

## Political Funding and Electoral Bond Scheme in India: A Legal and Constitutional Analysis

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*Citation: Rajta, P, & Richa. (2025). Political Funding and Electoral Bond Scheme in India: A Legal and Constitutional Analysis. International Journal of Innovations & Research Analysis, 05(04(I)), 221–228. [https://doi.org/10.62823/IJIRA/05.04\(I\).8393](https://doi.org/10.62823/IJIRA/05.04(I).8393)*

### ABSTRACT

*This paper examines the constitutional issues raised in Association for Democratic Reforms v. Union of India with a primary focus on changes that impact the transparency of political funding. The removal of limits on corporate donations as outlined in Section 182(1) of the Companies Act, combined with the introduction of the Electoral Bond Scheme, which allows donations to remain anonymous, has sparked concerns about fairness and transparency in elections. The confidentiality of the scheme stops the public from knowing who donates, which limits what voters can access. Petitioners argued these changes violate the promise of equality under Article 14 and Article 19(1) (a) of the Constitution, protecting free speech and the right to information. The Court examined whether unlimited corporate funding, combined with forced secrecy, undermines democratic values by creating opportunities for undue influence and reducing transparency during elections. Using constitutional principles such as proportionality and balancing conflicting rights, the Court attempted to weigh the right of voters to know against the privacy of donors. The analysis found that alternatives already exist such as Section 29C(1) of the Representation of the People Act which requires parties to disclose donations exceeding twenty thousand rupees, thereby offering a better balance between privacy and openness. Ultimately, the Court ruled that amendments permitting unrestricted corporate donations and concealing donor identities through the Electoral Bond Scheme infringe upon fundamental rights. The verdict highlighted the importance of voters having access to relevant information and warned against unchecked financial power in politics and reaffirming the commitment of the Constitution to fair elections.*

**Keywords:** Political Funding, Electoral Bond, Financial Power, Constitutional Principles, Petitioners.

### Introduction

In *Association for Democratic Reforms v. Union of India*<sup>1</sup>, a set of petitioners approached the Apex Court of India under Article 32 of the Constitution, raising doubts about how the Electoral Bond Scheme operated in practice. They argued that the scheme introduced a method that allowed contributors to send money to political parties without any public trace, which raised many questions about the openness of elections. Their arguments did not stop at the scheme alone as they also drew attention to the changes introduced by the Finance Act of 2017. That Act amended several previous statutes, including the Reserve Bank of India Act, 1934, the Representation of the People Act, 1951, the Income Tax Act, 1961 and the Companies Act, 2013. The petition before the Court sought to demonstrate how these adjustments created a new space for political funding that was not easily accessible to ordinary people. The legal backdrop for the dispute becomes apparent on reading Section

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31 of the Reserve Bank of India Act. This provision limits the power to issue promissory notes or similar instruments payable to the bearer, retaining that authority with the Reserve Bank of India or the Central Government in certain situations. Following the introduction of the 2017 Finance Act, a new subsection was added, identified as Section 31(3), which enabled the Central Government to grant permission to scheduled banks to issue instruments now known as electoral bonds. Once this shift was made, it created a need to place the amendment next to the older system of rules on political funding, since only then it could be understood how large a departure it actually made.<sup>2</sup> The older rules addressed matters such as corporate donations, the duty to disclose sources of political finance and the tax benefits that donors sometimes utilized. When these parts are read together with the newer scheme, it becomes clearer that the structure of political funding has moved in directions that many observers felt uneasy about, though the exact scale of the change was difficult for some to judge at first glance.

### **Meaning of Electoral Bonds**

The Electoral Bonds Scheme came into effect on January 2, 2018, when the Ministry of Finance, Department of Economic Affairs, introduced the new arrangement. The move relied on the power granted by Section 31(3) of the RBI Act, which had been inserted not long before, although many readers at that time were still trying to understand its scope. Electoral bonds were introduced as bearer-style banking papers that resemble promissory notes in a loose manner, yet they operate in ways that are not quite identical in day-to-day use. These instruments keep the buyer's name hidden, allowing a donor to move money without drawing much public attention. This part of the scheme left a number of people uneasy, even as the government continued to claim it was following the law correctly.

Under this structure, the ability to purchase a bond is limited to Indian citizens and entities that exist or were formed within Indian territory with no foreign bodies permitted to participate in the process. The term 'person' is drafted in a broad sense, encompassing natural individuals, Hindu Undivided Families, companies, partnerships, unincorporated groups and various artificial legal units that appear in different statutes, along with any agency or branch that falls under their control. A buyer can act alone or with one or more others and the rules do not attempt to dictate how these groups should come together, which has caused some confusion for new applicants. The wording in notifications also led to a few errors as some applicants misread the requirements in slightly incorrect ways and banks, too, sometimes misinterpreted parts of the scheme in the early months.

A political party may redeem a bond only if it meets the criteria fixed in the scheme, the main one being registration under Section 29A of the Representation of the People Act, together with at least one percent of votes in the latest general election to either the Lok Sabha or a State Assembly. Parties that qualify can deposit the bonds only in accounts held with authorized banks and the State Bank of India has been chosen as the sole institution that issues and redeems these papers. Payments for purchases are accepted only in Indian currency, via cheques, demand drafts, electronic clearing or transfers. However, banks sometimes struggle with heavy crowds or confused applicants who fill out key parts of the form incorrectly, which slows the queue.

The bonds are printed in fixed denominations and no other denominations are permitted. Each bond remains valid for only fifteen days from the date it is issued and a political party that does not deposit it within this window loses the right to draw value from it, which happened more often than expected. Any bond not redeemed is then transferred to the Prime Minister's Relief Fund, a step that drew debate among academics who wondered if such funds should be allocated elsewhere but the scheme did not offer an alternative at that point. A person wishing to buy a bond must begin by completing the form shown in Annexure II of the scheme. The bank will issue the bond only after verifying that all the listed details are properly supplied. If the applicant fails the Know Your Customer check or misses any basic requirement, the bank will reject the request. The scheme does not clearly outline a process for appealing such a decision. Once a bond is issued, it cannot be returned or refunded and this part of the rule frustrated some buyers who made small mistakes in amounts or timings. All personal and financial information submitted to the bank is to be kept confidential, unless a court orders disclosure or an agency initiates a criminal investigation. Banks are strongly cautioned on this point. The scheme opens a ten-day window for sales in January, April, July and October and in years when the Lok Sabha election is scheduled, an extra thirty days are added, which often creates a rush that some branches struggle to manage smoothly.<sup>3</sup>

No interest is added to any electoral bond and buyers do not have to pay commission, brokerage or even a small service charge during the purchase, which many found surprisingly

straightforward for such an unusual instrument. For tax purposes, the value carried by these bonds is treated as voluntary contributions that political parties receive and this amount falls under Section 13A of the Income Tax Act, where such contributions are exempt from tax, though a few readers misread the provision in the early years. The scheme also makes it clear that electoral bonds cannot be traded in any secondary market. This rule was intended to prevent people from turning the instrument into a kind of negotiable paper; however, some confusion still arose because the language felt slightly stiff to ordinary buyers.

### **Constitutionality of the Electoral Bonds Scheme**

The petitioners approached the Supreme Court through Article 32, requesting that the Court declare the Electoral Bond Scheme unconstitutional, along with the various legislative changes introduced by the Finance Act of 2017. They questioned Section 135 of the Finance Act, which amended Section 31 of the RBI Act; Section 137, which altered Section 29C of the Representation of the People Act; Section 11, which modified Section 13A of the Income Tax Act; and Section 154, which impacted Section 182 of the Companies Act. The petition brought together multiple strands of law, although some parts of the record showed that even lawyers found the layering of amendments somewhat confusing at first reading.

The consolidated petitions presented to the Court raised two central issues that required careful judicial consideration and each had a slightly different texture. One issue was whether removing limits on corporate donations through the alteration to Section 182(1) of the Companies Act weakens the idea of free and fair elections and thereby violates Article 14. The second issue was whether the non disclosure of political contributions, allowed under the scheme and enabled by changes to Section 29C of the Representation of the People Act, Section 182(3) of the Companies Act and Section 13A(b) of the Income Tax Act, interferes with the citizens right to receive information under Article 19(1)(a). Many observers felt that the court was being asked to reconsider older assumptions about transparency, which made the hearing more complex than usual.<sup>4</sup>

During the hearings, Advocate Prashant Bhushan submitted that the scheme lacked a clear and rational basis for its introduction and he pointed out that the Finance Minister had once claimed the goal was to improve transparency by passing donations through formal banking channels. Yet even after the scheme existed, cash donations continued under the law, which he felt diluted the basic purpose rather than strengthening it. He also argued that the government had ignored serious objections raised by both the Reserve Bank of India and the Election Commission and suggested that such disregard made the policy-making process appear hurried and careless at times. The submissions stated that these amendments together create several constitutional concerns. First, they weaken earlier statutory safeguards on transparency in the Representation of the People Act and in the Companies Act, making those safeguards nearly pointless in practice. Second, they cut off important information that voters are entitled to receive under Article 19(1)(a), especially since political parties hold influence over law-making as seen under the Tenth Schedule. Third, the opacity allows for corrupt exchanges between donors and political entities, which undermines the dignity and safety of public life and impacts Article 21. Fourth, shareholders lose access to information about how companies allocate their funds and this harms their role as stakeholders in corporate governance. Fifth, the scheme allows certain parties, mostly those in power at the state or central levels, to gain financial advantages that disturb the level playing field needed for electoral fairness, which in turn harms the health of democratic competition itself. Advocate Kapil Sibal presented arguments trying to cover both sides of the voting rights issue. He explained that the negative aspect protects voters from being unfairly forced or pressured, while the positive side means voters must have access to full and relevant information before making their choice. He stressed that such information should include details on where political parties obtain their funding because without that knowledge, the entire election process becomes unfair and questionable.

He pushed back against the Union's request for judicial restraint, saying this matter deals more with electoral rules than with economic policy so it deserves close judicial attention. He argued that laws changing basic election rules should not be assumed constitutional by default. Sibal pointed out that corporate donations don't fit with constitutional values since companies are not citizens and thus cannot claim rights under Article 19(1)(a). He said the scheme undermines political equality by allowing companies to have outsized influence through unlimited donations, thereby distorting the core idea of one person, one vote. He also highlighted the amendment to Section 182(3) of the Companies Act, which allows companies making losses to donate without any limit. According to him, this opens the door

for businesses to gain undue influence in politics while hiding these donations from shareholders, thereby violating common transparency practices in corporate governance.<sup>5</sup> On the other hand, the Attorney General defended the scheme and related amendments before the Court. He stated that political parties naturally develop in a free democracy and are essential for governance and representation. So, parties have a right to get support, including financial backing. The scheme, he argued, allows individuals and groups to donate through formal banking channels, moving away from secretive cash donations. The Union claimed this change enhances the credibility and accountability of political funding.

### **Confidentiality for Donors and Privacy Concerns**

Confidentiality for donors was described as a central feature of the scheme. The argument was that protecting donors' identities encourages honest contributions without fear of coercion or retaliation. This privacy safeguard allows individuals to support parties freely. It was also argued that there is no absolute or general right for citizens to know all financial details about political parties. The Court's recognized right to information was said to be mainly limited to helping voters decide about candidates with criminal records or pending charges. Regarding corporate donations, the Attorney General stated that these matters are for lawmakers and broader democratic policy, not for courts to decide as individual rights questions.<sup>6</sup>

Supporting this, the Solicitor General pointed out that, prior to the introduction of electoral bonds, most donations were made in cash, which allowed unregulated money to flow and compromised election fairness. The new system was presented as a reform aimed at removing black money from political funding. The Solicitor General also said the state has a duty to protect individual privacy, including political choices. The anonymity provided by the scheme was considered vital for protecting donors' political freedom. The Union requested that the Court exercise caution in considering this challenge, urging it to employ judicial restraint, particularly in matters of economic policy. They relied on earlier cases where courts usually took a step back from interfering with financial or economic regulations. The common view in many judgments is that laws or government actions related to economic issues receive less stringent review compared to those involving civil rights, such as freedom of speech or religion. For instance, in *Swiss Ribbons v. Union of India*<sup>7</sup>, the Court stated that legislatures have broad freedom to experiment with new economic policies. A similar approach was followed in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*<sup>8</sup>, where changes to the Insolvency and Bankruptcy Code were challenged. However, the Court inquired whether these amendments truly align with economic policy. It stated that the Court cannot simply accept the government's assertion that a law is economic; it must examine closely what the law actually regulates.<sup>9</sup>

The change to Section 31 of the Reserve Bank of India Act creates a new type of bearer financial instrument, which might be considered financial in a narrow sense. However, the other amendments fall into two main groups: first, those that prevent the disclosure of political donation information and second, those that allow companies to donate unlimited amounts of money to political parties. Both of these are closely tied to the electoral process itself. Documents between the Ministry of Finance and the Reserve Bank of India revealed concerns that these bonds could be used as an alternative currency. The government defended the scheme by saying it aims to reduce black money in elections and protect the privacy of donors. Given this, it's clear the government itself called these changes electoral reforms. Therefore, the Court rejected the notion that these amendments were solely about economic policy.

### **Election Law and Democratic Principles**

Another key issue was how much courts should presume laws are constitutional, especially when it comes to election laws. Petitioners argued that election laws shouldn't get this presumption automatically because these laws change the basic structure of democracy and so deserve closer judicial scrutiny. The idea behind presuming laws are valid is based on two things. First, it comes from democratic legitimacy, the idea that elected lawmakers answer to the people and work in their interest. Second, it assumes legislatures know more about policy details than courts, which mainly interpret the law. But the Court clarified that this presumption doesn't apply when a law violates fundamental rights found in Part III of the Constitution. If there's an obvious violation, then the government must prove the law is constitutionally valid. The petitioners also suggested that election laws should be completely exempt from this presumption with the Court didn't agree. It stated that no special exceptions can be made solely because of the subject. Like any law, election laws must be judged based on the evidence.

If someone points out a constitutional problem, the government must respond with clear and legally sound reasons to defend its actions.<sup>10</sup> The amendment to Section 31 of the Reserve Bank of India Act introduces a new type of bearer financial instrument, which may be viewed as financial in a narrow sense. Yet, the other amendments group into two main categories: first, those that block disclosure of political donation details and second, those that allow companies to make unlimited donations to political parties. Both relate directly to the electoral process itself. Records between the Ministry of Finance and the Reserve Bank of India reveal concerns that these bonds might be used as a kind of alternative currency. The government defended the scheme by stating it aims to curb black money in elections and preserve donors' privacy. Given this, it's clear the government itself classified these changes as electoral reforms. Therefore, the Court did not accept the claim that these amendments are purely a matter of economic policy.<sup>11</sup>

The legal reasoning emerging from the Association for Democratic Reforms and People's Union for Civil Liberties cases reflects a clear progression regarding the constitutional grounding for a voter's right to access information. This right, stemming from Article 19(1)(a), has been shaped by courts over two broad phases. Throughout these phases, the main idea remains constant: information that supports democratic participation should be accessible to voters. Since voting is a core political act, voters must have enough relevant details to make an informed decision. In the ADR case, the Court acknowledged that some disclosures could intrude upon the privacy of candidates or their families. Nevertheless, it held that such information should be disclosed when public interest outweighs privacy concerns. So, the right to information isn't without limits with it becomes essential when the public good demands it. Voters should receive all necessary information to make a reasonable electoral choice.

Petitioners, drawing from the principles in ADR and PUCL, argued that hiding financial donations made to political parties conflicts with freedom of speech and expression under Article 19(1)(a). Two key questions arise from this argument. First, whether disclosure requirements that apply to candidates should be extended to political parties. Second, whether knowing about parties' funding is vital for voters in making electoral choices. Political parties hold a major role in India's elections. Though the Constitution originally did not mention political parties, their importance has gradually been recognized over time. The addition of the Tenth Schedule in 1985, which deals with defections, demonstrates that lawmakers acknowledge the influential role of parties. Election laws themselves also highlight parties through provisions about registration, recognition and symbol allocation.<sup>12</sup> There are three reasons why parties matter as electoral actors. First, voters frequently pick candidates based on party symbols rather than personal qualities. Second, the parliamentary system depends on parties or coalitions having a majority to form a government. Third, the Tenth Schedule legally obligates parties to manage the conduct of their elected members. Given this institutional role, it seems logical and necessary to extend the right to information from candidates to political parties. Information on party funding should be understood in light of the core principles of electoral democracy.<sup>13</sup>

The Indian democratic model is based on political equality, expressed in two key ways. One, equal representation via the principle of one person, one vote. Two, constitutional reservations for disadvantaged groups, ensuring their participation in legislatures and shielding them from exclusion. However, formal equality does not eliminate real-world inequalities that impact political participation. Economic disparities clearly influence political engagement. Money given to parties opens access to decision-makers and can influence policy. This link between money and influence raises concerns, especially since laws don't restrict donations by time or purpose. Parties may receive funds year-round, used not only for campaigns but also for office upkeep or paying staff. Therefore, there is no clear legal separation between campaign funds and general party finances. This lack of clarity raises doubts about how money influences election results and subsequent government decisions.<sup>14</sup>

Financial contributions create potential for quid pro quo arrangements. Donors might expect policy favours in exchange. This risk increases when donations remain anonymous as is the case with the Electoral Bond Scheme. Lack of transparency undermines public trust and creates a murky overlap of political and economic power. For this reason, information about party funding is crucial for voters to make informed choices. Courts have stated before that access to relevant information is necessary for meaningful voting. By anonymizing donations, the Electoral Bond Scheme and related amendments deny voters critical insight into the connection between political funding and government decisions.

### Legitimacy of Voter's Access to Information

Then the question arises: can restricting voter access to information ever be justified? The Court applies the proportionality test to determine if limiting rights is acceptable. This test has four parts: First, is the aim legitimate, Second, is there a rational link between the restriction and the aim, Third, is this the least restrictive way to achieve the goal and Fourth, does the benefit outweigh the harm to individual rights. Initially, the State must demonstrate that the law pursues a valid objective and that the measure actually supports it. Here, the scheme's goal is to curb unaccounted money in elections. A former Finance Minister stated that donor secrecy encourages the channelling of funds through banks instead of cash. If the goal is to stop illicit electoral funding, it must fit under Article 19(2)'s exceptions. Some say preventing unaccounted money helps maintain public order. However, the Supreme Court has interpreted "public order" narrowly, referring to peace and stability, rather than financial matters. So, fighting illicit funding isn't clearly covered under Article 19(2). Even if the aim is accepted, the Court must examine whether the measure truly helps reach it. The State claims anonymity encourages formal banking donations. Even if this seems rational, the measure needs further scrutiny.<sup>15</sup>

According to proportionality, the law must be the least rights-infringing method. This requires checking if alternatives exist, determining if they work, assessing their impact on rights and evaluating the overall balance.<sup>16</sup> For example, donations of twenty thousand rupees or more made via direct electronic transfer are fully transparent. Electoral trusts also enable large donations while maintaining transparency and combating corruption. Therefore, the electoral bond method isn't the least restrictive choice. It restricts voter knowledge without adding benefits beyond less intrusive options. Because it fails the necessity stage, balancing harms and benefits isn't needed.<sup>17</sup> The State also argues that confidentiality protects donor privacy, which the Constitution is designed to safeguard. Two questions follow: Does informational privacy include political affiliation? And does donating to a party express that affiliation? The nine-judge bench in *Justice KS Puttaswamy v. Union of India* confirmed that informational privacy is protected, tied to the dignity and autonomy of individuals. Political beliefs are at the core of free expression. Revealing one's political preferences risks discrimination, surveillance or harassment, especially for those who dissent. Thus, informational privacy covers political affiliation. However, although the State claims that electoral bonds ensure donor anonymity, this privacy is imperfect. Administrative systems might trace donors. Parties can pressure donors after donations. So, the scheme isn't like a secret ballot and can't fully protect political views.

Courts have evolved methods to balance conflicting fundamental rights. Initially, the focus was mainly on public interest. Then single proportionality tests appeared and now courts lean toward double proportionality, weighing each right carefully. In *Campbell v. MGM Ltd*, Baroness Hale applied double proportionality to balance privacy and press freedom by comparing the weight of rights, checking justification of interference and applying proportionality to both. Justice Chandrachud in *Central Public Information Officer, Supreme Court v. Subhash Chandra Agarwal*<sup>18</sup> endorsed this, highlighting the need to consider benefits and costs to both rights instead of letting one override the other. India's proportionality framework assesses legitimacy, suitability, necessity and balance with the balancing stage including comparison of competing rights and their justifications. When two or more fundamental rights come into conflict, the first thing to consider is whether the Constitution prioritizes one over the other. If it doesn't, then each right must be carefully considered step by step. First, does the law or measure pursue a valid objective? Second, is there a reasonable connection between the law and that aim? Third, is the method used the least restrictive option available to achieve that goal? And fourth, does the harm caused to any right go beyond what is acceptable compared to the purpose it serves?

In the Puttaswamy decision<sup>19</sup>, the Supreme Court clarified that privacy is closely connected to all fundamental rights. Article 25's freedom of conscience covers the right to support political causes, sometimes through financial means. However, this freedom must be balanced with other rights, such as freedom of speech and expression. People who donate to political parties have privacy protections not only under Article 21 but also under Article 19(1)(a), which protects free expression and association. Therefore, the Constitution treats both the voter's right to know about political funding and the donor's privacy as equally important, without placing one above the other.<sup>20</sup>

Regarding the confidentiality provision in the Electoral Bond Scheme, especially Clause 7(4), it keeps donor information secret except in cases of court or investigative disclosure, effectively blocking public and voter access. The government argues this protects donor privacy while allowing limited disclosure when legally necessary. While the scheme's anonymity does serve privacy interests, the

secrecy clause conflicts with the public's right to transparency in election financing. This lack of openness limits voters' ability to make fully informed decisions. However, a less restrictive alternative is already in place. Section 29C(1) of the Representation of the People Act requires parties to publicly report donations exceeding twenty thousand rupees. This system strikes a balance between privacy and transparency by disclosing major donations while maintaining confidentiality for smaller ones. It gives voters meaningful information about substantial financial influences without compromising the privacy of minor donors. This approach meets the necessity requirement, unlike the broad anonymity allowed under electoral bonds.<sup>21</sup> Before 2017, Section 182(3) of the Companies Act required companies to disclose both the amount and the recipient of political donations in their financial statements. After the amendment, companies only have to report the total amount contributed annually. This provision should be read together with the amended Section 29C of the Representation of the People Act, which exempts parties from disclosing donations received through electoral bonds. Yet, Section 182(3) covers all methods of political funding, not just bonds. Previously, donations made via cheque or electronic transfer had to be disclosed both by companies and political parties.<sup>22</sup> The amendment essentially aligns company reporting requirements with the secrecy provisions of the bonds, which courts have already found unconstitutional. Petitioners argue that Section 154 of the Finance Act is clearly arbitrary and violates Article 14. It allows companies, including those operating at a loss, to make unlimited political donations and enables shell companies to funnel money. The government responds that labelling this an arbitrary misunderstanding of the law is incorrect as legislation by Parliament commands greater respect and courts apply different standards to subsidiary laws. Nevertheless, legislative history and judicial decisions show that unlimited corporate donations pose a threat to fair elections.<sup>23</sup> The Law Commission's 170th Report highlighted that companies strategically donate to influence policy outcomes. Cases such as *Kuldip Nayar v. Union of India*<sup>24</sup> and *PUCL v. Union of India*<sup>25</sup> emphasize that democracy depends on fair elections, which ensure equal opportunities.<sup>26</sup>

### Conclusion

Corporate donations have a greater impact on elections than individual contributions, due to both their size and the motivations behind them. These donations tend to be transactional rather than genuine expressions of political support. Before the amendment, donation caps tied to net profits limited these distortions. That safeguard no longer exists. Moreover, treating profit-making and loss-making companies equally weakens efforts to prevent quid pro quo politics, rendering the law evidently arbitrary. The Court's conclusion is straightforward. Section 154 of the Finance Act improperly equates companies with individuals in the context of political donations, permitting unchecked corporate influence in politics and governance and disregarding company income when setting donation limits. Therefore, the amendment allowing unlimited corporate funding and removing profit-based caps is unfair under Article 14 and must be struck down. Additionally, the Court found that the Electoral Bond Scheme, the exemption under Section 29C(1) of the Representation of the People Act (amended by Section 137 of the Finance Act 2017), Section 182(3) of the Companies Act (amended by Section 154 of the Finance Act 2017) and Section 13A(b) of the Income Tax Act (amended by Section 11 of the Finance Act 2017) violate Article 19(1)(a) and are unconstitutional. The Court also held that removing the cap on corporate political donations in Section 182(1) of the Companies Act is arbitrary, breaches Article 14 and must be invalidated.<sup>27</sup>

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