the Electoral Trust, you get an exemption.

CHIEF JUSTICE DY CHANDRACHUD: Any 5 companies could set up an Electoral Trust.

VIJAY HANSARIA: That's exactly has happened.

CHIEF JUSTICE DY CHANDRACHUD: And was there any restraint on how the Electoral Trust should contribute to a political party? Or they could contribute to any political party?

VIJAY HANSARIA: But it has to mandatorily contribute 95%.

CHIEF JUSTICE DY CHANDRACHUD: Was there a requirement of disclosure, Maintaining account?

VIJAY HANSARIA: That is there in the rules My Lord, in 17(C)(A)

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CHIEF JUSTICE DY CHANDRACHUD: Rule?

VIJAY HANSARIA: Rule 17(C)(A) of the Income Tax Rules changed in 2013. This complete thing has been made in 2013

JUSTICE SANJIV KHANNA: This provision was incorporated in 2000... was enacted in 2009. So the rules must have been made at that time itself? Or they came in the first time. ...

VIJAY HANSARIA: I'm sorry I could not get it.

JUSTICE SANJIV KHANNA: rules, might have come in at that time itself. Was there any restriction as to the quantum of donation which should be given to a particular political party? Was it restricted on the basis of the Electoral share?

VIJAY HANSARIA: Basically idea was My Lord, the corporate identity may not be disclosed this is the route.

JUSTICE SANJIV KHANNA: No, that's fine. For the [UNCLEAR], was there any restriction as to whom it should be across the board, or it was restricted only it was complete. You had the option to go to any give it to any political party.

VIJAY HANSARIA: Electoral Trust My Lord has to be My Lord, the formulation has to be approved by the Income Tax Commissioner etc., the rules have said

CHIEF JUSTICE DY CHANDRACHUD: No, but the point is, would an Electoral Trust say that we are going to give money only to one political party. Or was there, let us see that rule. You said rule 17(C)(A).

TUSHAR MEHTA: It can be given to one party also.

JUSTICE SANJIV KHANNA: There was no restriction.

TUSHAR MEHTA: There was no restriction. Instead of 5 people differently donating, they create a trust. There are some 28 trusts and that scheme still continues. But it was found to be a non-starter.

1 **JUSTICE SANJIV KHANNA:** But there was no restriction that you had to equally
2 distribute or....

3

4 **TUSHAR MEHTA:** No, no. Like-minded people can come together, create a trust and
5 [UNCLEAR] to one party.

6

7 **JUSTICE SANJIV KHANNA:** I don't know. I got some impression that probably there was
8 some proportionate number.

9

10 **VIJAY HANSARIA:** We have the figures on record. I'll show Your Lordship. Electoral Trust
11 figures are on record.

12

13 **TUSHAR MEHTA:** Collectively, they may have given to different parties, but there was no
14 rule or [UNCLEAR] or embargo that they have to equally distribute. They can give to one party.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** Alright, let's see the 17(C)(A) because 13 B,
17 Subclause. B. Says such Electoral Trust functions in accordance with the rules made by that.

18

19 **VIJAY HANSARIA:** That's the rule 17(C)(A),

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** Now let's see what that rule says. Yes, Rules.
22 17(C)(A), upload *kar dijiye zara*.

23

24 **VIJAY HANSARIA:** *Nahin hai* I think. Rules are not there My Lords. They're not online.
25 We have it online.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** Yeah give the link to him, he will do it.

28

29 **VIJAY HANSARIA:** Can we mail to Your Lordship that ID?

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** Mail it to the Court Master, no problem.

32

33 **VIJAY HANSARIA:** Yes mail it to Court Master. Only 17(C)(A).

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** The functions of an Electoral Trust. It said the
36 Electoral Trust shall not accept any money from...I just missed it here, from any foreign entity,
37 whether incorporated or not.

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VIJAY HANSARIA: Yes. So foreign entities come now, I'll show to Your Lordship, presuming the FCRA regulation is valid. Even in Defence Sector My Lord, they can pump any amount of money, Defence Companies. Yes, it has come on... If Your Lordships see 126 said who, Electoral Trust can accept money from whom.

CHIEF JUSTICE DY CHANDRACHUD: *Thoda scroll kar lijiye neeche...*

TUSHAR MEHTA: So this is possibly answering Your Lordships questions.

CHIEF JUSTICE DY CHANDRACHUD: *....dikhna, thoda sa upper jaiye, bus. Nahin upar aur. Political party took... ruk jaiye.*

JUSTICE SANJIV KHANNA: Only to eligible political parties.

VIJAY HANSARIA: 7 says...

CHIEF JUSTICE DY CHANDRACHUD: 29-A...

JUSTICE SANJIV KHANNA: 7, 7.

CHIEF JUSTICE DY CHANDRACHUD: Spend up to 5% of its total contribution.

VIJAY HANSARIA: No. Because 95% you have to contribute. 5% Only you can keep. 7 is important and 8 is important. First My Lordships may permit me to read 7.

CHIEF JUSTICE DY CHANDRACHUD: Just read 7.

VIJAY HANSARIA: Yes My Lord. 'A political party registered under Section 29-A, of the RP Act shall be eligible Political Party. And Electoral Trust shall distribute funds only to the eligible political parties.' So you can distribute to whichever political party, but registered under 29-A. I'll come to the scheme of RP Act,- 'Electoral Trust may, for the purpose of managing its affair, spend up to 5% of the distributions received in a year, subject to an aggregate limit of 500.... 500,000'.... Okay...In the first year of incorporation, Rs. 3000... 300,000 in the subsequent years.

1 **CHIEF JUSTICE DY CHANDRACHUD:** In fact, that in the Election Commission of India,
2 then issued a directive. They issued a directive after this rule was brought into force
3 mandating, a disclosure by political parties of contributions which were made.

4
5 **VIJAY HANSARIA:** My Lord.

6
7 **CHIEF JUSTICE DY CHANDRACHUD:** Once the Election Commission of India
8 mandated the exercise of his powers under Article 324 that there should be a disclosure then
9 this became a non-stater, because then you had to come up into the public realm on what you
10 have donated.

11
12 **VIJAY HANSARIA:** No, but they have distributed the figures, I will show to Your Lordships.

13
14 **CHIEF JUSTICE DY CHANDRACHUD:** Yeah, we'll see that.

15
16 **VIJAY HANSARIA:** Figures are there on record. May I read two more Sub-Rules of this?
17 This is very important. Para... Sub-Rule 9. 'The Trust shall obtain a receipt from the eligible
18 political party indicating the name of the political party, it's permanent account number,
19 registration number, amount of the fund receipt from the trust, date of the receipt and the
20 name of the designation of the person signing such receipt. Electoral Trust shall not utilize any
21 contribution for direct or indirect benefit of the members or contributors for any purpose,
22 namely, Executive, etc., etc'. Corporate entity cannot use it... give it here and then use it for
23 their own purpose.

24
25 **CHIEF JUSTICE DY CHANDRACHUD:** Then, 'The Electoral Trust also maintain a list of
26 persons from whom contributions have been received, and to whom the same have been
27 distributed, containing the name, address and permanent account number of each such
28 person, along with the details of the amount and mode of its payment, including the name and
29 branch of the bank'.

30
31 **VIJAY HANSARIA:** Yes. 'Electoral Trust shall also maintain a list of persons from whom
32 contributions have been received'. I'm so sorry. 'From whom contributions have been received,
33 and to whom the same has been distributed, containing the name, address, permanent account
34 number of the person, along with details of the amount and mode of payment, including the
35 name of the branch of the bank. 12) Every Electoral Trust shall get its account audited by an
36 accountant, as defined in explanation to Section so and so, along with so and so. An Electoral
37 Trust shall maintain a regular record of proceedings of all meetings and decisions. 14)

1 Electoral Trust shall furnish a certified copy of the list of contributors, and a list of political
2 parties to whom such sums were distributed, in the manner prescribed in Sub-Rule 8, to the
3 Commissioner of Income Tax or the Director of Income Tax, as the case may be every year'. So
4 My Lord, the income tax is there. Election Commission, by virtue of that, it is there.

5

6 **JUSTICE SANJIV KHANNA:** I don't think, subject to correction I think the rules were
7 introduced only in 2013.

8

9 **VIJAY HANSARIA:** My Lord.

10

11 **JUSTICE SANJIV KHANNA:** So, till 2013... in that 2009 Amendment...

12

13 **VIJAY HANSARIA:** Electoral Trust route was not available.

14

15 **JUSTICE SANJIV KHANNA:** So, it never got enforced.

16

17 **VIJAY HANSARIA:** Now My Lord, after being available...

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** ... the rules, because it had to function in
20 accordance with the rules.

21

22 **VIJAY HANSARIA:** In accordance with the rules.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** So, so long as the rules were not formulated,
25 there was no guidance to the functioning.

26

27 **VIJAY HANSARIA:** Yes. And if Your Lordships now see, how many Electoral Trusts have
28 been formed, etc., that is in Volume 4, page 7311.

29

30 **JUSTICE SANJIV KHANNA:** Volume 4?

31

32 **VIJAY HANSARIA:** 7311, is an analysis of Electoral Trust's contributions by ADR for the
33 year 2015-16. Yes, 7311, Volume 4.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** There are total 18, but 8 didn't receive anything
36 at all.

37

1 **VIJAY HANSARIA:** If Your Lordships see, page 7134, the contributions. There are 18
2 Electoral Trusts who have contributed 49 crores, roughly. Learned Solicitor said it didn't work,
3 My Lord. That the route... which because it was transparent enough. Corporates cannot My
4 Lord...

5
6 **CHIEF JUSTICE DY CHANDRACHUD:** Basically, there's only one trust which had
7 substantial...

8
9 **VIJAY HANSARIA:** Yes, My Lords, that's only one trust, Satya Electoral Trust. So, total is
10 49 crores. My Lord, only 47 crores is by one trust to whom, 5 corporate houses may have
11 donated money or contributed money. This is for 2015-16. 2018-19 it improves My Lord which
12 is, figures are at page 7326. 7326, in the same volume. Volume 4, is the analysis for 2018-19.
13 And at 7335 give the figures My Lord, there are 25 Trusts and the total figure is at page 7335,
14 252 crores. There also My Lord, some other Prudent Electoral Trust contributes the major part
15 of it.

16
17 **CHIEF JUSTICE DY CHANDRACHUD:** 25 Trusts, is it?

18
19 **VIJAY HANSARIA:** Yes My Lords. And these are available with Election Commission.
20 Election Commission has a very important role. Now My Lord, with this scheme, Election
21 Commission has been completely shut out of all information. That's why Your Lordships have
22 passed that interim order. I do not know whether the Election Commission has brought those
23 details to Your Lordship My Lord. But they said in the subsequent we have it. We have kept it
24 in sealed cover and Your Lordship would see in the yellow, not available on ECI website, even
25 5 Electoral Trust or 6 Electoral Trust does not give it My Lords.

26
27 **CHIEF JUSTICE DY CHANDRACHUD:** All right. Then?

28
29 **VIJAY HANSARIA:** So My Lords now, the final amendment is, Your Lordships would get it
30 2009 Your Lordships have seen the amendment. Now 2017 Amendment My Lord which Your
31 Lordships will get in Mr. Bhushan's note Volume 1 at page 8, bottom. 13-A is amended by 2017
32 Finance Act and the amendment is on the right hand side at page 9 of Volume 1. Right hand
33 side is the existing provision My Lord, till 2017. Your Lordship has seen 13-A. Now on the right
34 hand side are the changes made in bold. So earlier requirement was you have to disclose every
35 contribution in excess of Rs. 10,000. Now it says on the right hand side, Clause B of proviso
36 because they can get exemption or deduction My Lord, only if they fulfil these conditions. A,
37 B, C till 2017 and 2017 A, B, C, D. C, B has been changed in respect of voluntary [UNCLEAR]

1 other than by way of Electoral Bond. Now if you make changes or contribution other than
2 Electoral Bond, you will be eligible for exemption. So you don't have to give the details of the
3 Electoral Bonds. That is one change made in Clause B. Second change is Clause D is added. No
4 donation exceeding Rs. 2000 is received by such political party otherwise, by an account payee
5 cheque drawn by a bank or an account payee draft or use of electronic clearing through a bank
6 statement or Electoral Bond. So you cannot pay cash in excess of Rs. 2000 now. Earlier you
7 could have received cash My Lord, but you have to give the details above Rs. 10,000.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** Yes

10

11 **VIJAY HANSARIA:** Now MyLord, D is important, that you can receive... but otherwise,
12 then Electoral... And what is Electoral Bond is explanation My Lord for the purpose of this
13 proviso. 'Electoral Bond means a bond referred to an explanation to Sub-Section 3 of Section
14 31 of the RBI Act'.

15

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

17

18 **VIJAY HANSARIA:** Now Your Lordships would immediately come to page 10. What are the
19 changes? Because it says as defined in the RBI Act. Now what is the change in the RBI Act?
20 Your Lordships would get at page 10 of the same volume, Volume 1.

21

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

23

24 **VIJAY HANSARIA:** Now My Lord, Section 31 is of RBI Act 1934, issues a complete ban on
25 issue of demand *Hundi*, promissory note. And this in fact, gives in your hand an Electoral
26 Bond. I can [UNCLEAR] valid for 15 days. I have a currency to print myself on an Electoral
27 Bond. I take it. I'll show to Your Lordships how it works.

28

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

30

31 **VIJAY HANSARIA:** Yes, yes. I will show to Your... I can print... I will have it in my hand as
32 I want. As in cash... as in cash. I don't print it, The Schedule Bank prints it. I know that.

33

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

35

36 **VIJAY HANSARIA:** What is added is Sub-Section 3, in the RBI Act. Notwithstanding,
37 contained in this section, the Central Bank may authorize... Central Government may

1 authorize any Scheduled Bank to issue an Electoral bond. Explanation for the purpose of this
2 sub-section, Electoral Bond means a bond issued by a Scheduled Bank under a scheme notified
3 by the Central Government. And that Bond Scheme, Mr. Bhushan has shown to Your
4 Lordships, how it works. State Bank of India can do it, valid for 15 days. What I'm showing to
5 Your Lordship, the details of these donations by Electoral Bond is done away with by Section
6 13-A, Amendment, Clause 4. Proviso, Clause D added to proviso of 13-A.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** Right.

9

10 **VIJAY HANSARIA:** So My Lord, no longer disclosure of the receipt amount by Electoral
11 Bond.

12

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

14

15 **VIJAY HANSARIA:** Now fourth, change made is in the Representation of People's Act 1951.
16 Which is there at page 7. Your Lordships may only make two notes, Representation of People's
17 Act, Section 29-A, is inserted in 1989. Till then there was no provision for political parties. So
18 far as statutory recognition. 29-A, which is in Volume 4, Page 27. It is There. My Lord, 198...
19 Chronologically let me go to it. 1989 Section 29-A, is inserted.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** Volume 4, page?

22

23 **VIJAY HANSARIA:** Volume 4, page 27.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** All Right. This strives for recognized political
26 party...

27

28 **VIJAY HANSARIA:** Yes my Lord. Statutory recognition of Political Parties by the RP Act.
29 Which Your Lordships will get Volume 4, page...

30

31 **JUSTICE SANJIV KHANNA:** Volume 4, page...?

32

33 **VIJAY HANSARIA:** They start at 27.... at 46 My Lord, Yes. 1989 this section is added. Page
34 46.

35

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

37

1 **VIJAY HANSARIA:** Registration with Election Commission or Association of the bodies at
2 political parties...

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** You may not read the whole thing. We just...

5

6 **VIJAY HANSARIA:** That's all right. It's just... I'm just giving the history My Lord. Then
7 2003, along with those changes in the Income Tax Act, Section 29-B and 29-C are added at
8 page 47. 2003 is a very important for making the donations to the political parties. Which...
9 29-B, permitted political parties to accept contribution from companies, but no contribution
10 from foreign source. And, My Lord, what is important is, 29-C, that they have to give reports
11 of contributions in excess of Rs. 20,000. And details would mean the details of the persons of
12 identity, not KV. 29-C, My Lord, '... political party in respect of any person authorized by
13 politician this job financially... report the following. The contribution in excess of 20,000
14 received by such political party from any person in the financial year'. Meaning, therefore, you
15 can identify the person. '...the contribution in excess of 20,000 received from political party,
16 from companies other than government companies.' Now, the 2017 change comes, which Your
17 Lordships will get in Volume 1, at page 7. Now, Your Lordships come to page 7 of Volume 1,
18 where the corresponding changes have been given in the tabulated form by Mr. Bhushan. 29-
19 C earlier required details of all contributions beyond Rs. 20,000. Now proviso is added to 29-
20 C, Sub-Section 1. 'Provided that nothing...' on the right-hand side, bold. '... contained in sub-
21 sections will apply to contributions received by way of Electoral Bonds...', so, you don't have
22 to give details. 'For the purpose of Electoral Bonds', means RBI Act. So, this has been done
23 away with. So, this is the complete My Lord, the scheme of the four enactments Your Lordships
24 are concerned with. The Companies Act, the Income Tax Act, the RP Act, and the Reserve Bank
25 of India Act.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** Yes. Thank You, Mr. Hansaria. Anything more?

28

29 **VIJAY HANSARIA:** Yes, My Lord. One more thing, My Lord, which is important. One of the
30 arguments is, the disclosure is required of the candidates, not of political parties. Now, if Your
31 Lordship permits me to come to my return submissions at page 35. Just two paragraphs of
32 that.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** Regionally, our law really didn't speak of political
35 parties at all.

36

37 **VIJAY HANSARIA:** Yes, My Lord.

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CHIEF JUSTICE DY CHANDRACHUD: The Constitution incorporated the concept of a political party when the 10th Schedule came in.

VIJAY HANSARIA: My Lord, yes.

CHIEF JUSTICE DY CHANDRACHUD: Before that, we really spoke of the Right to Suffrage, which we saw in Article 326. The individual right to contest an election. The individual right to stand for election.

VIJAY HANSARIA: An individual right of a legislator to vote as per his... as per his conscience is also taken away. But political party can issue a whip...

CHIEF JUSTICE DY CHANDRACHUD: 29(A) is inserted in 1989. That's the first time the law takes into account specifically, the very concept of the requirement of registration.

VIJAY HANSARIA: Yes.

CHIEF JUSTICE DY CHANDRACHUD: Of course...

VIJAY HANSARIA: Symbol.

CHIEF JUSTICE DY CHANDRACHUD: Allotment of symbols was always there.

VIJAY HANSARIA: '68.

CHIEF JUSTICE DY CHANDRACHUD: '68

VIJAY HANSARIA: 68 Symbol Order. So, would Your Lordships just permit me to show two paragraphs of page of my written submissions, which is Volume 1-A?

CHIEF JUSTICE DY CHANDRACHUD: Page?

VIJAY HANSARIA: Page 35, para 42 and 43. Volume 1-A, are my written submissions.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

1 **VIJAY HANSARIA:** Para 41, 29-A, Your Lordships have seen. 'Political parties are the
2 central institutions of democratic form of government under the Constitution. The sovereign
3 will of the people is expressed through its representative, most of whom are set up by the
4 political parties. Political parties are the route through which the voice of the people is
5 expressed in the Parliament. Since the political parties play a central role in the democratic
6 setup, they must function in transparent manner. More particularly, there must be financial
7 transparency to ensure purity of election. The political parties are the organization
8 representing the hopes and aspirations of the people. Now 43 is important. The political
9 parties are entitled various benefits and privileges. Some of which may be noted as here under.
10 First My Lord, their contribution they received under 13-A are not taxable. The donors also
11 get the exemption under GGB and GGC. A is 13-A. Clause B of para 43 is 80 GGB, and GGC. C
12 is the election expenditure. The political parties may not which incur are not added to the
13 candidates. So that's again important thing which benefit received by the political parties. All
14 these are to show that political parties perform a very important function in the democratic
15 setup. Fourth My Lord, D under the 10th Schedule as Your Lordship has said, they are bound
16 to vote as per the Whip of the party irrespective of their conscience of the... otherwise they are
17 incurred disqualification.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Now what next?

20

21 **VIJAY HANSARIA:** Yes, I have given below case laws at para. 44. What is, How the
22 importance of political parties has been recognized by this court My Lord.

23

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

25

26 **VIJAY HANSARIA:** I'm not reading them. And 45, 46, the Law Commission, Justice
27 Venkatachaliah Commission, also recognized the importance of political parties. My Lord, one
28 question which Your Lordships fell, what is the manifest arbitrariness? It fall from Your
29 Lordship, Chief Justice yesterday My Lord on my colleagues. My submission would be My
30 Lord, Two or three things. One is the distinction made between a normal bank transfer, with
31 the disclosed, I can make donation of any amount by bank transfer. Both are by bank transfer.
32 Lordship has seen Electoral Bond is also purchased from A, to the bank anonymity, but it is
33 by bank transfer. So you are making a distinction, artificial distinction between an honest
34 contributor who is making disclosure to all of all, of all its funding to the political party, to the
35 shareholders, and to the public at large. Because I have missed out one provision. I'll show to
36 Your Lordships, Conduct of Election Rules Form 24(A). Everything beyond 24... 20,000 is to
37 be disclosed as per the rules. So an artificial distinction is being made between a bank transfer

1 by an honest corporator who wants to show that, yes, I have made this contribution. And to
2 another, who wants an anonymity. And there is no intelligible difference between these two
3 transfers though both are bank transfers. Earlier one is with transparency and second one with
4 opaqueness. Secondly, as I said, My Lord this, how does it work, this Electoral Bond? For
5 example, a KYC compliant company, purchases the Electoral Bond worth 100 crores. It doesn't
6 want to give... another person wants to give money to a 'x' political party, it doesn't want to
7 show, it has cash component. What is going on, I have talked to certain chartered accountants,
8 they say there is a premium attached to it My Lord. I can buy 100 crores by giving 125 crores
9 of cash.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** We just said that yesterday.

12

13 **VIJAY HANSARIA:** That's what Your Lordship said and Your Lordships would find out
14 from any chartered accountant doing this and that is a very accepted, that 20% to 25%
15 premium is charged by giving cash. So person who is purchasing the Electoral Bond is getting
16 100 crores, is getting 100% exemption. Another person who want to pay to another political
17 company he paid cash and it reaches the political party. This is how this Electoral Bond is now
18 functioning. There's thousands of crores.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** So if say, if a contribution has to be made of 500
21 crores to a political party,

22

23 **VIJAY HANSARIA:** My Lord.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** Technically, you can find 500 people who will
26 each make a contribution of one crore.

27

28 **VIJAY HANSARIA:** Yes.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** Who will each purchase an Electoral Bond of
31 one crore.

32

33 **VIJAY HANSARIA:** Yes My Lord.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** Right? Each of those persons gets an exemption
36 of one crore.

37

1 **VIJAY HANSARIA:** My Lord.

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** A deduction of that one crore. Because you have
4 contributed...

5

6 **VIJAY HANSARIA:** He get a deduction of one crore, he get cash for that.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** The political party. It's exempt.

9

10 **VIJAY HANSARIA:** Yes.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** But the person who is aggregating and actually
13 contributing 500 crores, all that they have to do is to trade on the Electoral Bond, pay cash.

14

15 **VIJAY HANSARIA:** That's right. So he's ultimately paying cash. And that's why I said that
16 this is almost a cash available with hundreds of crores rupees available to a person who wants
17 to pay cash. This is the [UNCLEAR] arbitrariness in the entire scheme.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** So the actual contributory...

20

21 **VIJAY HANSARIA:** Yes.

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** ...is not necessarily...

24

25 **VIJAY HANSARIA:** Not necessary at all.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** ...the person who is purchasing Electoral Bonds
28 through official banking channels at all.

29

30 **VIJAY HANSARIA:** No. So I want to pay and avoid ED. I want to pay a government which
31 is opposite to Central Government, Let me put it that way My Lord. To government in state, I
32 don't want to show to the government, Lord, I have paid so... because the government would
33 know to whom it has been paid. Mr. Bhushan has shown to You Lordships, the State Bank of
34 India route. They don't want to say who has paid. I want to keep an anonymity. I pay it in
35 crores, I purchase it and then pay it, because those bonds... My Lords, bonds are there on
36 record My Lord. It does not show me the number. Infrared numbers are available, if Your
37 Lordships see the format of the bond. Just show that, which is that page?

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JUSTICE SANJIV KHANNA: That's fine because it's a bearer bond.

VIJAY HANSARIA: Your Lordships have not been shown the bond.

JUSTICE SANJIV KHANNA: It's a bearer bond.

JUSTICE B.R. GAVAI: Probably like those Kisan Patras.

VIJAY HANSARIA: I'm so sorry?

JUSTICE SANJIV KHANNA: Kisan Vikas...

JUSTICE B.R. GAVAI: Kisan Vikas Patras.

VIJAY HANSARIA: Please give me a minute. I'll show the bond.

TUSHAR MEHTA: Kisan Vikas Patra has numbers. This has no number. That's the distinction.

VIJAY HANSARIA: No. It's an infrared number. I cannot see with the naked eye. Only the infrared person can see...

JUSTICE SANJIV KHANNA: There's some identification.

TUSHAR MEHTA: Yes, there is. I'm going to point out that. My Lord, the learned AG and I will point it.

VIJAY HANSARIA: It's in cash, Your Lordship can see.

CHIEF JUSTICE DY CHANDRACHUD: Let us see it.

PB SURESH: We've got this copy sir.

JUSTICE B.R. GAVAI: Volume 4514.

CHIEF JUSTICE DY CHANDRACHUD: How did you acquire so many Electoral Bonds?

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PB SURESH: It's the real copy.

VIJAY HANSARIA: It's a currency. Read it.

TUSHAR MEHTA: Can I have one? I have not seen this.

VIJAY HANSARIA: Yes, yes. We have seen it from the record.

TUSHAR MEHTA: Can we have one more copy?

VIJAY HANSARIA: Give more. Give more. Distribute it, so long as it is not of one crore, I hope.

JUSTICE B.R. GAVAI: It doesn't have a value and date of issue.

VIJAY HANSARIA: It is there in Volume 4, page 4514 also, My Lord. But this gives a... If Your Lordships Google it, it says on the infrared you can see a number here, not by naked eye. It's a number.

KAPIL SIBAL: ... which is by the Ministry...

JUSTICE SANJIV KHANNA: No, no, it has to be numbered, otherwise, how will they... they'll be fake bonds.

KAPIL SIBAL: In our official document, this is part of the file.

VIJAY HANSARIA: But My Lord, you and I...

CHIEF JUSTICE DY CHANDRACHUD: So, there is a number which can be seen on the infrared.

VIJAY HANSARIA: On the infrared by the authorized persons My Lord.

JUSTICE SANJIV KHANNA: Infrared is easily available.

VIJAY HANSARIA: 515... it's the same...

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TUSHAR MEHTA: It can't be can be seen on light. It's not a child's play. There is a system, I'm going to explain.

VIJAY HANSARIA: No, you cannot see.

CHIEF JUSTICE DY CHANDRACHUD: This is only a picture. This is only a... like a photocopy.

PB SURESH: ...copy. It won't have that number in infrared, you can't find that. But, this is the specimen copy.

CHIEF JUSTICE DY CHANDRACHUD: Specimen copy.

VIJAY HANSARIA: Specimen is 514, Your Lordship may place the note also.

CHIEF JUSTICE DY CHANDRACHUD: We have seen this.

VIJAY HANSARIA: Very well, this is there. This is much better.

CHIEF JUSTICE DY CHANDRACHUD: Alright, anything else Mr. Hansaria? I think you better wrap up now.

VIJAY HANSARIA: Just two more minutes, Your Lord. My Lord, internationally, this is a very difficult subject. There's a study My Lord, I'll just give the page numbers of that on record, by City... By Council of Europe. Council of Europe, which has 45 member countries... 46 member countries, which is in Volume 4, page 6920, which has raised serious concerns about anonymity of the funding by the corporate houses. If Your Lordships kindly see. Just three or four pages of that, Your Lordships may make a note of it.

CHIEF JUSTICE DY CHANDRACHUD: That's alright, we'll read it.

VIJAY HANSARIA: It starts at Volume 4, page 6920.

CHIEF JUSTICE DY CHANDRACHUD: We'll look at it. Mr. Hansaria.

VIJAY HANSARIA: I'll just give the page numbers, the relevant page numbers, My Lord.

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CHIEF JUSTICE DY CHANDRACHUD: 6920?

VIJAY HANSARIA: 6920 it starts. Your Lordships may note, 6928, 6930.

JUSTICE B.R. GAVAI: 69...?

VIJAY HANSARIA: 6928, 6930, 6934, 6939 and 6941. It has raised a serious concern about... and the heading is, Financing Political Parties.

CHIEF JUSTICE DY CHANDRACHUD: Thank you. Thank you very much.

VIJAY HANSARIA: I'm extremely grateful to Your Lordships. And I must acknowledge the indebtedness to my colleagues who have...

CHIEF JUSTICE DY CHANDRACHUD: You've unloaded it very systematically. We really appreciate that.

VIJAY HANSARIA: And the two interns who have done it. They are of great help. They are also here from... college students. They have given the chart. I've made them sleepless nights. Nikita and Charmi. I'm extremely grateful to My Lord. My Lord, only one thing. Section 29-C Your Lordship has seen?

CHIEF JUSTICE DY CHANDRACHUD: Yes. Yes,

VIJAY HANSARIA: Required. There is a Form 24(A), in which you have to give... Form 24(A) of the Conduct of Election Rules, in which you have to keep the details of the contribution of 20,000 and above. There is a statutory form given, and from where we get all these details. And they're uploaded on the website of the Election Commission.

JUSTICE SANJIV KHANNA: These are uploaded on the website?

VIJAY HANSARIA: Yes, My Lord. And we have all those uploaded documents from where we made the chart, at pages 59 to 63. Your Lordships may kindly only note two pages of my note. I'm not reading it. My written submissions Volume 1-A.

CHIEF JUSTICE DY CHANDRACHUD: Pages?

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VIJAY HANSARIA: Pages to 69 to 63. 59 to 63 where My Lord calculations have been made as to the percentage of undisclosed source of funding, which varies from 63%, 65%, 72%, etc., etc., year wise given . And these are all from the website of the Election Commission and this is where the charts have been made by my colleagues spending sleepless nights under my employ. I'm extremely grateful to Your Lordship.

CHIEF JUSTICE DY CHANDRACHUD: Yes, Mr. Hegde. Thank you Mr. Hansaria. What is the line of your submission Mr. Hegde?

SANJAY HEGDE: Most of my submissions have been covered. I most respectfully adopt them, endorse them, and vehemently adopt them. My Lords, what I propose to do is to buttress some of the submissions. I won't take very long please My Lords. I appear in IA number 106839 of 2018. The applicant is a shareholder in a public listed company, like the original petitioner in the *Jayantilal Kotecha* case, who had 3 shares in TISCO. I have a few shares in a few companies he has been a public interest litigant earlier also. Your Lordships, was shown the Electoral bond and as Your Lordships was shown, that Electoral Bond, the figure that came into my mind was of the late lamented Mr. Ram Jethmalani, who really brought political corruption to the fore when he demonstrated to a press conference in 1993, how one crore was fitted into a suitcase. When I spoke to my younger colleague, they said, oh, yes, we saw it in a Netflix series. Today, whether it is a sum of one crore, whether it is a sum of hundred crores, all that it requires is just that one piece of paper that Your Lordships has been presented.

JUSTICE B.R. GAVAI: Suitcases are not required? Suitcases are not required?

SANJAY HEGDE: Suitcases are not required. One brief envelope suffices and that brief envelope is time limited.

CHIEF JUSTICE DY CHANDRACHUD: 15 days.

SANJAY HEGDE: 15 days. My Lords, there was a better copy at page 6919 of an actual Electoral Bond for Rs. 1000, where even the stamp is issued.

CHIEF JUSTICE DY CHANDRACHUD: 6919 of?

SANJAY HEGDE: Of Volume 4.

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JUSTICE B.R. GAVAI: 69...?

SANJAY HEGDE: ...19 of Volume 4. Your Lordships, will see that there is a date of 23 January 2023, and the words "for value received the bank, which is a State Bank of India, hereby proposes to pay on demand to the eligible payee which is holding this instrument upon surrender of the original instrument in the designated account of the eligible political party with the bank, the sum representing the value of this instrument in accordance with the scheme. On payment of the said amount, the liability of the bank here under shall stand fully extinguished." So what has been created is a time denominated anonymous currency. This is My Lords, the currency of power. And I make this submission simply because, long ago it was a British Chancellor of the Exchequer, Lord Thurlow , who said,- 'Corporations are neither bodies to be punished, nor souls to be condemned. They therefore do as they like.' A corporation, is a juristic person consisting of various shareholders and those shareholders who are in management, take a decision on behalf of other shareholders, or on behalf of the juristic person, that they will contribute. They will buy Electoral Bonds and then they are given a further assurance that their contribution to 'X' political party or 'Y' political party, need not be reported to anyone.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

SANJAY HEGDE: If My Lords then see in actual practice over the past few years, what has happened. Your Lordships have been shown various records derived from political party statements, which have been further analysed by the ADR. Now, My Lords, my client, what he has done is, he has gone to the balance sheets of certain listed public companies. They are not before Your Lordships. So I am not going to mention any names. Your Lordships may treat them as Corporation A, Corporation B, Corporation C. But now, please, if Your Lordships just turns down towards, now, page 6916, two or three pages before that, My Lords. Now, 6915 is the corporation's statement of profit and loss. Thankfully, My Lord, those documents are also highlighted at the relevant portion. Now, here they do not even put in the profit and loss statement, as they are required to under the law, that they have actually bought Election Bonds. What is done is, the next page. Other expenses. And in other expenses, right at the bottom with a double hash, it includes rent, printing, stationary, security repairs, and maintenance expenses, etc. Further, it includes political contributions amounting to 273 and 412 made under 182 of the Companies Act during the year of March 31, 2020, and 2019. Now this is not Rs. 412. This is expressed in crores. And how do you know that? You go back. Because you have to go... not crores My Lords...

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CHIEF JUSTICE DY CHANDRACHUD: All amounts are in millions...

SANJAY HEGDE: All amounts are in millions of Indian Rupees except per share data. Right... right at the top of page 6914..

CHIEF JUSTICE DY CHANDRACHUD: So it is Rs. 412 million.

SANJAY HEGDE: Yes. It is 41 crores. So similarly My Lords and since Your Lordships, one of Your Lordships has a penchant for figures.. Yes, My Lord?.

JUSTICE SANJIV KHANNA: 6194, specifically, is miscellaneous expenses...

SANJAY HEGDE: 69... ?

JUSTICE SANJIV KHANNA: ...into donation of Rs. 20 crores paid to political parties.

SANJAY HEGDE: Yes My Lord.

JUSTICE SANJIV KHANNA: ...through Electoral Bonds.

SANJAY HEGDE: That is another corporation My Lords. Each of the corporations, each of the corporations has, there are no fixed standards. Each corporation puts it somewhere or the other. Some include it with rent, stationery and the rest. My Lords, sometimes it said that the truth in affidavits, what is revealed is interesting but what is concealed is vital.

CHIEF JUSTICE DY CHANDRACHUD: That is how the accounting treatment takes place in the corporations.

SANJAY HEGDE: Please My Lords, So now what is...

TUSHAR MEHTA: [UNCLEAR] system.

SANJAY HEGDE: What is it which is actually required My Lords?

CHIEF JUSTICE DY CHANDRACHUD: What is the submission?

1 **SANJAY HEGDE:** My Lords the submission is this, that even under the current the law, at
2 page 8 of the same volume, Mr. Prashant Bhushan's chart, what is required is, that no such
3 contribution shall be made by a company unless resolution authorizing the making of such
4 contribution is passed at a meeting of the directors. And such resolutions, shall subject to the
5 other provisions, be deemed to be justification in law. Each time that there is a purchase of an
6 Electoral Bond by a company, there has to be a resolution of the Board of Directors, which is
7 not normally open to the public. They are not... The company maintains minutes book. It is
8 available for inspection. Each of these resolutions, because these Electoral Bonds are election
9 specific.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Not necessarily.

12

13 **SANJAY HEGDE:** It can't, be...

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** No, no, no. Bonds are sold at certain specific
16 stipulated times in a year. In January, in October...

17

18 **SANJAY HEGDE:** No, no.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** ... and then 30 days for the General Election.

21

22 **SANJAY HEGDE:** Please, My Lords, it is... whenever there is an election in a...

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** In fact, the argument of Mr. Sibal made, that it
25 is not election related at all, because when you purchase the Electoral Bond in say January,
26 there may not be an election on the anvil at that point of time at all. And, you have to expend
27 it within 15 days, otherwise it ceases to be valid. In the sense, that the contribution is made to
28 the PM's Relief Fund.

29

30 **SANJAY HEGDE:** It has to be cashed within 15 days.

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** It has to be cashed. Otherwise it doesn't serve its
33 purpose.

34

35 **SANJAY HEGDE:** So therefore, a political party can take it into its accounts. As to when the
36 political party uses the money, there is no limit on that.

37

1 **JUSTICE B.R. GAVAI:** No, that is what is Mr. Sibal's argument, that it can be used for any
2 purpose at all.

3

4 **SANJAY HEGDE:** It can be used for any purpose. You create a huge political party office.
5 You have residences there for the party leaders.

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** Right.

8

9 **SANJAY HEGDE:** That is [UNCLEAR] and it can be at any point of time.

10

11 **JUSTICE B.R. GAVAI:** He said that the term 'Electoral Bond' is a misnomer.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** You can purchase an aircraft or a yacht.

14

15 **SANJAY HEGDE:** Yes. But the point here is, My Lords, this tranche, each tranche of issue
16 of Electoral Bonds is normally linked, subject to correction, My Lords. Your Lordships can
17 clarify it with... with the Declaration of Election.

18

19 **JUSTICE SANJIV KHANNA:** It's not available throughout the year. There are specific
20 times.

21

22 **SANJAY HEGDE:** Specific times. Those times are often matched.

23

24 **JUSTICE B.R. GAVAI:** The specific months in a year. I think there are four months...

25

26 **TUSHAR MEHTA:** Quarters.

27

28 **JUSTICE B.R. GAVAI:** Four quarters in a year.

29

30 **SANJAY HEGDE:** It also happens that almost every quarter, there is an election.

31

32 **JUSTICE B.R. GAVAI:** No, not necessarily.

33

34 **SANJAY HEGDE:** A state or a...

35

36 **JUSTICE B.R. GAVAI:** No, it may be a by-poll or something, but not every General Election
37 doesn't happen four times a year.

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SANJAY HEGDE: Not a General Election, not a General Election, not a General Election. But, every few months there is a series of elections. And around that... around that time...

JUSTICE B.R. GAVAI: Mr. Sibal is nodding his head, no, and his experience is greater than yours, at least in that...

SANJAY HEGDE: That I concede, that I concede. My Lords, my respectful point is this, that even with the changes in law, there are compliances required, and those compliances can be further enhanced by what Your Lordships, the Chief Justice referred to, as far as the Election Commission is concerned. There is the Election Commission Notification under 324, with regard to Electoral Trusts. I would... Mr. Hansaria said that it was not on the website. Thanks to Mr. Prasanna here, I could get it retrieved. Your Lordships kindly sees what the Election... Trust Notification itself said.

JUSTICE SANJIV KHANNA: Yes. Just one thing,

SANJAY HEGDE: Please, My Lord.

JUSTICE SANJIV KHANNA: We take it, all of you, the way you've argued is, the relief you are seeking, is squash-ment of the scheme itself. Complete scheme.

SANJAY HEGDE: Yes, My Lords.

JUSTICE SANJIV KHANNA: Not any part of the scheme, not any portions of the scheme, or what you're seeking is, erasing of the scheme with regard to anonymity.

CHIEF JUSTICE DY CHANDRACHUD: And, the challenge to the validity of the amendments to the law.

SANJAY HEGDE: It is a challenge to the validity of the amendment. I'm not...

JUSTICE SANJIV KHANNA: You have not, till now, been very specific on that. You have broadly argued, but on the question of relief or the prayer you are seeking, what do you...

SANJAY HEGDE: My Lords, I am an intervener. I can't...

1 **JUSTICE SANJIV KHANNA:** You're right. You're right. It's a wrong question to you.

2

3 **SANJAY HEGDE:** Yes, My Lord.

4

5 **KAPIL SIBAL:** We are seeking that the entire scheme be set aside as arbitrary.

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** Okay. And the amendments...

8

9 **KAPIL SIBAL:** And, one of the elements of arbitrariness is obscurity. That's one of the
10 elements.

11

12 **JUSTICE SANJIV KHANNA:** We're not asking...

13

14 **KAPIL SIBAL:** Since Your Lordships put it like that, one of the elements is that but it's much
15 broader than that, which is what we want.

16

17 **SANJAY HEGDE:** As an intervener all that I can point out is I support the petitioner and
18 I'm making a further case that even under the law, as it currently stands, Your Lordships can
19 impose further directions which would possibly reduce the opacity.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** Alright. Thank You, Mr. Hegde.

22

23 **SANJAY HEGDE:** Would Your Lordships kindly allow me to place that one Election
24 Commission documents?

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** Yes. We are uploading it?

27

28 **SANJAY HEGDE:** Under 320.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** All right.

31

32 **SANJAY HEGDE:** Yes My Lords, it has been uploaded.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** Let's see that.

35

36 **SANJAY HEGDE:** Please My Lords. This was with regards to Electoral Trusts. It has been...
37 Prasanna will have. It's out here. As per Rule 17(C)(A) of the Income Tax Rules, the Electoral

1 Trust can receive voluntary contribution from any company or individual for funding of
2 political parties under the existing law. For transparency of funding, political parties are
3 required to submit their contribution reports in excess of 20,000 from any person. However,
4 there is no such transparency requirement either regarding source of funding or dispersal of
5 funds to political parties through Electoral Trust. Therefore, there is a legal vacuum in respect
6 of disclosure of contribution reports by Electoral Trust. In exercise of the plenary powers
7 vested in it by virtue of Article 324 and all other powers enabling in this behalf, the
8 Commission hereby issues the following direct instructions. Electoral Trusts are required to
9 submit an annual report of contributions to the Commission before the due date of filing of
10 the income tax return. The report shall be in the enclosed format. The report shall contain
11 details of contributions received from any person or entity. Details of all donations given to
12 political parties in the financial year as per the format and the format specifies the period and
13 the specificity. The annual report shall be verified, signed by the person authorized and a copy
14 of the.... And Your Lordships was speaking of the Satya Electoral Trust, My Lords, that is the
15 list of approved trust was there and then the abstract of donations details of the contributions
16 and Part C. Name of the political party, PAN, amount distributed, date and mode. So it's not
17 as if even under the existing law the opacity cannot be reduced. I'm grateful.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you, Mr. Hegde.

20

21 **PB SURESH:** May I please...

22

23 **VIJAY HANSARIA:** This document is there My Lords. Page 7305, Volume 4,

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** Volume 4, page 7305. Thank you.

26

27 **PB SURESH:** My Lords, I appear on behalf of Dalit Panther Party My Lords. My written
28 submissions are at page 182 of Volume 1. Lordships may kindly avail. Page 182 of Volume 1.
29 And my IA number is 156371 of 22. 156371 of 22 My Lords. 182 My Lords.

30

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

32

33 **PB SURESH:** My Lords, my submission is threefold. The first submission is My Lords, we
34 represent a political party which was, in fact, the political party for a change is on the side of
35 the petitioners, challenging the scheme, the Electoral Scheme or the secret scheme or the
36 secret bond, as we call it from our side. Now, the issue here is, as a political party which
37 espouses the cause of Dalits and other marginalized people, this scheme is in such a way is

1 structured that it has a desperate and a more severe effect on us than other political parties.
2 So that way, My Lords, there is a very hostile discrimination as far as our parties are concerned,
3 which espouse the cause of these marginalized sections, for two reasons. And this court has
4 held, this is what precisely has to be avoided in any scheme or in any law.

5

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

7

8 **PB SURESH:** The first point is if Your Lordships sees Clause 3(3) of the scheme, if I may call
9 it as Clause 3(3) or Rule 3(3) of the scheme, there is a cap of 1% of the electorate. It says, -
10 'Only the political parties registered under Section 29-A of the Representation of People Act
11 and secured not less than 1% of the votes polled in the last general election to the House of the
12 people or the Legislative Assembly, as the case may be, shall be eligible to receive the Bond.'
13 My Lords, the point here is when you make a discrimination between 1% and the other 99%,
14 this is absolutely no rational nexus.

15

16 **JUSTICE B.R. GAVAI:** Where is the rational nexus? A political party should have polled at
17 least 1% of the votes in the election. Tomorrow, you may have two persons party and claim
18 donation?

19

20 **PB SURESH:** My Lord in our case there is a barrier to entry. And nascent political parties
21 My Lord in a free and fair election, the receipt of political donations cannot be... for example,
22 I start a political part...

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** You can receive donations, but you can't have
25 Electoral Bonds coming in.

26

27 **JUSTICE B.R. GAVAI:** Electoral Bond and the exemption [UNCLEAR].

28

29 **PB SURESH:** My Lord that's precisely... That is where I stand disadvantages. When people
30 don't come out to give monies to political parties on the basis of their ideology, people will
31 definitely not come to me on the basis of my ideology. Because they want to be anonymous.
32 The very purpose of what the state says today is anonymity is given for the purpose of
33 protecting the people who give these bonds. And when that anonymity is taken away by My
34 Lord, my point is that it does not... It affects me directly. That same anonymity when applied
35 to me...

36

1 **CHIEF JUSTICE DY CHANDRACHUD:** It is [UNCLEAR]. Because even other political
2 parties, it's not that only a political party like yours espouses the cause of the marginalized
3 section.

4
5 **PB SURESH:** Not really My Lords.

6
7 **CHIEF JUSTICE DY CHANDRACHUD:** That would be mainstream political party, which
8 equally espouse the cause of the marginalized groups because they depend upon them as their
9 constituents.

10

11 **PB SURESH:** My Lord we are next. The point is that where anonymity is given to all political
12 parties, I should be given the same anonymity, in the sense that I am also a political party
13 registered under the Representation of People Act. Why not 5%? Why not 10%? There is
14 absolutely no empirical data to suggest why you have protected 1%. The whole point is, My
15 Lords, when anonymity is given to all political parties under a statutory enactment...

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** Then you also have threshold requirements for
18 allotment of an election symbol.

19

20 **PB SURESH:** It should be supported by data My Lords. There's absolutely no data. For
21 example, 0.99%

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** That you've made your point. What's the next
24 point now?

25

26 **PB SURESH:** That's one point. My Lords, the second issue, is that if Your Lordship may
27 kindly see, the issuing at Rule 3-6 My Lords. Rule 3-6. The bond shall be issued to the buyer
28 on a refundable basis...

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** There is no Rule 3-6, There is no para. 3-6

31

32 **PB SURESH:** It is... Sorry My Lords it is 7... 8(2)... I'm sorry. Yes it's 666.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** There is no 666, you may be referring to 7-6.

35

36 **PB SURESH:** Yes, it is 7-6.

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** Volume 4, page 619.

2

3 **PB SURESH:** Yes 7-6. 'The bond shall be issued to the buyer on a non-refundable basis'.
4 These are irrevocable bonds. So even by mistake. The whole point is read with 10. 10 talks
5 about issuing officers and commission payable. No commission, brokerage or any other
6 charges for issue of the bond shall be payable by the buyer against purchaser of the bond. Now
7 this is tax payers money. For example My Lords if myself or anybody else here wants to buy
8 even a demand draft or a promissory or anything else My Lords, there is a charge which is
9 borne by the customer. Here the customer bears the charges of a note which is being given
10 actually free of cost.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** I don't think we need to labour on these points.

13

14 **PB SURESH:** These are all things which have been tightened to ensure facilitate.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** These lie in the realm of policy. These lie in the
17 realm of policy. These are not the best points. I mean, let's not... we are missing the wood for
18 the trees by...

19

20 **PB SURESH:** Your Lordships may kindly see at page 1115, Volume 4.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** Substantive arguments have been made. You
23 might dilute the of those arguments by going into these...

24

25 **PB SURESH:** 1113. Your Lordship's may kindly see 1113, for disparate impact. 1113, Volume
26 4. My Lords, under 182, it is the corporate boards which take a decision. And as well as we
27 concerned, our empirical data suggests that we control only 3% of the boards in India. That is,
28 in respect of thousand top companies which are registered in the Stock Exchange, Bombay
29 Stock Exchange, as well as the National Stock Exchange, where the market capitalization is
30 one-fourth. However, the Dalits and the other marginalised have only 3%.

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** We are not belittling your grievance, but your
33 grievances are a wider, systemic grievance, which is not particularly related to Electoral Bonds.
34 So, your grievance really has to be in the form of another petition, which challenges broader
35 aspects of our Election Law, which have a disparate impact on parties, espousing the cause of
36 the marginalized. But by really conflating that grievance with the challenge to the Electoral
37 Bonds, we are really losing sight of the specific challenge in relation to the Electoral Bonds.

1 You may want to come forth with a petition, a broader petition challenging those provisions of
2 the Election Law, which may have possibly a disparate impact on parties, say, espousing the
3 cause of the *Bahujan* parties. We're not at all belittling that, but we're just trying to say that
4 let's not lose the focus of this [UNCLEAR] here.

5

6 **PB SURESH:** This aggravates the inequality as well. My point is, schemes after schemes like
7 this... today My Lords, my position is, if I am a nascent party...

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** You don't want to say in this petition, assuming
10 that the others are right, that you have not made out your cause, because that may lead to your
11 cause, in that sense, being impacted by us ruling on this, in a petition where we don't have the
12 sufficient data...

13

14 **PB SURESH:** Then Your Lordship may kindly see...

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** ... overview of our Election Law. You are raising
17 a point relating to the marginalized groups, but please keep your powder dry for a substantive
18 challenge in a separate petition. That's what we are trying to just sort of... without advising
19 you, but you know. We don't want to lose the impact of what you are saying, in a more specific
20 challenge. This is a very niche challenge, in that sense. A very important challenge, but a niche
21 challenge.

22

23 **PB SURESH:** Then my ground on 19(1)(a) My Lords, is slightly different. If Your Lordship
24 may kindly look at my notes, my 19(1)(a) challenge is that... at page 187, that the right to no
25 rival political party's funding sources, is also a part of a political party's right here. My Lords,
26 one is for the right of the... one is for voter to know. Because one is for the voter to know as to
27 who is funding whom, as a Right of Information. Who bankrolls the rival parties? My Lord,
28 the position here is, Your Lordship may kindly see, visualize the position that our parties are
29 in, at this stage. Now, bigger parties, because of the money and power play, become bigger and
30 bigger. We become smaller and smaller. There are barriers at the entry.

31

32 **JUSTICE B.R. GAVAI:** That's not an issue here.

33

34 **PB SURESH:** That's precisely My Lords. Therefore, at least on 19(1)(a)...

35

36 **JUSTICE B.R. GAVAI:** You're totally going away from the main issue.

37

1 **PB SURESH:** On 19(1)(a), in which case, I'm not touching that point. At least in 19(1)(a), the
2 political party's rights to know rival political party's funding is...

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** You know, the problem is that you are an
5 intervener. You have not filed a substantive petition. Therefore, we can't strike it down on the
6 ground which you are asserting. You can only support the cause of the Petitioner and the main
7 Petitioner.

8

9 **PB SURESH:** Apart from My Lords...

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Therefore, you may want to perhaps reassess
12 your position. Come to the court, or appropriate High Court and challenge specific provisions
13 of the law, Election Law, which according to you have a disparate impact on the parties which
14 are representing the *Bahujan* causes. I mean, we are not at all saying that you're not right on
15 your broader grievance; that will have to be examined by a Constitutional Court. But, you may
16 want to perhaps frame it very differently. Why get into it here as an intervener without
17 adequate data, without adequate challenges to other provisions of the law?

18

19 **PB SURESH:** My Lords, in which case My Lords, the other points...

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** We will not say anything which will affect your
22 cause. Please rest assured. But we are also trying to tell you that perhaps...

23

24 **PB SURESH:** Your Lordships may kindly... then Your Lordships may kindly say that these
25 will leave another day for this cause to be agitated My Lord. It is not that Your Lordships...

26

27 **JUSTICE SANJIV KHANNA:** You are an intervener.

28

29 **PB SURESH:** No My Lords, the point is...

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** You are an intervener. It will never affect your
32 rights.

33

34 **PB SURESH:** No, My Lords, the point is at least under 19(1)(a) My lords, I should at least
35 know the critiques of these parties as far as who is bankrolling. That right to information about
36 political parties being funded...

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** That Mr. Bhushan argued. Mr. Sibal argued.
2 Everybody has argued that. That is no difficulty. Now that has been argued. That point you
3 join with the others.

4

5 **PB SURESH:** Yes. Apart from My Lords, adopting all this one, My Lord, the thing is just one
6 paragraph of the....

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** I think we will now conclude.

9

10 **PB SURESH:** Only one paragraph of the judgment and then I will leave it to Your Lordships.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** One paragraph of the?

13

14 **PB SURESH:** My Lords, page 1804.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** One para of what are you reading?

17

18 **PB SURESH:** My Lords, 4204 of *Kanwar Lal Gupta* My Lords, Justice Bhagwati speaking
19 as far as this party regarding elections and the expenditure and what are the other parties role.
20 Just ten lines.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** *Kanwar Lal* has been cited yesterday.

23

24 **PB SURESH:** Just one paragraph Your Lordships. Ten lines, two minutes. Your Lordships
25 may kindly see My Lords. This is My Lords, **1975. 3 SCC 696** at page, My Lords I am reading
26 4204.

27

28 **JUSTICE B.R. GAVAI:** What is the volume?

29

30 **PB SURESH:** Volume 4 My Lords.

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** Volume 5 na? Page?

33

34 **PB SURESH:** Volume five My Lords. I'm sorry.

35

36 **JUSTICE B.R. GAVAI:** 42...?

37

1 **PB SURESH:** Volume 5 My Lords, 4204. That's ten lines from top or ten lines from bottom,
2 My Lords. The object of the provision My Lords. Ten lines from bottom.

3

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

5

6 **PB SURESH:** The object of the provision limiting...

7

8 **JUSTICE B.R. GAVAI:** The expenditure is twofold.

9

10 **PB SURESH:** Yes, yes. Your Lordship may have a look at it. Sorry My Lords. Extremely sorry.
11 Yes, the object of the provision limiting the amount, [UNCLEAR] of the limit. The object of
12 the provision limiting the expenditure is twofold.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, we got the point.

15

16 **PB SURESH:** Precisely My Lords. So this directly impacts us in a way. That could be
17 considered.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you. Mr. Attorney General?

20

21 **KALEESWARAM RAJ:** Can I make one short submission My Lords?

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** Now we are moving to the Attorney General's
24 arguments. Now everybody can supplement what they want to say in a small note or
25 something. You have given your note Mr. Kaleeswaram Raj?

26

27 **KALEESWARAM RAJ:** Yes, I have given it My Lord, I have given it. Yes.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Yes Mr. Attorney General.

30

31 **ATTORNEY GENERAL R. VENKATARAMANI:** We have a division of labour. So on the
32 contours of the scheme, the Learned Solicitor had advanced certain submissions for a larger
33 questions of 1928, the connection, confidence, etc. That's how we have proposed the division
34 of labour. So let the Solicitor begin on the preliminary submission.

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** Alright.

37

1 **TUSHAR MEHTA:** May I please Your Lordships. At the outset, as My Lords, the Chief
2 Justice and the Bench yesterday... I am sorry. I thought Your Lordships are rising ... No,
3 somebody came so I thought Your Lordships are rising.

4

5 **KAPIL SIBAL:** You can start afresh at 2 o' clock.

6

7 **TUSHAR MEHTA:** I can start at 2:00 My Lords?

8

9 **JUSTICE SANJIV KHANNA:** But you see there's one a larger issue, which we are not really
10 examining that is of election funding, because that's... the second issue which arises, but it
11 dovetails into this issue is with regard to the corporate funding and whether it should be open,
12 transparent, or whether it should be... The other issue which arises is because they have
13 referred to the kickbacks and the bribes and other things or *quid pro quo*. Now there can be
14 various terms used for that. We'd like the Election Commission if they are aware of the total
15 financing which is required for each general election or for the state election, on an average
16 state election will be an average, an amount which is collected and used through these bonds.
17 The issue which may come up is, because we have this opacity with regard to who's funding,
18 etc., then how if there is any *quid pro quo*, how does anybody establish it?

19

20 **TUSHAR MEHTA:** We have an answer. First of all... I'll answer that but please do not bear
21 one thing in mind, please for the time being for appreciating my arguments, remove the two
22 expressions repeatedly used, anonymity and opacity.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** All right.

25

26 **TUSHAR MEHTA:** It is a restricted, limited, confidentiality, which can be open, and the veil
27 can be lifted by judicial direction. I'll point that out.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Fine, we will resume after lunch.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, Mr. Solicitor.

32

33 **TUSHAR MEHTA:** Yes, with My Lord's permission, and My Lord, permission from the
34 Learned Attorney. Basic, facts I may highlight for Your Lordship consideration. First of all,
35 this use of black money in elections and politics in general, elections in particular. Every
36 country is grappling with this problem and country specific issues are being dealt with by every
37 country depending upon the circumstances existing.

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CHIEF JUSTICE DY CHANDRACHUD: Yes.

TUSHAR MEHTA: India is also grappling with this problem and as Your Lordships have seen, Bombay High Court took note in late 60s. But the real efforts started by every Government of the day, whether it is this Government, that Government, Government is perpetual. Every Government did its bit to ensure that there is some methodology adopted which eradicates the power of black money or unclean money in the electoral process. My attempt would be to show a little history on that, My Lords.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

TUSHAR MEHTA: My Lord, having tried several attempts, several mechanisms and modes, the menace of black money was not being dealt with as effectively because of the systemic failures and therefore the present scheme is a conscious and deliberate attempt, a) to ensure clean money coming into the banking system and the election and political parties' functioning and; b) so far as possible to eradicate the menace of use of unclean money, non... unaccounted money, or black money as we say in the elections. We are right now concerned with the use of unclean money in the elections. Your Lordships may not take this particular scheme as a standalone case or a standalone attempt in the direction of dealing with the menace of black money. There are several steps taken, one of which is this particular scheme, which is confined to the political governance of this political parties' culture My Lord. The first step was digitization. The digitization drive, and I'm going to give three figures to Your Lordships, and as citizens, we will be really proud My Lord, to know how our country has fared. Digitization necessarily results into all transactions coming through... passing through the banking channels, official channels, what is called the Information Highway. I cannot hide anything. I leave my traces in the digital footprint somewhere or the other.

JUSTICE B.R. GAVAI: What is the term that you used?

CHIEF JUSTICE DY CHANDRACHUD: Information Highway.

TUSHAR MEHTA: Informational highway, My Lord, where I cannot hide. Information Highway My Lord. I cannot hide.

CHIEF JUSTICE DY CHANDRACHUD: That's a phrase used for the internet. Internet is an information highway.

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ATTORNEY GENERAL R. VENKATARAMANI: ...capable of being used [UNCLEAR]

TUSHAR MEHTA: used, My Lord, in a limited sense also. But Your Lordships would also recall when the digitization drive started, the Government was at times being mocked. What is this? This is a utopian idea. Would a vegetable vendor accept by digitization, by your digital payment? Now, a vegetable vendor selling vegetables, I'm not elaborating on that, on a gunny bag, he's accepting digitized money, that is, whatever app we are using. But the important thing as citizens we should be proud of, and this is a part of, this process is, our digital payment in India is seven times more, seven times that of United States and European Union put together. It is three times that of China. Meaning thereby, more money is now available in the official channels and clean money. I would not say My Lord, that the black money or unaccounted cash is completely eradicated. That's the ideal thing to do. But we do whatever best we can under the circumstances. So, My Lord, the first step was digitization. Second step, My Lord, in this direction was the registration of shell companies. My Lord, my learned Attorney has placed on record, the official record and it is in my compilation also, at page 65, but Your Lordships need not go into the details, but... 65... Between 2018 to 2021, the Government of India identified 2,38,223 shell companies and actions are taken and nobody has challenged them.

JUSTICE B.R. GAVAI: Two lakh?

TUSHAR MEHTA: 2,38,223 shell companies. Because this is one of the vehicles through which the unclean money passes hands. Again, this may not have a direct bearing. I am just trying to point out that the scheme which is under consideration of Your Lordship, is not an isolated attempt but is a part of a series of attempts made, whereby now more clean money is available because of the digitized payment. We have approximately 750 million mobile internet users who, now Your Lordships are aware, banking is done through mobile internets. And we are adding one new internet user every 3 seconds.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

TUSHAR MEHTA: Now, after going through the history Your Lordships would find out, I'll be able to satisfy Your Lordships, or attempt to satisfy Your Lordships, that each and every word used in the scheme is very consciously used and what they called anonymity or opaqueness, is neither anonymity nor opaqueness, but is a confidentiality by design. And why? How? What is the justification? What is the rationale behind it? I'll be able to explain.

1 The legality of the scheme is entirely for Your Lordships, to consider and decide with whatever
2 best assistance we can provide. But one thing, My Lord, I'll be able to satisfy Your Lordships,
3 that if the element of confidentiality goes from this scheme, the scheme goes and we are back
4 to 2018 regime, and I am going to show that regime and Your Lordships, would like to ask the
5 petitioners what benefit you will get, if the country were to go ten step backwards and I have
6 the facts and figures with me. My Lord, unfortunately the petitioner, one of the petitioners,
7 My Lord, that is ADR, has placed all its reports on record except one, which is the most crucial.
8 As a passing remark My Lord, without making an issue out of it, generally, when you are
9 approaching the Court in public interest, you place everything which assists the Court. You
10 don't place something on which you wish to argue. Anyway, My Lord, my written submissions,
11 Volume 2(A), page 102. Please see the position we will be back at, if this scheme is to be My
12 Lord, interfered with, as prayed by the petitioners. This is the report prepared by ADR, the
13 petitioner before Your Lordships, based upon the figures published by the Election
14 Commission of India and my worry, the worry of the Government and the worry of every
15 citizen is, that if this scheme goes, we go back to this regime. And what would be the
16 transparency in this regime? What would be the national benefit to this regime? It's for the
17 petitioner to explain. My Lord, please see the highlights. Your Lordships have, the title is
18 Analysis of Sources of Funding of National and Regional Parties of India, for Accounting Year,
19 2004-5 to 2014-15, 11 years.

20

21 **JUSTICE SANJIV KHANNA:** Which page number?

22

23 **TUSHAR MEHTA:** 102, Volume 2(A), of my written submissions, My Lord . The right hand
24 side top, just for identification, is ADR.

25

26 **JUSTICE B.R. GAVAI:** [UNCLEAR] volume?

27

28 **TUSHAR MEHTA:** Volume 2(A), My Lord Justice Gavai got that one? My Lord Justice
29 Pardiwala has got it. Justice Misra also. Yes. My Lord, one thing is very clear. Lordships made
30 very clear that, Your Lordships are not examining whether there can be a political contribution
31 or not *per se*. The question is how? Whether this scheme is legal or not. That's a wider
32 question, that's not arising here. But ADR has also accepted that there is an element of money
33 involved in the contesting elections, running a political party, running several other activities
34 by the political parties, etc. My Lord, kindly read all these figures with one caveat in mind, that
35 these are the figures declared by the political parties, voluntarily, and published by the
36 Election Commission. Everything may not have been declared. I'll not pitch it higher than this.
37 This is what is declared, and the figures are shocking. Any interference, My Lord, in the scheme

1 takes us back to this position, please see. Political parties play a key role in a democracies, as
2 they contest elections, form governments, formulate policies and are responsible for providing
3 governance and improve the lot of the common men. Your Lordships can skip the rest. Please
4 come to the highlights, highlights. This is My Lords, again reported money.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** What's the date of this report? It's...

7

8 **TUSHAR MEHTA:** The date is, 24th of January, 2017, but the period is 2004-05 to 2014-
9 15, different formulation in the Central Government. This would also meet with one of the
10 arguments very vehemently raised, that look, the ruling party gets the maximum benefit. That
11 has always been the trend from the beginning. You can't help. 2004 to 2015, there was a
12 different ruling party in power. Now please see this. The contribution statement submitted by
13 the political parties declares... Your Lordships are on the highlights. My Lord Justice Gawai
14 has the... The contribution statement submitted by political parties declaring names and other
15 details of donors who contribute above Rs 20,000 are the only known sources of income of the
16 political parties. The unknown sources are income declared in the IT returns but without
17 giving source of income for donations below Rs 20,000. Such unknown sources include sale
18 of coupons, My Lord this is done by the CPI(M) Mr. Farasat's client, Aajeevan Sahyog Nidhi
19 Relief Fund, miscellaneous income, voluntary contributions, contribution for meetings,
20 *morchas*, etc. The details of donors of such voluntary contributions are not available in public
21 domain. Other known sources of income include sale of removable properties. Your Lordships
22 can skip that. Kindly come, My Lord, next, total income. Your Lordship gets that? Rest is not
23 relevant for either of us. Total income of national and regional political parties between
24 financial year 2004-05 and 14-15 is Rs 11,367.34 crores. Total income of political parties from
25 known donors. Details of donors as available from contribution reports submitted by parties.
26 They may not have allowed submitted all and black money was in vogue during that period for
27 all political parties. Rupees, only 15% of the total income. Now total income of political parties
28 from unknown sources. Income specified in the IP rules whose sources are unknown- Rs 7
29 crore... 7,832.98 crores, which is 69% of the total income of the parties. Now please see, My
30 Lord, national parties... The chart Your Lordship have? The third column of the chart. My
31 Lords have the chart. National parties, Rs 6612 crores, income from unknown sources... My
32 Lord, what is this unknown sources? I'll just tell Your Lordships. Before Your Lordships goes
33 through further, one clarification would be very, very relevant. May I complete that first or just
34 clarification.

35

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

37

1 **TUSHAR MEHTA:** Every political party needs clean money also because they have to show
2 expenditure for the purpose of rallies, this, that and others. How do they do that? And some
3 other shocking details will come. My Lord, I deposit 100 crores as a political party saying that
4 so many thousand people donated Rs 19,000 to me each. If it is less than 20,000, I'm not
5 supposed to disclose his identity. So the cash which I receive I'm showing as unknown sources
6 income. The donation in the form of individuals who have supposedly given me 19,000. That
7 is... that is... and no record is required under the law because 19,000, there is no record
8 required. This is the amount My Lord which is 69%. National parties is 6612 crores and
9 regional parties 1 crore to 20.56 crores, their income from non-, known sources. Please see My
10 Lord, substantially less.

11

12 **JUSTICE SANJIV KHANNA:** Mr. Mehta just one question here. This 11,367 crores is as
13 per the Income Tax Returns?

14

15 **TUSHAR MEHTA:** Yes.

16

17 **JUSTICE SANJIV KHANNA:** So they'll be over and above that?

18

19 **TUSHAR MEHTA:** Over and above. Therefore, I say that whenever Your Lordship reads
20 these figures, please bear that caveat...

21

22 **JUSTICE SANJIV KHANNA:** This figure which is taken out by the ADR is not what we
23 perceive as the actual income, but what is...

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** In the contribution reports.

26

27 **JUSTICE SANJIV KHANNA:** In the contribution reports, in the Income-Tax Report.

28

29 **TUSHAR MEHTA:** It is what is disclosed by the political parties to the Election Commission.
30 Therefore, I started with a caveat that Your Lordship may bear in mind, these are declared
31 figures.

32

33 **JUSTICE SANJIV KHANNA:** There is one issue. What you are... the figures therefore you
34 are showing us over, with regard to 69%, are those 20,000. Less than 20,000, which has now
35 been reduced to 2000.

36

37 **TUSHAR MEHTA:** Maybe to some extent they may have given names also.

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JUSTICE SANJIV KHANNA: No, no, they wouldn't have given those names. That 20,000 figure after 2017, I think has come down to 2000. That's been reduced to 2,000. So, that's, this is the, factually this is the position.

TUSHAR MEHTA: Position of all political parties. Now, Your Lordships, may kindly for the time being ignore the diagram and come to My Lord, the written part, 'political parties with maximum income from unknown sources.' During the eleven years between 2004-05 and 14-15, 83% of total income of so and so amounting to Rs 332.39 crores and 65% of total income of so and so amounting to Rs 2,125 crore came from unknown sources. We were grappling with this situation when this scheme was conceived. Among the regional parties Rs 766.27 crore or 94% of the total income of so and so party and 88.06 crore, or 86% of the total income of so and so party came from unknown sources. Now, Your Lordships, may kindly come to page 105. Observations of ADR. 104, I'm sorry, page 104.

CHIEF JUSTICE DY CHANDRACHUD: Recommendations? Or observations.

TUSHAR MEHTA: Observations of ADR. 104. Page 104. Of the 51 regional political parties... I am sorry My Lords.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

TUSHAR MEHTA: Considered for this report... I'm sorry, My Lords are writing.

JUSTICE SANJIV KHANNA: Yeah, one more question. The returns filed by the political parties on 29-C are all uploaded on the website of the Election Commission?

TUSHAR MEHTA: They have taken from them only.

JUSTICE SANJIV KHANNA: Of the Election Commission of India?

TUSHAR MEHTA: As per ADR's own stated case, they have analysed this based upon those reports.

JUSTICE SANJIV KHANNA: Those Income Tax Department will not reveal that it is...

1 **TUSHAR MEHTA:** They can't do, they can't. This is the Election Commission's website.
2 That's their case also. Of fifty- one regional political parties considered for this report, forty-
3 five parties have not submitted their donation statements to ECI for at least one financial year.
4 The 12 regional political parties, which have never filed their contribution report since 2004
5 and 2005 are, I'm not reading the names, I don't wish to make it political, I'm just pointing
6 out, this is the problem we were grappling with, which eventually led us to examine, evaluate
7 and find out a solution. Then, Income Tax Returns or audit reports of national and regional
8 parties were obtained by filing RTI applications with the Income Tax Department. The Income
9 Tax Returns of 42 out of 51 regional parties analysed were unavailable for at least one financial
10 year. The information was either denied by the IT department, the parties had not filed their
11 returns for the financial year, or the department were unable to trace the audit reports.
12 Incomplete information was provided, where possible, copies of audit reports were procured
13 from the ECI. The income of national parties from unknown sources, please mark, My Lord,
14 increased by 313% from Rs 274.13 crores during financial year 2004-05 to 1130 crores during
15 financial year 2014-15. The income of regional parties from unknown sources increased by
16 652% from Rs 37 crores during financial year 2004-05 to Rs 281 crores during financial year
17 2014 and 15. Among all the national and regional parties, please mark this, My Lord, this is
18 something very, very funny and something very, very alarming and shocking. Amongst all the
19 national and regional parties considered, so and so is the only party to consistently declared
20 receiving nil donation above Rs. 20,000. They have not received any donation. Everything is
21 below 20,000. Between financial year 2004-05 and 2014-15 thus, 100% of parties donations
22 came, from unknown sources. The total income of the party increased by 2057%, from Rs 5.19
23 crore during financial year 2004-05, to Rs 111.96 crore, during 2014-15, and this is as declared,
24 as declared within 19,000. Now please come to page 105. My Lord, the argument that the
25 scheme has benefited the ruling party. My respectful assistance to Your Lordship is this. More
26 contribution going to the ruling party is the norm. That's the... I'm sorry.

27

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

29

30 **TUSHAR MEHTA:** My Lord, kindly see the third bullet point. Detailed report. Your
31 Lordships would find...

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** Why is it, according to you, why is it the norm
34 that the ruling party is making the substantial part of the donations? What's the reason for
35 [UNCLEAR]?

36

1 **TUSHAR MEHTA:** I would not be able to hazard a guess, but the figures show that whoever
2 was ruling party either in the state or in the Centre, possibly, possibly My Lord, this is my
3 assistance.

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** [UNCLEAR] is with an expectation right?

6

7 **TUSHAR MEHTA:** I'll just tell Your Lordships, how the things work and this is my reply,
8 not Government's reply. This is my assistance to Your Lordships, generally Lord, every
9 political party has their programs and policies, etc. They have their working style, which are
10 distinct and all people, they have confined their arguments to corporations or companies, but
11 they are individuals, contractors, HUF, because HUF is also now a financing entity etc. They
12 know the working style, they know their business style, that if this party forms the government,
13 it would be beneficial, that we'll be able to be comfortable with them, because there is less of
14 red-tapism somewhere, it is more of a red-tapism, etc., etc. What is running in the mind of the,
15 this...

16

17 **JUSTICE B.R. GAVAI:** Donor.

18

19 **TUSHAR MEHTA:** Donor, is not possible. But by and large they decide based upon their
20 interest, obviously. They are not doing a charity, let us not be not very idealistic the way they
21 would like Your Lordships to be My Lords, while dealing with a very complex problem.
22 Practically they are also doing their own business and their decisions are business driven or as
23 we use the expression, it's a market driven, that, more powerful the leader, more cadre- based
24 the party, more chances of success. I feel that I'll be comfortable while doing my business, less
25 corruption, more corruption. These are the factors based upon which they donate. But Your
26 Lordships may practically keep one thing in mind. All big donations or big donors, whether
27 individuals or others, Trust or companies, etc. they donate to all parties, who are relevant. The
28 figures differ and ultimately, I'll be able to show after showing the history of this, that, why
29 black money was used to pay political contribution. This is the bottom line of this scheme,
30 which the Government has sought to address.

31

32 **JUSTICE SANJIV KHANNA:** Mr. Mehta, what you said can be one reason. The other
33 reason is money circulation by the party themselves.

34

35 **TUSHAR MEHTA:** Money circulation?

36

37 **JUSTICE SANJIV KHANNA:** By the parties themselves.

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TUSHAR MEHTA: Party, My Lord.

JUSTICE SANJIV KHANNA: Because you don't have to give the details of any donor who's paid less than Rs. 20,000. So any money which is available within the party can be circulated. The unaccounted for money is circulated back into the system.

TUSHAR MEHTA: In this scheme it is not possible, but maybe, but I don't think the parties tend to gain by circulating. But...

JUSTICE SANJIV KHANNA: Only thing is because you have to show on table a particular level of expenses whenever you incur expenses, say, in a rally or any other expense. Certain expenses have to be shown. The second point which you are raising is relevant. Obviously, these figures are relevant. The second point is, these unaccounted or unaccounted for, were in the transactions below the figure of 20,000, not in the higher, already the...

TUSHAR MEHTA: Not reported. I would put it. I can go and give 5 crores but party may choose not to report .

JUSTICE SANJIV KHANNA: That is possible, that is possible. But as far as the higher sums above 20,000 were concerned, they were all reported. They were already with the details, their reporting is with details, because we saw some charts given to us. Most of the payments were reported. Above 20,000 payments are to be reported otherwise it would be violation of the law.

TUSHAR MEHTA: The bottom line, My Lord... I'll take Your Lordships further, but the bottom line is this. What was really found? That what is the reason, why a person who contributes to a political party chooses the mode of unclean money as payment mode and Your Lordships would immediately agree with me if we go by the practicalities of life. What happens is, suppose one state is going for an election. There are two parties, they are multiparty, but by and large there are two parties which go neck to neck. Suppose I am a contractor. I'm not a company or anything. I am a contractor and I'm supposed to give my political contribution to Party A and Party B or Party A or Party B, as the case may be. But the fear was if I give by way of accounted money or by clean money, by way of a cheque, it would be easily identifiable. If I give to Party A and Party B forms the Government, I would be facing victimization and retribution and vice versa. If I give money to B and Party A continues to be in Government, then I would be facing retribution or victimization. Therefore, the safest course was to pay by

1 cash, so that none of the parties know what I paid to which party, and both parties are happy
2 that I have paid something. So, that, the payment by cash ensured confidentiality. Both parties
3 would say that one party would be given 100 crores, one party would be given 40 crores,
4 depending upon my assessment of their winnability. But both would not know who is paid
5 what. My Lord, sometimes what used to happen is in my business, I get only clean money or
6 substantial part of the clean money, but practicalities require that I contribute to the political
7 parties, and practicality again requires that I contribute with a degree of confidentiality so that
8 I'm not victimized in future. And therefore clean money used to be converted into unclean
9 money. White money being converted into black money so that it can be paid, according to
10 them anonymously, and according to me with confidentiality. And this is disastrous for the
11 economy when white money is converted into black money.

12

13 **JUSTICE B.R. GAVAI:** But as the learned Chief Justice yesterday gave an example. Quite
14 possible that hundred people may have [UNCLEAR] Rs 1 crore each and somebody may
15 purchase those 100 crores by paying cash.

16

17 **TUSHAR MEHTA:** I just, My Lord, I wanted to answer that question. I also examined that
18 question. What Your Lordship's query, as I have understood it is that suppose I have 100 crore
19 in cash. Now, Your Lordships are examining the scheme, for the purpose of answering this
20 particular query right now. I'll go into the history thereafter. I have 100 crores. What I will do
21 is, I will ask, I will give him cash of 10 crores that you deposit this in your account, buy an
22 Electoral Bond of 10 crores, give it to me. I'll give another 15 crores to my learned, another
23 learned friend and I would aggregate. Kindly, My Lord, see the situation. The moment 10 crore
24 of cash goes in his account there are checks and balances within the Income Tax Department.
25 He will have to face the investigation. My learned friend will have to face the investigation. I
26 will be involving ten to fifteen more persons to buy ten to fifteen Electoral Bonds as against
27 that, it's easier for me even today, to go with 100 crores to a political party and say, that take
28 this 100 crore in cash. Why should I, My Lord, involve ten people as my accomplice?

29

30 **JUSTICE B.R. GAVAI:** No, the advantage is that the political party will get it in the white.
31 There's an advantage for the political party, because you will get it in...

32

33 **TUSHAR MEHTA:** I would not risk myself. The reason is this, the moment 10 crore cash
34 goes in his account...

35

36 **JUSTICE B.R. GAVAI:** No, No. Suppose, if 100 companies...

37

1 **TUSHAR MEHTA:** Yes, My Lord.

2

3 **JUSTICE B.R. GAVAI:** They purchase it. Let us assume all of them are in profit.

4

5 **TUSHAR MEHTA:** Yes, My Lord.

6

7 **JUSTICE B.R. GAVAI:** They purchase for 1 crore. So, they'll get a double benefit that they
8 will get income tax exemption for the amount that they have paid. And also, if they transfer it
9 to an aggregator, he will get cash also for that.

10

11 **TUSHAR MEHTA:** The difficulty is, My Lord, the moment he deposits 10 crores in cash, the
12 Income Tax Department thinks that...

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** No, no, I am not talking about going to deposit
15 10 crores in cash. Who will ever deposit 10 crores in cash?

16

17 **TUSHAR MEHTA:** Then, I will show the scheme. It has to be deposited if he has to...

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** No, no. The problem with this scheme Mr.
20 Solicitor, it provides for selective anonymity. It's not completely anonymous. It provides
21 selective anonymity.

22

23 **TUSHAR MEHTA:** Confidentiality,

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** Selective confidentiality. The State Bank of
26 India, it's not confidential qua the State Bank of India, one. It's not confidential qua, the law
27 enforcement agencies. So, a large donor, a large donor, could never take the risk of buying the
28 Electrical Bond for the purpose of tendering it to the political party. All that the large donor
29 has to do, is to disaggregate the donation, get people who will purchase Electoral Bonds with
30 small amounts, small amounts which will be then purchased through the official banking
31 channels, not through cash. If you have to...

32

33 **TUSHAR MEHTA:** Provided they have 10 crores. So, I'll have to find out, I will have to find
34 out ten people having 10 crores and who are ready to risk that. I need not tell Your Lordships...

35

1 **CHIEF JUSTICE DY CHANDRACHUD:** But, Mr. Solicitor, what will really happen is this.
2 A large donor will never put his or her head on the line by being in the books of account of the
3 State Bank of India, of having purchased...

4

5 **TUSHAR MEHTA:** They are doing.

6

7 **PRASHANT BHUSHAN:** He won't do by the opposition party he will do it by the ruling
8 party.

9

10 **TUSHAR MEHTA:** There is no, please.

11

12 **JUSTICE SANJIV KHANNA:** Mr. Bhushan, they did not interrupt you.

13

14 **TUSHAR MEHTA:** Please, Mr. Bhushan.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** What would really happen is this, and this is
17 what the scheme is capable of, because it's selective anonymity, selective confidentiality.

18

19 **TUSHAR MEHTA:** I need not tell Your Lordships. A possible or potential abuse may not
20 perhaps be the ground, but let me examine, let me explain the entire scheme to Your
21 Lordships. In a given...

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** Second, Mr. Solicitor, your argument that look,
24 if you were to strike down the scheme, you will go to a situation which it existed prior.

25

26 **TUSHAR MEHTA:** My Lord, can I come?

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Yeah, I'll just... you can deal with it in your own
29 [UNCLEAR]. That would not be valid in itself for the reason, that we are not [UNCLEAR] the
30 Government from coming with or coming out with a transparent scheme or a scheme which
31 has a level playing field. The purpose, the purpose of ensuring that electoral funding relies less
32 and less on the cash component and more and more on the accountable component, it's of
33 course a, it's a work in progress. We are completely with you. There's no difficulty. We are
34 completely with you that this is a problem which economies, which democratic societies are
35 grappling with. But, the point is not that, it's not an all or nothing approach. The problem with
36 the scheme lies is, if it doesn't provide a) a level playing field to the political parties and b) if it

1 suffers from opacity as the argument for the other side is. This is not to prevent the Legislature
2 or the Executive from coming out with a scheme which deals with these decisions. [UNCLEAR]

3

4 **TUSHAR MEHTA:** Confidentiality goes.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** No, maybe that the confidentiality, we are not
7 saying what it should be. That's not part of our function.

8

9 **TUSHAR MEHTA:** That's not. Kindly allow me to respond.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** But. And, two very important things. Maybe the
12 earlier scheme failed. Maybe it didn't get you as much of white money into the electoral
13 funding as you would otherwise have liked to do. But look at the safeguards in the scheme in
14 the earlier provisions. A cap on how much of your net profits you can contribute, one.

15

16 **TUSHAR MEHTA:** I have an answer to that.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Two, a disclosure within your own accounts, and
19 therefore to your shareholders that this is the political party to whom we are contributing.
20 What we are now doing is, is that in the effort to bring in white money into the electoral
21 process, essentially, we are providing for a complete, an information whole.

22

23 **TUSHAR MEHTA:** Can I respond?

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** That is the problem. The motive may be perfectly
26 laudable. No question about it. Question is, whether you have adopted means which are
27 proportional. Or do the means meet the test of Article 14?

28

29 **TUSHAR MEHTA:** I take it My Lord.

30

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

32

33 **TUSHAR MEHTA:** So that I'm not discouraged, that Your Lordships are just putting to me,
34 what is their contention.

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** Obviously, that's why we are hearing you. Our
37 views are never final until the last word in the case is heard.

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TUSHAR MEHTA: I know that My Lord. At 3 o'clock, it's too much of a seriousness. My Lord. I wanted to break that seriousness.

CHIEF JUSTICE DY CHANDRACHUD: Mr. Solicitor our word is the last word, actually only when the judgment comes.

TUSHAR MEHTA: Judgment is delivered. I know My Lord.

CHIEF JUSTICE DY CHANDRACHUD: In fact even after arguments conclude we are all involved in parlays and discussions between ourselves, formally...

TUSHAR MEHTA: Confer...This was just, My Lord, to break that aura of seriousness.

JUSTICE SANJIV KHANNA: And us putting questions is getting...

TUSHAR MEHTA: To get the answers, I understand, I have appeared before Your Lordships, on hundreds of time. I'm just on the lighter side, I wanted to... So, Your Lordships' concern is right, but when I explain the scheme, Your Lordships would find that anything else other than keeping it confidential, will not be able to address the problem of victimization and victimization incentivizes payment by cash.

JUSTICE SANJIV KHANNA: Just one caveat over here. Victimization and retribution is normally by the party in power.

TUSHAR MEHTA: Yes, My Lord.

JUSTICE SANJIV KHANNA: Not by the party which is in opposition.

TUSHAR MEHTA: The opposition may come back to power after a month. I'll just, My Lord...

JUSTICE SANJIV KHANNA: So, but the figures which you are saying that the maximum donations which are on paper, which are accounted for are to the party in power and not to the party in opposition, may not therefore be logically flowing from that argument.

1 **TUSHAR MEHTA:** No, I am pointing this out My Lord, only to satisfy Your Lordships their
2 argument, that because of this scheme, maximum money goes to ruling party. I am just trying
3 to show to Your Lordships, that there is a trend, whether it is this scheme or prior to that.

4
5 **JUSTICE SANJIV KHANNA:** Just one more question and therefore, thereafter the field is
6 up to you. The other issue is which is because of selective, confidentiality. What happens is,
7 when the selective confidentiality as to his donations to the opposition party is concerned,
8 there are ways and means to get that information. And it's easier for the party in power to get
9 that information.

10

11 **TUSHAR MEHTA:** It's not.

12

13 **JUSTICE SANJIV KHANNA:** Let's put it very frankly. We've been very frank on the first
14 aspect. Let's be also very frank on the second aspect. Now what is the fear is, because of this
15 selective confidentiality, the opposition parties do not know who are your donors, but donors
16 to the opposition party can be ascertained, at least by the investigating agencies.

17

18 **TUSHAR MEHTA:** I'll just tell Your Lordship.

19

20 **JUSTICE SANJIV KHANNA:** They are put at a disadvantage to question you on your
21 donations, whereas their donations did [UNCLEAR] question.

22

23 **TUSHAR MEHTA:** I'll just My Lord answer that question. You will have to trust, you means,
24 we will have to trust at some stage, someone as the final fiduciary position authority. Second,
25 My Lord, nobody has so far taken Your Lordships, through the scheme, and how the scheme
26 operates. That's what My Lord I intend to. Possibly this may not be a 100% foolproof scheme.
27 There may be out of hundred, five people which are, My Lord the Chief Justice indicated. They
28 might misuse it. But suppose I am a genuine person, who wants to contribute without any
29 retribution. I'll just give an example, I don't wish to give any example of a live election, but
30 imagine a state which is, where election process is going on. Party A is in power, party B is
31 likely to be in power and both are neck to neck. As a contractor My Lord, I would like to
32 contribute to both the parties because I know that there is 49% possibility of party B coming
33 into power and therefore I'll have to be contributing to them. I am on practical lines without
34 being idealistic etc. I'll come on transparency, informational privacy, etc. But let us take it on
35 a practical plane. Either way, My Lord, I will be incentivized to give cash, because I do not
36 know whether B will form the government after a month and I do not know whether A will
37 continue to be in the government after the month. Either of the way, my victimization and

1 retribution will continue. So, the only incentive is to pay by cash, nobody knows what I pay.
2 As against that, I will explain in the scheme, that nobody will come to know, including the
3 Central Government. Including the Central Government. I will be able to show from the
4 scheme. My Lord every provision is made with some intention, some rationale, some
5 justification and some purpose to prevent some malpractice in mind.

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** But retribution is not avoided by this scheme. I
8 will tell you the simple reason for it. Under the Companies Act, as now modified, a company
9 is not required to disclose to which political party it has contributed. But it has to disclose how
10 much it has contributed totally. So a company, say a large public limited company says I've
11 contributed 400 crores, this financial year. Right? Now the party, including a party in power,
12 whether in the state or in the Centre, knows how much has come to it in terms of Electoral
13 Bonds from that particular company?

14

15 **TUSHAR MEHTA:** It can never know, therefore allow...

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** No, the party, of course, it knows.

18

19 **TUSHAR MEHTA:** If the donor discloses...

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** Party ABC knows how much has come from this
22 company into its coffers. You also know from the company's balance sheet how much it has
23 contributed in a macro sense though that balance sheet no longer discloses to whom it has
24 contributed. That mismatch is sufficient to know as to how much money has gone to the party
25 in power. So, it's not that the possibility of retribution is averted by this scheme.

26

27 **TUSHAR MEHTA:** So far as possible. But My Lord, after I explain the scheme to Your
28 Lordships, Your Lordships perhaps may have a rethink on this apprehension because
29 otherwise I asked them what is a better solution reverting back to the earlier incentivized black
30 contribution scheme. That's again, a question. Out of hundred, everybody doesn't play by 400
31 crores.

32

33 **JUSTICE SANJIV KHANNA:** Mr. Sharma what is a better solution? That's for Mr. Sharma
34 to answer.

35

36 **TUSHAR MEHTA:** Pardon My Lord?

37

1 **JUSTICE SANJIV KHANNA:** That's why Mr. Sharma to answer. Even if we have some
2 answers or questions, we'll not answer that because we are restrained by judicial review.

3
4 **TUSHAR MEHTA:** Yes, My Lord. I was on page 105.

5
6 **CHIEF JUSTICE DY CHANDRACHUD:** 105?

7
8 TUSHAR MEHTA: My Lord, just to show that between 2004-05 to 2014-15, it's not because
9 of the scheme, but because of the trend, because of the consistent practice of the contributor
10 that so and so party got maximum, then the second, then the third. They know who is going to
11 be in power. They are better judges of the electoral process than the common man or those
12 who contribute, they know that where to invest their money. And I'm using that expression
13 which I should not have used. Now please come to page 113. Page 113, income of political
14 parties from unknown, known and other sources. Here there was a complete anonymity or
15 opaqueness or confidentiality, whatever name we may use, because once I pay in cash, I have
16 no difficulty at all. Nobody can find out what money I have paid to Congress, what money I
17 paid to BJP or IN... TMC any, anyone. Complete immunity from retribution or victimization.
18 Now see My Lord. Please see, unknown sources. The first party is 2000 some crores, second
19 party 3000 some crores. Please see the last, for which Mr. Farasat appeared, 471 crores. They
20 say that we don't buy Electoral Bond. They better start buying Electoral Bond. And I'll point
21 out My Lord, I don't wish to go into it. What is the source of their funding? Then, My Lord,
22 known sources. Please see My Lords for the last party, 15.04, known sources- 15.04. They are
23 running a Government and other known sources- 406 crore. And what is other known
24 sources? Please, My Lord, kindly... we have, see the fourth column, other known sources.
25 What happens when they don't buy the Electoral Bond? I'm sorry, last political party, other
26 known source, Your Lordship gets? But this is 406 crores. I have their balance sheets. Other
27 known source means membership fees. And membership fees is more than double than My
28 Lord, both the national parties, BJP and Congress. They have kind of a bucket collection. There
29 are several things which, the best thing to do is to ensure that they get Electoral Bonds, then
30 only this kind of situation... My Lord, please see the chart below. Regional parties. Now, the
31 interesting figure. I'll not take Your Lordships to examples of each of the parties, but see the
32 first party. Unknown source- 766.27 crores out of total, please see, 819 crores. Last column is
33 total. So, out of 800 crores 766 crores is unknown sources. Maybe out of hundred, what Your
34 Lordships say, in two cases it may be true, but, otherwise this is the position.

35
36 **JUSTICE SANJIV KHANNA:** In other known sources, when they submit to the ECI, they
37 give the names of the persons? No?

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TUSHAR MEHTA: Yes, I think so. Yes My Lord.

JUSTICE SANJIV KHANNA: They give the names of the person?

TUSHAR MEHTA: Yes, they give the names. One lakh...

PRASHANT BHUSHAN: I am not speaking for the CPM, I'm just saying that it's a sort of
[UNCLEAR]

TUSHAR MEHTA: No, let CPM defend itself. You need not bother. CPM is very much here. You can rest assured, he will competently defend it. I didn't name the party. I didn't name any political party, My Lord. That they did. I did not want to politicize it, but it was necessary for me to give these figures to Your Lordships, that if confidentiality is...

CHIEF JUSTICE DY CHANDRACHUD: That malaise, the malaise is agnostic to political parties, whichever side of the spectrum you are.

TUSHAR MEHTA: Yes, My Lords.

CHIF JUSTICE DY CHANDRACHUD: Malaise affects the entire spectrum. So, we are not here saying that a particular political party is holier than the other. We have a problem.

TUSHAR MEHTA: It's a problem which we are grappling with.

CHIEF JUSTICE DY CHANDRACHUD: And this figure which you have said, will again not say more than that, this 2004-05 to 2014-15.

TUSHAR MEHTA: That's all. I also didn't say anything. I only highlighted the period even prior, this was the trend.

CHIEF JUSTICE DY CHANDRACHUD: Your chart was not lost to us.

TUSHAR MEHTA: I'm grateful My Lord. And the chart which Mr. Bhushan's client should have placed. It is his chart. He has placed all the charts except this chart.

1 **CHIEF JUSTICE DY CHANDRACHUD:** But, Mr. Solicitor, therefore that really, for us
2 could really still beg the question, in the sense that, for us it's not whether the ruling political
3 party in power presently is going to be the beneficiary of that or not. We're testing a question
4 of constitutionality, and we take your point that, well, this is part of our political system.
5 Whoever is in power gets the large share of the pie in so far as electoral contributions are
6 concerned.

7

8 **TUSHAR MEHTA:** Yes.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** So, we have to deal with this uninfluenced by all
11 this by the vicissitudes of the change in political fortunes.

12

13 **TUSHAR MEHTA:** I am grateful. But, that keeps on changing and party which is in power
14 in the Centre maybe in opposition in the states, state may be completely different party like
15 West Bengal. It's neither in Centre... So, this My Lord, in our federal structure that keeps on
16 changing. So, Your Lordships, are necessarily confined to whether this scheme is
17 constitutionally valid and can appeal to Your Lordships. Now, please come to page 6. What are
18 the earlier efforts made? And some of the discussion in Parliament...

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** Page 6?

21

22 **TUSHAR MEHTA:** Page 6 of my written submissions 2A, the same file, same document.
23 Because, I must say to the credit of all our leaders across political lines, that everyone has tried
24 their best. Sometimes the problem is this My Lord, and I was really told about this problem.
25 In political parties also there are divergence of views whether to support this scheme or not to
26 support this scheme. And the reason is genuine, practical, but a little humorous. What happens
27 is, I am a leader, I am a local leader in a state or 3rd, 4th ranked leader at the national level. I
28 get 30 crore by way of political contribution to my party. I would deposit only 25 crores in the
29 party books. In case of Electoral Bond every rupee goes to the account of the political party. If
30 I have to accept it, I have to accept only through Electoral Bond, that unexpected benefit will
31 not be available to me. So there is a debate even amongst other political parties, that this
32 scheme works well. This element is at least eliminated. Now, please see My Lord, what are the
33 efforts which were made. And then, I will link it to the speech of, the then Honourable Finance
34 Minister when this scheme was introduced. That every effort was made, every permutation,
35 combination. This can be the solution. That can be the solution. Everything was tried by the
36 nation. And we reached the situation which I have shown at page 102 onwards, and now with
37 that problem the nation, as a nation, I'm not going one party or other ruling here or ruling

1 there. As a nation we started thinking and in the Parliament, this scheme was presented and
2 why it was debated, how it was debated, I'll point this. Please come to page 6, the position in
3 India, My Lord. I have before that, given the position of other states. I'm not reading it. It's for
4 Your Lordship's assistance. I'm sorry, My Lord, page 7, page 6, 1956, Section 293, read with
5 293(a) of the Companies Act allowed corporate donations to political parties, as long as
6 Memorandum of Association of the Company permitted the same. Your Lordships have seen
7 1957 judgment and therefore, I am not reading it. It's a judgment reported in '58, but it's a '57
8 judgment. But at page 7, my learned friend, My Lord missed the last part, I need not remind
9 Your Lordships, Your Lordships are aware of it. But ultimately, My Lord, Justice Chagla says
10 this after that discussion, which I have quoted My Lord, on the first column at page 7. But it is
11 not for us to legislate, as My Lord the Chief Justice said, nor is it for us to lay down the policy.
12 But having had this case before us and our attention having been drawn to the possible evils
13 attendant upon powers exercised by the companies, we thought it our duty to draw the
14 attention of Parliament, to the necessity of remedial measures being immediately undertaken
15 to curb and control the evil. Now possibly as a result of this judgment or otherwise, we do not
16 know what happened, what were the circumstances in '69, but there is one article, My Lord,
17 where I could find something. My Lord, before I take Your Lordships to this '69 the theory is
18 that in '69 there was a party called Swatantra Party floated by...

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Pilloo Mody.

21

22 TUSHAR MEHTA: No, that was by Rajaji.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Rajaji and Pilloo Mody those were the two...Rajaji
25 was really the...

26

27 **TUSHAR MEHTA:** Rajaji, Rajagopalachari ji was the founder of that party. And that party
28 was gaining momentum. This is the theory and the Government of the day wanted
29 contributions to that party, which was gaining momentum to stop, and therefore, they
30 prohibited any contribution by the companies. Please, My Lord, see 69. Following the
31 recommendation of Santhanam Committee, the Government introduced an amendment
32 which prohibited any contribution by a company to any political party, or for any political
33 purpose, to any individual or body. My Lord, Your Lordships can mark this. Santhanam
34 Committee report, I'm not going to read it, is in Volume 4, Volume 4. I'll just give the page
35 number, but Your Lordships need not read that, but as a part of that committee's report, it was
36 followed by the Government and the contribution was...

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** What is the page in Volume 4 ?

2

3 **TUSHAR MEHTA:** Page 8103, My Lord.

4

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

6

7 **TUSHAR MEHTA:** Now note. Note is interesting. Therefore I am tempted to place it. Since
8 corporate funding was illegal, the corporates and politicians created several backdoor routes
9 of channelling the money into the Congress party. I'm sorry... *flow mein*... I don't mention
10 names of party, facilitated by large sums of cash holding with businesses. A commentator has
11 called this practice "briefcase politics". My Lord Justice Gvai used this expression, "briefcase
12 politics", referring to a prevalent practice of pricing Government permits at number of
13 briefcases of cash that can be supplied. In exchange of doling out benefits to corporates, the
14 party collected large amounts of cash and illicit money while at the same time depriving
15 opposition parties of legally collecting funds from the corporates. Thus corporate donations
16 continued despite bans. They just became underground. It has devised a new method of legally
17 channelling corporate money into so and so coffers by placing corporate advertisements in
18 party journals. Magazines used to be published, souvenirs used to be published. These
19 corporate advertisements were indirect way of funding the party without violating the law. My
20 Lord, I have given which article from which I have taken this. Then My Lord, in 1979, the
21 Income Tax Act was amended to exempt the income of political parties from taxation by way
22 of section 13A, subject...

23

24 **JUSTICE SANJIV KHANNA:** Before '79 the income tax parties were not, sorry, political
25 parties were not exempt?

26

27 **TUSHAR MEHTA:** I think so, My Lord, subject to being corrected, that's, my research
28 shows, not to my knowledge.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** Check from Mr. Palkhiwala's book or...

31

32 **TUSHAR MEHTA:** I'll check-up.

33

34 **JUSTICE SANJIV KHANNA:** Because when you use the word amended to exempt...

35

36 **TUSHAR MEHTA:** Was amended. My Lord, must be. Amendment means there must be
37 preexisting exemption. I'll answer this tomorrow. Then '85. '85, the then Government, My

1 Lord, took a bold step. Please see, corporate funding was reintroduced by the Government by
2 making necessary amendments in Section 293(A) of the Companies Act. All companies except
3 Government companies were allowed to contribute to political parties or to any person for
4 political purposes, subject to approval of the Board of Directors and disclosure in the Profit
5 and Loss statement. Here also, the Board of Directors decide. That's the regime continuing till
6 the scheme came. These donations were restricted to 5% of companies' average net profits of
7 previous three years. Now please see, the debate in Parliament when this was introduced, My
8 Lord, that would really assist Your Lordships. That is in my volume, I have circulated a second
9 volume. I'm not going to read the whole, but I have placed the entire debate My Lord. It's at
10 page... page 41.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** Volume 2?

13

14 **TUSHAR MEHTA:** Volume 2B, *nahi*, volume 2A of documents, if you can. It's called, My
15 Lord, Compilation of documents. Yes, My Lord, this is the one My Lord. Your Lordships are
16 on the right page.

17

18 **JUSTICE MANOJ MISRA:** Compilation of Documents is 2A?

19

20 **TUSHAR MEHTA:** 2A, My Lord, Compilation 2A.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** 2A is your written submissions actually.

23

24 **TUSHAR MEHTA:** No, there is Compilation 2A My Lord. Compilation 2-2A, that's how it is.

25

26 **JUSTICE SANJIV KHANNA:** What does it begin with?

27

28 **TUSHAR MEHTA:** It is Compilation on behalf of Solicitor General of India. That's the title.

29

30 **JUSTICE J.B. PARDIWALA:** That's Volume 2, not 2A.

31

32 **JUSTICE B.R. GAVAI:** Final Compilation of the Union of India?

33

34 **JUSTICE SANJIV KHANNA:** Final Compilation 2, Volume 2 Final Compilation. No?

35

36 **TUSHAR MEHTA:** Yes, My Lords. Now additionally... I am thankful to my learned friend.

37

1 **KAPIL SIBAL:** No, no, no, I wish you had told us, but doesn't matter.

2

3 **PRASHANT BHUSHAN:** We had requested them more than a week earlier... 10 days
4 earlier. You give us whatever documents, we'll upload.

5

6 **KAPIL SIBAL:** It's okay.

7

8 **PRASHANT BHUSHAN:** But, anyway.

9

10 **KAPIL SIBAL:** It's all right. It's too big a matter to start objecting on these technicalities.

11

12 **TUSHAR MEHTA:** Kindly see, My Lord, page 41, Your Lordships have on this document?
13 We'll sit with the Court Master and give the appropriate nomenclature or the title to this
14 compilation.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** On the screen, yes.

17

18 **TUSHAR MEHTA:** It is essentially debate of Parliament. It's not a document, in that sense
19 of pleadings or something. This is...

20

21 **JUSTICE SANJIV KHANNA:** This is 1985, Companies Amendment Act.

22

23 **TUSHAR MEHTA:** Yes, Companies Amendment Act Bill 1985. The Minister of Chemicals
24 and Fertilizers and Industry and Company affairs. Please read.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** Give us the page reference. This will be called
27 compilation volume?

28

29 **TUSHAR MEHTA:** Whatever Your Lordship says, we will accordingly...

30

31 **CHIEF JUSTICE DY CHANDRUD:** Okay, *kya hoga yeh?*

32

33 **TUSHAR MEHTA:** That's what I'm saying, that whatever the Court... the Honourable
34 Members will recall, all My Lords have. The Honourable Members will recall that the
35 Government had made certain important policy announcements while introducing the
36 Finance Bill on 16th March '85. One such announcement was that the companies should be
37 permitted to make political contribution in order to enable the corporate sector to play a

1 legitimate role within the defined norms in the functioning of our democracy and for this
2 purpose, necessary legislation would be undertaken. In recent years a view has gained ground
3 that a certain amount of openness rather than a blanket ban on political donation will really
4 auger well for a cleaner political and economic environment. Representatives of trade and
5 industry have been equally urging upon the Government to reconsider replacement of the
6 existing provision of 239A, by the law which obtained prior to 1969 and which was introduced
7 by 1960 to permit companies to make political contributions subject to certain ceilings.
8 Companies often urge and rightly that they are entitled to support a political party which
9 believes in certain amount of freedom of private business. Secondly, many companies feel that
10 they can resist any pressure from any political party out of books donations if they are allowed
11 to contribute by an enabling provision of the statute. Please mark this. In '85 also, they said
12 that we are required to pay in cash, black, permit us officially. Enabling provisions on the
13 statute a certain sum, which is within their capacity to spend. Thirdly, it is also argued with
14 some force that a company itself functions on the principle of shareholders democracy and
15 therefore a ban on political donation in a democratic society is an anachronism. Fourthly,
16 political donations by companies is permitted within limits in other democratic countries of
17 the world which have not suffered on account of permitted political donation. Now, Your
18 Lordship may kindly rest. Now Your Lordships, may not read. Please come to page 43. This is
19 a beautiful speech delivered by one Mr. Panicker. Your Lordships has that, My Lord? I'm just
20 showing My Lord, the....

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** What is the internal page on that?

23

24 **TUSHAR MEHTA:** 330. 330, My Lord, right hand side top. I'm showing My Lord, that this
25 is the problem with which we are grappling and we are trying to find out some solution or the
26 other.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Where does that speech begin actually?

29

30 **TUSHAR MEHTA:** My Lord, it's begin at page 326, internal page 320. Left hand side is 325
31 and right hand side is 326. That's column wise pagination. It seems, My Lord. There's a column
32 wise pagination, also.

33

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

35

36 **TUSHAR MEHTA:** I am on, My Lord, column number 40.

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** First was Mr. Veerendra Patil's statement which
2 you read out.

3

4 **TUSHAR MEHTA:** Yes, My Lord.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** Alright. And where does Mr. Panikkar's begin
7 actually? I just want to go back.

8

9 **TUSHAR MEHTA:** My Lord, that is 330, right hand side column.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Ram Pyare Panika.

12

13 **TUSHAR MEHTA:** Yes, Panika.

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** From Robertsgunj. Alright. I thought it was K.
16 M. Panikkar.

17

18 **TUSHAR MEHTA:** No, no. Sir, The Honourable Minister has said while introducing this
19 bill, a hint was given at the time of introducing the finance bill, that a bill permitting donations
20 to various political parties would be brought forward. Not only this, the Prime Minister of our
21 country had also announced in the manifesto of our party, at that time, that the election, at the
22 time of elections, that such a provision must be made, keeping in view the political parties and
23 also with a view to removing corruption from the country. With all these things in view, the
24 Honourable Minister has brought forward this bill today. Therefore, I fully support the bill.
25 Sir, you just have a glimpse into the history of the 37 or 38 years. A bill was brought forward
26 in 1956. Not only this, the leaders of the political parties of the side where it was Professor
27 Madhu Dandavate or whether it was Sachar Committee, were of the view that donations
28 should be banned and it was under those circumstances that Government had imposed the
29 ban on them. But after imposing the ban, it was felt, that black money was increasing rather
30 fast. And various political parties, who were not in a position to collect donations, either due
31 to their own policies or due to other circumstances of their own making were not getting
32 justice, even in the elections. Keeping all these things, this bill has been brought forward. I was
33 just going through the debate that took place on this bill in Rajya Sabha. Many of the
34 opposition members have supported it, but at the same time, they have also alleged that the
35 so and so party has brought forward this bill in its own interest. I went to tell Shri so and so,
36 you have a Government in so and so, and left front have their Government in so and so. So and
37 so has it's Government. Therefore if you criticize it is for the sake of criticism. It's not good.

1 There is no question of benefit in it. The question is how to root out corruption from politics.
2 Today, black money poses the biggest problem before the country and all this is being done by
3 big capitalists, those elements who influence the economy of our country and if it is not
4 checked, it is but natural that these elements will try to give a slip to Government under the
5 pretext of patronizing many political parties. Therefore, today is a very important day in the
6 democracy of our country. And the bill brought forward by the Honourable Minister is a
7 historic one, which will help checking many malpractices which have crept into polity due to
8 the imposition of ban on donations. Not only this I and my party colleagues are of the view
9 that there should not be too many parties. One knows to what extent the number of parties are
10 risen before the elections in the name of caste etc. Please, come to My Lord, next page 334, the
11 right hand side pagination. This is by Harish Rawat, the then MP. Possibly My Lord the former
12 CM of, Harish Rawat, Uttarakhand. The political system, second unnumbered para, the
13 political system which we have today is an open political system. In such a system, every
14 section is free to play its decisive role, but the prosperous section uses its influence more. There
15 is no denying the fact that the role of money is continuously increasing in our election system.
16 Every political party is ever eager to accept this money in some form or the other, and from
17 one source or the other. No political party is today in a position to say that they contest election
18 on the money raised through their membership subscription or by the subscription collected
19 by the workers. Except My Lord, we have seen one party. In this situation which is developing
20 in our country, wherein at the Centre there is so and so Government and in various states,
21 Governments of different parties are being formed. it cannot be said that rising of resources
22 by way of donations is confined to the so and so party alone. and there is a restriction on other
23 parties and that they cannot accept money that is not so. Now the question arises why a ban
24 was imposed on it in 1969. When this ban was imposed at that time also it was serial on the
25 basis of recommendations made in the reports of various committees that donations by
26 companies were causing degradation, a sort of pollution in politics. But after the ban imposed
27 in 1969, a new situation emerged. The intention behind that ban was good, but the intention
28 was not fulfilled. And it was highlighted by the political parties, the intelligentsia and the
29 newspapers that the political parties were receiving black money from the companies and the
30 companies were polluting politics by giving black money. And at the same time the political
31 parties were giving protection to the companies generating black money by accepting
32 donations. I am of the view that the donations that the political parties will get after legalizing
33 donations by the companies will not be in black money. The companies will have to show their
34 accounts to the Income Tax and other departments and the other people can also have
35 information to this effect in one way or the other. Now please rest. Your Lordships can skip
36 and come to...

37

1 **JUSTICE B.R. GAVAI:** This is lacking now?

2

3 **TUSHAR MEHTA:** Yes? I'm sorry?

4

5 **JUSTICE B.R. GAVAI:** In the present scheme, this is lacking?

6

7 **TUSHAR MEHTA:** Yes.

8

9 **JUSTICE B.R. GAVAI:** Other persons will not be in the position to get any information.

10

11 **TUSHAR MEHTA:** I'll have to justify that. I'll have to justify that. But this attempt was made.
12 Thereafter also, some attempts were made. And having found that this is the only possible
13 solution to not incentivize black money, then the decision is taken. I'll come to that. I bow
14 down, My Lord, and I'll have to satisfy Your Lordship's conscience on that. Page 338, My Lord
15 second unnumbered para. Sir, whatever might have been desirable in 1969 may be undesirable
16 in 1985 and vice versa. According to the particular situation prevailing at that time, we would
17 have decided something. But now, with the change in the circumstances, if we reverse our
18 earlier opinion, there is nothing wrong in it. Everybody feels that even when there was no ban
19 on political donations, the generation of black money was so rampant that a serious check was
20 necessary because the future of our children and future of our democracy have been seriously
21 affected. Now, sir, the very basis of democracy is that we must have a clean public life and a
22 cleaner political structure. We want to create a society by giving a tradition of cleaner public
23 life about which our children may be proud of. The present situation, which is prevailing is
24 that there are serious complaints to which I referred to earlier. Your Lordships can, My Lord,
25 thereafter skip. Please, My Lord, rest may not be of much assistance and thereafter Your
26 Lordships would find the objection reasons, why in 1985, this Act came to be amended and
27 239 was reintroduced permitting the political contribution, of course, with the cap of 5%. That
28 is at page 62 of this compilation. It refers to the same thing. I may not take Your Lordships'
29 time on that. Kindly come back to my written submissions at page 7. Statement of objection
30 reasons, in substance says what I have read, what was discussed in Parliament. Nothing more
31 or nothing less. So either of us may not get any new fact which can assist Your Lordships. Page
32 7, bottom. Wide ranging amendments were made in the Representation of the People Act, the
33 Income Tax Act 1961, and the Companies Act 1956 in various provisions relating to elections,
34 political parties, and connected matter. The Amendment *inter alia* included the following.
35 Section 29B was inserted in Representation of People Act, by way of which political parties
36 were explicitly permitted, subject to provisions of the Companies Act, to accept any amount of
37 contribution voluntarily offered to it by any person or company other than Government

1 company. The provision for declaration of donation received by the political parties was also
2 inserted as Section 29(C) in Representation of People Act. This is now amended My Lord. Your
3 Lordships have seen that. A chapter relating to supply of certain material to recognize political
4 parties was also inserted in Chapter 5(A) in the Representation of People Act. Contributions
5 to political parties by individuals as well as corporations were made 100% tax deductible by
6 insertion of section 80 GGB and 80 GGC in the Income Tax Act By way of amendments in the
7 Income Tax Act, this is 2009, tax deductions of the contribution made by a company to
8 Electoral Trusts were enabled, and income received by Electoral Trusts were also exempted
9 from the Income Tax Act. Then My Lord, 2013 the 5% cap was increased to 7.5. Then 2014,
10 guidelines for submission of Contribution Reports of Electoral Trusts were issued by the
11 Election Commission of India to requiring Electoral Trusts to disclose details relating to
12 contributions received by it and the contributions made by the Trusts to various political
13 parties. Please pause here for a minute. What is this Electoral Trust? It exists today also. This
14 system exists today. The Honourable Finance Minister in 2017-18, while introducing the
15 present scheme, takes note of it and says that it has not achieved the result it was intended to
16 achieve. Electoral Trust is not the subject matter. I just broadly point out what are the contours
17 of how the Trust operates. My Lord, any companies... number of companies,

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Five companies.

20

21 **TUSHAR MEHTA:** Five companies, not less than five. My Lord can create a Trust. It's only
22 a name Trust. It is not to be registered as a Trust. It is a Section 25 company. Whatever
23 companies have chosen to be members of this Trust would put their money in that common
24 pool. And that Trust would decide whom to pay? What to pay? To what extent to pay?

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** And they have to pay not less than 95% of the
27 [UNCLEAR] of the previous financial year.

28

29 **TUSHAR MEHTA:** 5% would be for their for their administrative expenses. But there also
30 this confidentiality was not given. And therefore, nobody preferred to go through the channel
31 of Electoral Trust. It is available. Today, I must tell Your Lordships, there are these channels
32 available. I can still pay by cash. Very honestly, I can still pay my cash. Second, I can pay by
33 way of a cheque which discloses my identity. I may not have any objection my identity is
34 disclosed. I am identified with a particular political party or I'm paying both the same amount,
35 either way. Third, I pay by RTGS. That again discloses my identity if the party wants, any
36 political party wants to know. Fifth, this Electoral Trust. That also is a scheme open. Now, the
37 fifth one, after experimenting My Lord, all these, is the I'm sorry, present scheme. Please, now

1 come to, 15, Your Lordships were taken, Election Commission's report. And 2017 are the
2 present amendments which are made and Electoral Bonds Scheme was notified. Now, My
3 Lord may please kindly see... at that stage, I'm not going to read, just I am highlighting at page
4 12, Your Lordships would find, 'position in the United States of America'. They also had
5 something similar like Electoral Trust. Because, every country is grappling. For example, my
6 learned friend cited one example of one country where it is directed that Government would
7 fund the election. It's not possible. That was an example of a country with less population than
8 Delhi and with two or three parties. My Lord, we have federal democracy. We have several
9 country specific issues. But here, what is called PAC, Political Action Committees, which were
10 like voluntary organizations were created. And those PACs where the common pool in which
11 the companies would donate, and those PACs would decide, which political party is to be
12 funded. But they had their own problems, which I have narrated, My Lord, which may not
13 immediately assist Your Lordships in the present dispute, and therefore, My Lord, I leave it at
14 that. Your Lordships may kindly go through it. It would be an interesting read. And it would
15 give a perspective that why every country is grappling with the problem and why every country
16 is trying to find out the solution, which is country specific. Now, Your Lordships may kindly
17 come to page 22. Rest, I am... Your Lordships have taken note of several things but, before that
18 My Lord, please come to para 62 at page 22. I had the benefit of sitting with the then
19 Honourable Finance Minister, who conceived this. He held several meetings, not with me, with
20 several experts, and this scheme was drawn. And when this petition was filed, he explained to
21 me, to the learned Attorney General, then Attorney General Mr. Venugopal and me. We sat
22 with him for about 3 to 4 hours. This is the crux of what he felt... transparency in... This is the
23 Honourable Minister's speech on 1 February 2017.

24

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

26

27 **TUSHAR MEHTA:** My Lord, page 22, para 62. My Lords have that? Transparency in
28 electoral funding. India is the world's largest democracy. Political parties are an essential
29 ingredient of a multi-party parliamentary democracy. Even 70 years after independence, the
30 country has not been able to evolve a transparent method of funding political parties, which is
31 vital to the system of free and fair elections. An attempt was made in the past by amending the
32 provisions of the Representation of People Act, Companies Act and the Income Tax Act to
33 incentivize donations by individuals, partnership firms, HUF, and companies to political
34 parties. Both the donor and the donee were granted exemption from payment of tax, if the
35 accounts were transparently maintained and returns were filed with the competent
36 authorities. Additionally, a list of donors who contributed more than Rs 20,000 to any party
37 in cash or cheque is required to be maintained. The situation has only marginally improved

1 since these provisions were brought into force. The political parties continue to receive most
2 of their funds through anonymous donations, which are shown in cash. This is My Lord, unless
3 you accept the problem there cannot be a solution being found. My Lord, honestly, My Lord
4 the then Honourable Minister says, that this is the problem we are facing. An effort therefore
5 requires to be made to cleanse the system of political funding in India. Donors have also
6 expressed reluctance in donating by cheque or other transfer and methods as it would disclose
7 their identity and entail adverse consequences. This is not what I am saying by way of a
8 justification. This is what is in the mind of the lawmaker.

9
10 Unfortunately, My Lord, just, not out, in the so far as matter is concerned, but when this
11 discussion used to take place, the then Honourable Finance Minister was really very unwell.
12 He was in the last phase of, Mr. Jaitley ji, and he used to carry some liquid, My Lord, which he
13 used to continue sipping as advised by the doctors. And he lost about 25 kgs and, I can
14 remember for those days. An effort therefore requires to be made to cleanse the system of
15 political funding in India. Donors have also expressed reluctance in donating by cheque or
16 other transparent method... methods as it would disclose their identity and entail adverse
17 consequences. I therefore propose the following scheme as an effort to cleanse the system of
18 funding of political parties. In accordance with the suggestion made by the Election
19 Commission, the maximum amount of cash donation that a political party can receive will be
20 2000 from one person. Political parties will be entitled to receive donations by cheque or
21 digital mode from their donors. As an additional step an amendment is being proposed to the
22 Reserve Bank of India Act to enable the issuance of Electoral Bonds in accordance with the
23 scheme that the Government of India would frame in this regard. Under this scheme, a donor
24 could purchase bonds from authorized banks against cheque and digital payments only. They
25 shall be redeemable only in the designated account of a registered political party. These bonds
26 will be redeemable within the prescribed time limit from issuance of the bond. Every political
27 party would have to file its return within the time prescribed in accordance with the provisions
28 of the Income Tax Act. Needless to say that the existing exemption to political parties from
29 payment of income tax would be available only subject to fulfilment of these conditions. This
30 reform will bring about greater transparency and accountability in political funding while
31 preventing future generation of black money. Further the speech of the then Honourable
32 Minister, there were some apprehensions voiced by some leaders of the opposition parties.
33 Then My Lord, the then Honourable Minister answers, let me clear the misconception if there
34 is any, because we have gone through this debate at the time of the Finance Bill itself. This
35 announcement was a part of the general budget itself. I had announced in the budget speech
36 itself that political funding in India needs to be cleaned up. Today the system is and this is no
37 secret to any political party or to the world outside that donations coming to political parties

1 are coming otherwise than through banking instruments. The names of the donors, quantum
2 and source of money are not known. There was complete lack of transparency. Electoral Bonds
3 substantially seek to clean, he doesn't say 100% , he is very clear that we substantially try to
4 tackle this problem. Electoral Bonds substantially seek to cleanse that system. Any person
5 seeking to donate money to a political party during that specified period can buy Electoral
6 Bonds from the specified branch of the State Bank of India. Those bonds can be given only to
7 a registered political party and only such parties so that fake parties are not registered, which
8 secured at least 1% vote in the last election. Otherwise for the purpose of getting donation you
9 can float a party. Those parties will have to announce one designated account. That is so and
10 so or the so and so or the so and so will have one account given to the Election Commission in
11 advance. These bonds can be encashed within 15 days of purchase by the donor to the political
12 party. When I come to the scheme, I'll explain why this 15%, that quid pro quo element is
13 attempted to be done away with. There would be a significant amount of transparency,
14 significant amount, he doesn't say that this is a fool proof solution we are giving. Today, there
15 is nil transparency. When the cash is given the source of money, the donor and where it is
16 spent is not known. Therefore, at least now it will be known. The donor will be having an
17 account of how many bonds he has purchased. The political party will be filing returns to the
18 Election Commission, thereby indicating the total bonds it has received and which donor gave
19 to which political party. It is in order to ensure that the transformation into clean money takes
20 place smoothly and people are incentivized to give that, that is the only factor which will not
21 be known. So, there will be clean money and a substantial...

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Solicitor, there is a clear problem here with
24 this speech.

25

26 **TUSHAR MEHTA:** Yes.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** The Finance Minister then, I mean, it's of course
29 a speech in Parliament but, now, the element of transparency is that the donors buy these
30 bonds. Not necessary. The donor doesn't have to buy the bond. The person who buys the bond
31 need not be the donor to the political party.

32

33 **TUSHAR MEHTA:** Out of hundred, Your Lordships are right two can be such, not all.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** But we're not on how many.

36

37 **TUSHAR MEHTA:** But, Your Lordships would not...

1

2 **CHIEF JUSTICE DY CHANDRACHUD:** We don't know how many out of hundred, too.
3 The point is, that a donor does not necessarily have to be a person who buys the bond at all.
4 Second, obviously...

5

6 **TUSHAR MEHTA:** I will answer that.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** Obviously, their balance sheets will reflect that
9 they have bought a certain amount of bonds. Balance sheets of only the purchaser will reflect,
10 not of the donor necessarily.

11

12 **TUSHAR MEHTA:** Correct My Lord. Maybe three out of hundred, five out of hundred. Your
13 Lordships are aware I need not cite the law though I have placed it.

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** Then, later in the next para, the learned Finance
16 Minister says, when the cash is given, the source of money, the donor and where it is spent is
17 not known. Therefore, at least now it will be known. How will this be known? Suppose an
18 Electoral Bond is purchased, the source of the money is not known, the donor is not known
19 and where it is spent is not known.

20

21 **TUSHAR MEHTA:** I am sorry.

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** All three are not know.

24

25 **TUSHAR MEHTA:** No, no, it is known My Lord. Kindly allow me to explain the scheme.
26 When I buy the, forget the example which Your Lordships have in mind.

27

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

29

30 **TUSHAR MEHTA:** Out of hundred, My Lord, five people may misuse the scheme. That may
31 perhaps not be the ground on which Your Lordships would judge the validity. But, rest ninety-
32 five, those who really...

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** We are not on misuse, we are on what the scheme
35 really is capable of..

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37 **TUSHAR MEHTA:** Your Lordship have not seen the scheme.

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CHIEF JUSTICE DY CHANDRACHUD: Right.

TUSHAR MEHTA: Nobody has taken Your Lordships through the scheme.

CHIEF JUSTICE DY CHANDRACHUD: We will see the whole scheme together.

TUSHAR MEHTA: Therefore, but, what the Honourable Minister is trying to say is, that if I buy the bond, my balance sheet would reflect that I am buying the bond. The scheme envisages that I can buy my bond only if I am KYC complaint and therefore, it would be known somewhere that this gentleman has bought Electoral Bond for being contributing to...

CHIEF JUSTICE DY CHANDRACHUD: The balance sheet does not reflect which bond he has bought. The balance sheet only reflects the total amount which has been spent on contributions.

TUSHAR MEHTA: Yes, the total bond purchased. The amount, not to whom it is given. It need not My Lord Otherwise, also it is never. If I buy My Lord, say, *Kisan Vikas Patra* not a comparable thing. It doesn't show, the balance sheet would not show it's gifted to my daughter. It shows only buying of *Kisan Vikas Patra*. Now, when it is given to a political party, the political party would deposit in a designated account. There is a minute scheme which is prepared and that designated account also will have to reflect in the Statement of Accounts of that political party, which will be filed before the Election Commission. The Election Commission would know that at least 500 crores have come by way of clean money. And both of them will be reflecting that in their respective books of accounts which the Honourable Minister says in case of cash nobody knew. I may go with a bag of 50 crores, give it to Mr. X of, who is the President of, whatever of, a political party and nobody would know what I have given, to whom I have given, whether it is rich political party or not, what use it is put to? Nothing. Therefore, he says that significantly, we'll be able to tackle this problem. Then, My Lord, it is in order to ensure that the transformation into... I'm sorry that I have seen. Now, this is wrongly mentioned as article written, but it was a statement made by the Honourable Finance Minister published in, My Lord, Press Information Bureau. That is very very relevant for Your Lordships assistance. Your Lordships have on page 24, para 64?

CHIEF JUSTICE DY CHANDRACHUD: Yes.

TUSHAR MEHTA: I can read it from the original, which is at page...

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CHIEF JUSTICE DY CHANDRACHUD: We can read it right here only. You can read it here, no problem. You have extracted the whole of it.

TUSHAR MEHTA: I can read it from here. It's not extracted in full. Better Your Lordships read from the book. It would be unfair not to read the whole. It's PDF 14, Volume 2.

CHIEF JUSTICE DY CHANDRACHUD: Volume?

TUSHAR MEHTA: Volume 2, PDF.

CHIEF JUSTICE DY CHANDRACHUD: Page 14?

TUSHAR MEHTA: 14. PDF page 14. First and second para we have not quoted because that is already there, in the budget speech of the Honourable Minister. Your Lordships would find, I'm not reading but just see, India is the largest democracy in the world. However, despite strengthening various institutions for the last seven...

CHIEF JUSTICE DY CHANDRACHUD: This appears to be an article by Mr. Jaitley, because this also says, following the text of the article written by Mr... maybe it was published in some newspaper at that time.

TUSHAR MEHTA: No, it was Press Information Bureau. But I'll check-up. But I was told My Lord there were some confusions, or, My Lord, misgivings, and therefore it was more by way of a statement. But be that as it may, indisputably written by the then Honourable Minister. A major step, second paragraph. Can I? I'm sorry. A major step was taken during the first NDA Government. The Income Tax Act was amended to include a provision that donations made to political parties would be treated as expenditure and would thus give a tax advantage to the donor. If the political party disclosed its donations in the prescribed manner. It would also not be liable to pay any tax,. A political party was expected to file its return both, with the Income Tax authorities and Election Commission. It was hoped that donors would increasingly start donating money by cheque. Some donors did start following this practice, but most of them were reluctant to disclose the details of the quantum of donation given to a political party. This was because they feared consequences visiting them from political opponents. The law, there are Governments of other political dispensation in states. So that is how My Lord, we balance the side. It's not only the Central Government which rules. In a federal setup if you, for example, if somebody were to pay BJP in West Bengal, I'm just giving

1 it hypothetical example, then some other party might victimize, might victimize. It's not an
2 allegation, it's an illustration. The law was further amended during the UPA Government... I'll
3 give another example so that my learned friend is satisfied.

4

5 **KAPIL SIBAL:** It's a very apt example. Why [UNCLEAR]

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** He agrees with you.

8

9 **TUSHAR MEHTA:** In Madhya Pradesh, somebody contributes to Congress. Maybe BJP
10 might victimize. Now it balances. Now there is a level playing field between both parties.

11

12 **KAPIL SIBAL:** No there's no level playing field on the funding. The rest is the level playing
13 field.

14

15 **TUSHAR MEHTA:** This was on the lighter side. Some donors did start following this
16 practice, but most of them were reluctant to disclose the details of quantum of donation given
17 to a political party. This was because they feared consequences visiting them from political
18 opponents. The law was further amended during the UPA Government to provide for pass
19 through Electoral Trust so that the donors would park their money with the Electoral Trust,
20 which in turn would distribute the same to various political parties. Both these reforms, taken
21 together, resulted in only a small fraction of donation coming in the form of cheques. Please
22 mark this. This is what ultimately the experience was. In order to make a serious effort to carry
23 forward this reform process I had announced in my budget speech for the year 17-18, that the
24 existing system would be substantially widened and donations of clean money could be made
25 to political parties in several ways. A donor could enjoy a tax deduction by donating in cheque.
26 Donors would also be free to donate money online to political parties. A cash donation to a
27 political party could not exceed an amount of Rs 2000, etc. Please see next para, I do believe
28 that donations made online or through cheques remain an ideal method of donation to
29 political parties. However, these have not become very popular in India, since they involve
30 disclosure of donor's identity. This is the heart and soul on which My Lord, either I can satisfy
31 persuading Your Lordships, or I fail. The confidentiality...

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** So the heart, really. I mean, that's where, frankly,
34 Solicitor you're very fair. The heart of it is whether we accept this submission that look, if you
35 require disclosure of identity...

36

37 **TUSHAR MEHTA:** The scheme fails. Then we go back to the earlier thing or unless...

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CHIEF JUSTICE DY CHANDRACHUD: Whether we like it or not, according to you our political system is such, that they would be reprieved that there would be a sense of vindictiveness if the... that well, you paid this to this particular party.

TUSHAR MEHTA: And that incentivized payment by cash.

JUSTICE SANJIV KHANNA: There are two aspects to it. One, as pointed out, whether by giving confidentiality to the donor, a greater objective or greater public...

TUSHAR MEHTA: A larger public interest is served.

JUSTICE SANJIV KHANNA: The second is partial confidentiality.

TUSHAR MEHTA: Partial?

CHIEF JUSTICE DY CHANDRACHUD: What I said, selective confidentiality. That's what my learned brother is emphasising.

JUSTICE SANJIV KHANNA: Because what happens is the person who is in power can have access to it.

TUSHAR MEHTA: I will show he will not be able to. That's what...

JUSTICE SANJIV KHANNA: That's the grey area. The other side will not agree to it. You may say so but the other side will not agree to it.

TUSHAR MEHTA: [UNCLEAR] before Your Lordships. If we agree to it or...

JUSTICE SANJIV KHANNA: And coupled with, their case will be coupled with number of cases against the opposition. You may be justified in saying there is a violation of law, therefore cases are justified.

CHIEF JUSTICE DY CHANDRACHUD: There is a statutory obligation on State Bank of India to maintain the confidentiality? You presume confidentiality before their banks [UNCLEAR], that's all.

1 **TUSHAR MEHTA:** There is. I will show that. There is confidentiality and when...I know
2 what is following from Your Lordships. In a raid, we have to go with counting machines, not
3 one machine, then we are being victimized.

4

5 **JUSTICE SANJIV KHANNA:** You're not. We're not saying that.

6

7 **TUSHAR MEHTA:** Yes.

8

9 **JUSTICE SANJIV KHANNA:** Look, if you have gone to the court, if there is a wrongdoing,
10 if there is illegality.

11

12 **TUSHAR MEHTA:** Yes, there are courts My lord.

13

14 **JUSTICE SANJIV KHANNA:** Then they'll obviously not support that. They'll support the
15 right side of the law. But the issue which is raised is if there is a selective confidentiality, then
16 what happens? Third aspect, which is there is, where this third aspect, because while dealing
17 with the first aspect itself, which is, or the second aspect itself, if confidentiality is given, what
18 is the... how do we ensure what was called the protection in one says *quid pro quo* by another
19 speaker. How do we ensure that this is checked?

20

21 **TUSHAR MEHTA:** That I have not paid money to get a favour. Let me put it as plainly as
22 possible. From the scheme I'll be able to satisfy Your Lordship. This concept of selective
23 confidentiality. I have to remove, that there is complete confidentiality. Between the two, there
24 is none. There can be, there need to not be, but the Government cannot go through that, pass
25 through that and find out from decoding whether my learned friend has given to A party and
26 not me. That I'll be able to show from the scheme. But ultimately, you'll have to trust
27 somewhere. For example, if everything is to be shown to say Election Commission. In the
28 Election Commission there can be a, My Lord, leak. You'll have to trust somewhere, you have
29 to trust somewhere. When...

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** It is not liable to give rise to say, I mean, a
32 possibility, it's a question, it's not a hypothesis, of legalizing kickbacks, because as you rightly
33 said Solicitor earlier, in the earlier scheme what would happen is say a rain maker for a political
34 party. ABC political party. He would collect some money. He collects 50 crores. He's not going
35 to deposit 50 crores in the coffers of the political party. He has his own share in that. Now,
36 basically the benefit of this. Let's look at the positives, so to speak, the benefit of it is that you
37 are legalizing whatever the motivation for the receipt of the funds. But now it goes to the party.

1 It doesn't go to the individual. That's the benefit. The party gets it as opposed to the individual
2 rainmaker would have got it earlier.

3

4 **TUSHAR MEHTA:** My Lord, I'll...

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** And we have no way of knowing whether this is
7 really also legalizing the motive for the inflow of the fund.

8

9 **TUSHAR MEHTA:** My Lords kindly see... I'll just answer that in detail tomorrow.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** We got your point.

12

13 **TUSHAR MEHTA:** I will just My Lord, leave one thought.

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** We'll reflect on it which is your case is, that look,
16 this is the political system, whether you like it or not, whether we like it or not. This was the
17 political system, this is how it operated. We have at least tried to improve upon it. The fact that
18 we don't succeed doesn't reach out to the constitutional validity of it. Maybe we are... we have
19 not improved upon the system, but we have tried to improve upon the system.

20

21 **TUSHAR MEHTA:** I'm grateful. One thing...

22

23 **KAPIL SIBAL:** I suppose in this argument, I hope Your Lordships are talking about his
24 argument.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, yes, that's his argument.

27

28 **JUSTICE SANJIV KHANNA:** If you can formulate [UNCLEAR] we are very open to
29 everything.

30

31 **TUSHAR MEHTA:** My Lord, forget the scheme.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** He has pointed out what was the regime before.

34

35 **KAPIL SIBAL:** That's right. That's right.

36

37 **TUSHAR MEHTA:** My Lord, forget...

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KAPIL SIBAL: Do away with black money has to be the My Lords... we are all on one platform on that.

PRASHANT BHUSHAN: [UNCLEAR] very simple which I had pointed out, if they wanted to deal...

TUSHAR MEHTA: Then you have to go to Parliament. That way you can't find out here as a public interest litigant.

KAPIL SIBAL: You allow all this and distribute it amongst all these candidates. Simple, allow all this.

JUSTICE SANJIV KHANNA: Just one more query Mr. Mehta with regard to the unaccounted... that is to 20,000 now reduced to 2000, the quantum which has been received by all the parties and how...

TUSHAR MEHTA: It is there in the compilation which I have filed.

JUSTICE SANJIV KHANNA: If it is there then it is fine.

TUSHAR MEHTA: But I am just leaving a thought with Your Lordships. I'll respond tomorrow. But suppose this scheme is not in existence. I want to give a kickback. I will pay. Kickback has to be by way of a...

CHIEF JUSTICE DY CHANDRACHUD: By way of cash,

TUSHAR MEHTA: Cash. Now even considering the case to be the worst, the amount will come in white money and will come in the official channel.

CHIEF JUSTICE DY CHANDRACHUD: It's legalizing the kickback, it is giving the money to the political party as opposed to people who are involved.

TUSHAR MEHTA: It would still be an offense. It would still be an offense. I'll be able to satisfy...

1 **JUSTICE SANJIV KHANNA:** The difficulty... the difficulty may be because if it's given by
2 the political bond or the, sorry, the Election Bond, then the issue is, it's all under protected
3 under the umbrella of confidentiality.

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** Confidentiality.

6

7 **JUSTICE SANJIV KHANNA:** That's the problem.

8

9 **TUSHAR MEHTA:** Yes, that's the heart and soul of the scheme. That's the only incentive of
10 the scheme.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** You can maintain confidentiality, which is to
13 ensure... we take your point... that confidentiality is designed to ensure that people are not
14 victimized for contributing.

15

16 **TUSHAR MEHTA:** And incentivized to pay by...

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** We are not saying that, that would be a better
19 scheme or that the government should adopt the scheme. That's not the point. But if you really
20 want to have that scheme under a level playing field, then all these donations should be given
21 to the Election Commission of India, which will then distribute it on an equitable basis.

22

23 **KAPIL SIBAL:** That's what I was saying, My Lords.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** You'll realize no donations come...

26

27 **KAPIL SIBAL:** That's correct, that's correct.

28

29 **TUSHAR MEHTA:** Then, My Lord, nothing will come, and everything will be by cash.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** You're absolutely right. That's what exactly we
32 said, which shows us the motivation for these donations.

33

34 **TUSHAR MEHTA:** Obligated, My Lord.

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** Tomorrow, we'll continue.

37

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END OF DAY'S PROCEEDINGS