SYNOPSIS AND LIST OF DATES

05.08.1976	The Foreign Contribution (Regulation) Act, 1976 was enacted by the Parliament to serve as a shield in legislative armoury, in conjunction with other laws like the Foreign Exchange Regulation Act, 1973, and insulate the sensitive areas of national life like - journalism, judiciary and politics from extraneous influences from outside the country. It imposed prohibition on candidates for election from accepting foreign contribution from foreign sources.
26.09.2010	Foreign Contribution (Regulation) Act, 2010 was enacted by the Parliament. As per Section 54 (1) of this act, the earlier FCRA, 1976 was repealed. The definition of 'Foreign Source remained largely unchanged. Any liability incurred under the FCRA 1976 would continue under FCRA 2010.
Jan 2013	The petitioners herein filed Writ Petition (Civil) No. 131 of 2013 in the Hon'ble Delhi High Court titled *Association for Democratic Reforms vs Union of India & Ors.*, which drew

attention to the donations received by political parties from foreign sources.

28.03.2014 The Hon’ble Delhi High Court held the two major National political parties guilty of taking foreign funding and directed the Central Government and Election Commission of India (ECI) to take action against the two national parties within six months.

14.05.2016 Finance Bill, 2016, which was passed as a Money Bill, received the assent of the President on the 14th May, 2016 and Became Finance Act, 2016. The Finance Act brought in retrospective amendment to the FCRA, 2010 from to change the definition of what constitutes a foreign company in such a way that key beneficiaries of UK-based Vedanta group — the BJP and Congress — would not face legal scrutiny for donations, with effect from 26.09.2010.

29.11.2016 The SLPs filed against the Delhi High Court judgment by the two political parties were dismissed as withdrawn by this Hon’ble Court.

21.03.2017 The Hon’ble Delhi High Court issued contempt notice to Union of India on a petition filed by

	the petitioners (Contempt Petition (C) 233 of 2017). The petitioners had argued that the amendment in FCRA 2010 with effect from 26.09.2010 would not come to the aid of the two political parties. The High Court specifically recorded the contention of the petitioners that amendment made by Finance Act 2016 would not help the two political parties.
03.10.2017	This Hon'ble Court issued notice on a PIL filed by the petitioner No. 1 herein, being Writ Petition (Civil) No. 880 of 2017, challenging the provisions of Finance Act, 2016 and Finance Act, 2017 including the amendment to FCRA 2010.
09.10.2017	Hon'ble Delhi High Court on an application filed by Central Government for extension of time, gave the Government time of 6 months from the date of the order, as a last opportunity, to take action against the two political parties for violations of FCRA.
03.02.2018	Letter was sent by Petitioner No.2 to the Respondents, Prime Minister office and various other government offices expressing his anguish on receiving news reports that vide Finance Bill of 2018, retrospective amendment

was being brought to the Foreign Contribution Regulation Act (FCRA), retrospectively from 1976 to condone illegalities committed by the political parties mentioned above. The Petitioner No.2 also requested the Respondents to desist from enacting such amendment with retrospective effect.

14.03.2018 Lok Sabha passed the Finance Bill 2018 whereby a retrospective amendment was made to the Finance Act of 2016. The amendment added the applicability of the proviso added by the Finance Act, 2016 retrospectively from 1976, instead of 2010.

21.03.2018 The Petitioner No.2 sent another letter to the Respondents, Prime Minister Office and various other government offices expressing his displeasure over passing of the Finance Bill, 2018 by the Lok Sabha allowing the retrospective amendment mentioned above.

30.03.2018 The Ministry of Finance notified the Finance Act, 2018 amending FCRA 2010 with effect from 1976.

.04.2018 Hence, the present Writ Petition.

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

Writ Petition (Civil) No. ..... Of 2018

PUBLIC INTEREST LITIGATION

1. Association for Democratic Reforms
Through Its Founder-Trustee
Prof. Jagdeep S. Chhokar
T-95, 2nd Floor, C.L House,
Gautam Nagar,
New Delhi-110049
PH: 09999620944
Email: jchhokar@gmail.com ... Petitioner No. 1

2. E.A.S.Sarma
14 - 40 - 4/1 Gokhale Road
Maharanipeta
Visakhapatnam - 530002
Email: eassarma@gmail.Com
PH: 09866021646 .... Petitioner No. 2

VERSUS

1. Union of India
Through its Secretary
Ministry of Home
North Block
Central Secretariat
New Delhi-110001 ...The Respondent

To,
THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUDGES OF THE HON'BLE SUPREME COURT OF INDIA

The Humble Petition of
The Petitioners above-named

MOST RESPECTFULLY SHOWETH:

1. The Petitioners are filing this writ petition under Article 32 of the Constitution of India, in public interest, challenging the amendments made in the Foreign Contribution Regulation Act, 2010 through the Finance Act, 2016 and Finance Act, 2018, which has been passed as a Money Bill with retrospective effect from the year 1976. The said amendments have been made in an attempt to overturn the judgment passed by the Delhi High Court holding the two major political parties the BJP and the Congress guilty of taking foreign funding, against which the SLPs were dismissed by this Hon'ble Court. The said amendments have opened doors to unlimited political donations from foreign companies and thereby legitimizing financial contributions received from foreign sources. The same is also against the principle of separation of powers since it has overruled the Delhi High Court judgment (against which SLPs were dismissed as withdrawn). The Delhi High Court had held the two major national political parties (BJP and Congress) guilty of taking foreign funding in violation of FCRA 1976. It is submitted that amendment made in FCRA 2010 vide the Finance Act 2016 is already under challenge before this Hon'ble Court vide WPC 880 of 2017 in which this Hon'ble Court has issued notice.

a) Petitioner No. 1 herein is Association for Democratic Reforms (ADR), a Trust registered with Registration No. F/9/9339/AHMEDABAD. ADR has been at the forefront of

electoral reforms in the country for the last 14 years from wide-ranging activities including advocacy for transparent functioning of political parties, conducting a detailed analysis of candidates in every election, and researching the financial records of political parties including their income-tax returns. It was on ADR's petition that this Hon'ble Court ordered all election candidates to declare their criminal records and financial assets. The Organization is registered as Public Trust under Mumbai Public Trust Act, 1950. Under the practice followed by ADR, the Founder-Trustee Prof. Jagdeep S Chhokar is authorised to institute proceedings on behalf of petitioner no. 1. The Registration Certificate of Petitioner No.1 and authority letter are being filed along with the vakalatnama. The petitioner organization's annual income is Rs. 75,27,929 (FY/13-14) (PAN No.AAAAA2503P). Petitioner No. 1 not being an individual does not have a National UID number.

Petitioner No.2 herein is Mr. E A S Sarma, former Secretary to the Government of India. He has worked extensively on violations of FCRA by the two political parties. He was a co-petitioner before the Delhi High Court in WPC 131 of 2013 in which judgment against the two political parties was passed. His UID number is 853422610935. His annual income is about 15 lakhs per year. His PAN number is AABPE1384L.

The petitioners have no personal interest, or private/oblique motive in filing the instant petition. There is no civil, criminal, revenue or any litigation involving the petitioners, which has or could have a legal nexus with the issues involved in the PIL.

The Petitioner No. 2 has written two letters dated 03.02.2018 and 21.03.2018 to the Respondent requesting not to bring in retrospective amendment in FCRA. A copy of letter dated 03.02.2018 and 21.03.2018 sent by Petitioner No. 2 to the Respondent are annexed as Annexure P1 (Pg _____) and Annexure P2 (Pg _____) respectively. But no response has been received to these letters and the respondent has notified the Finance Act 2018 amending FCRA with effect from 1976.

2. That the Petitioners submit that the Finance Act, 2016 has retrospectively amended the Foreign Contribution Regulation Act (FCRA), 2010 with effect from 2010, to allow foreign companies with subsidiaries in India to fund political parties in India, effectively, exposing the Indian politics and democracy to corporate lobbyists who may want to further their agenda. The amendment to the FCRA, 2010 is already under challenge in the Writ Petition filed by Petitioner No.1 viz Writ Petition (Civil) 880 of 2017 on which vide order dated 03.10.2017 this Hon’ble Court issued notice to the Respondents. Since the said amendment to FCRA 2010 did not completely fulfil the ulterior design of the political parties which dominate Parliament, therefore, by way of Finance Act 2018, the

amendment made in FCRA 2010 has been given effect from 1976 instead of 2010.

Brief Background

3. That in 1976, the Foreign Contribution (Regulation) Act, 1976 (hereinafter referred to as "**FCRA, 1976**") was enacted by the Parliament to serve as a shield in legislative armoury, in conjunction with other laws like the Foreign Exchange Regulation Act, 1973, and insulate the sensitive areas of national life like - journalism, judiciary and politics from extraneous influences stemming from beyond our borders. It imposed prohibition on candidates for election from accepting foreign contribution from foreign sources. Section (e) of the Act defined 'Foreign Source' which included:

"(i) the government of any foreign country or territory and any agency of such government,

(ii) any international agency, not being the United Nations or specialized agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification in the Official Gazette, specify in this behalf,

(iii) a foreign company within the meaning of section 591 of the Companies Act, 1956 (1 of 1956), and also includes

(a) a company which is a subsidiary of a foreign company, and

(b) a multi-national corporation within the meaning of this Act.

(iv) a corporation, not being a foreign company, incorporated in a foreign country or territory,

(v) a multi-national corporation within the meaning of this Act,

(vi) a company within the meaning of the Companies Act, 1956 (1 of 1956), if more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely,-

(a) government of a foreign country or territory,

(b) citizens of a foreign country or territory,

(c) corporations incorporated in a foreign country or territory,

(d) trusts, societies or other associations of individuals (whether incorporatedor not), formed or registered in a foreign country or territory."

The main reason behind enacting the said law was to prevent monetary aid/donations to gain dominance so as to interfere with the internal affairs of the country, so as to safeguard rule of law and ensure protection of fundamental rights guaranteed under Article 14 and 21.

4. That Foreign Contribution (Regulation) Act, 2010 hereinafter referred to as ("**FCRA, 2010**") was enacted by the Parliament. Through Section 54 (1) this act repealed the earlier FCRA, 1976. However, the definition of 'Foreign Source remained unchanged.

5. That on 28.03.2014, the Hon'ble High Court of Delhi in Writ Petition (Civil) No. 131 of 2013 filed by the petitioners herein held Congress and BJP guilty of violating FCRA 1976. The petition highlighted donations made to the political parties i.e. BJP and Congress by M/s Sterlite Industries Ltd. And M/s Sesa Goa Ltd., companies

registered in India under the Companies Act, 1956 and more than 50% of their issued share capital was held by Vedanta Resources PLC, a company incorporated under the Companies Act, 1985 and registered in England and Wales with registration No.04740415. The Hon'ble High Court held the two major National political parties guilty of taking foreign funding and directed the Ministry of Home Affairs (MHA) and Election Commission of India (ECI) to take action against the two national parties within six months. Relevant Para has been reproduced below:

> *"The second direction would concern the donations made to political parties by not only Sterlite and Sesa but other similarly situated companies/corporations. Respondents No.1 and 2 would relook and reappraise the receipts of the political parties and would identify foreign contributions received by foreign sources as per law declared by us hereinabove and would take action as contemplated by law. The two directions shall be complied within a period of six months from date of receipt of certified copy of the present decision."*

The Hon'ble High Court gave six months to the respondents comply with the directions issued. It has been more than four years now and till date, none of the directions have been complied with. The judgment passed by the Hon'ble High Court dated 28.03.2014 in WPC 131 of 2013 is annexed as **Annexure P3** (Pg _____)**.**

6. That Finance Bill, 2016 was introduced in Lok Sabha as Bill No. 18 of 2016 and passed on the 5th May, 2016 to give effect to the financial proposals of the Union Government for the Financial Year 2016-17 having received the assent of the President on the 14th May, 2016. In 2016, for the first time the Finance Bill was used to bring amendments to the FCRA, 2010 to change the definition of what constitutes a foreign company in such a way that key beneficiaries of UK-based Vedanta group, the BJP and Congress, would not face legal scrutiny for donations received from 2010 onward. Vide the said Act, amendment was brought to the definition of 'Foreign Source' in the FCRA, 2010 whereby a proviso was added to the definition which has been reproduced below:

   "Provided that where the nominal value of share capital is within the limits specified for foreign investment under the Foreign Exchange Management Act, 1999, or the rules or regulations made thereunder, then, notwithstanding the nominal value of share capital of a company being more than one-half of such value at the time of making the contribution, such company shall not be a foreign source;".

7. This didn't have any effect on the guilt already recognised on the part of BJP and INC decided in the WPC 131 of 2013. Since the decision adjudicated by the Hon'ble High Court of Delhi was taken after comparing with the provisions of FCRA, 1976 since the donations in question given to the political

parties were given in the year 2009. The relevant page of the Finance Act, 2016 is annexed as **Annexure P4** (Pg _____)**.**

8. That against the Order dated 28.03.2014 passed by the Hon'ble High Court of Delhi, appeal was filed before this Hon'ble Court. Vide order dated 29.11.2016, this Hon'ble Court dismissed the SLPs as withdrawn by both the parties as they conjointly told this Hon'ble Court about their decision to withdraw the SLPs they had filed in the year 2014. Copy of the order dated 29.11.2016 passed by this Hon'ble Court in SLP (C) 18190 of 2014 and SLP(C) 32626 of 2014 is annexed as **Annexure P5** (Pg _____)**.**

9. That a letter dated 03.02.2018 was sent by Petitioner No.2 to the Respondents, Prime Minister office and various other government offices expressing his anguish on receiving news reports that vide Finance Bill of 2018, retrospective amendment was being brought FCRA with effect from 1976 to condone illegalities committed by the political parties mentioned above. The Petitioner No. 2 also requested the Respondents to desist from enacting such amendment with retrospective effect. Through his letter Petitioner expressed his concern over the foul play which might be adopted by the legislature. There was no reply received from any of the recipients of the letter.

10. That on 14.03.2018 the Lok Sabha passed the Finance Bill 2018 whereby a retrospective amendment was made to the Finance Act of 2016. The amendment added the applicability of the proviso added by the Finance Act, 2016 with effect from 1976. A copy of the relevant page of the Finance Act, 2018 is annexed as **Annexure P6** (Pg _____). It has been reproduced below for better understanding.

> *"PART XIX*
>
> *AMENDMENT TO THE FINANCE ACT, 2016*
>
> ***217.** In the Finance Act, 2016, in section 236, in the opening paragraph, for the words, figures and letters "the 26th September, 2010", the words, figures and letters "the 5th August, 1976" shall be substituted."*

11. It is important to be mentioned here that the Legislature vide Section 54(1) of FCRA, 2010 had already repealed FCRA, 1976. Through Finance Act, 2016 retrospective amendment was added to the definition of 'Financial Source' under Section 2 in FCRA, 2010. The said amendment is already under challenge before this Hon'ble Court. Extending the scope of the same challenged amendment to the act which was repealed eight long years ago unambiguously show the desperation with which the Respondents are trying to condone their guilt. By misusing the legislative powers vested in them, the political parties have moulded their usage for fulfilling their own personal motives than using them for the betterment of the people and improving their standard of living. By

extending the applicability of a retrospective amendment from 1976, the legislature has tried to breach the basic structure of Constitution. It is a settled principle of law that it is well within the powers of the Legislature to remedy the defect or flaw which exists in the legislation. If such a defect or flaw is brought within the notice of Judiciary and if the decision is held against such legislation, then the Legislature has the duty to rectify it. But the Legislature cannot pass a retrospective amendment so as to nullify a judgement passed by any court. The decision of Hon'ble High Court was based on the law existing at that time and which very well recognised the guilt on the part of BJP and INC for accepting donations from the Indian Companies which were subsidiaries of a Foreign Company. The Legislature by taking this extra ordinary measure of extending the applicability of the amendment introduced in the Finance Act, 2016 with effect from 1976 by Finance Act, 2018 has violated the principle of separation of powers.

12. In a recent decision adjudicated by this Hon'ble Court in the case titled *State of Karnataka and Ors. v. The Karnataka Pawn Brokers Assn. and Ors.* dated 16.03.2018, it was held that:

> *"22. On analysis of the aforesaid judgments it can be said that the Legislature has the power to enact validating laws including the power to amend laws with retrospective effect. However, this can be done to remove causes*

of invalidity. When such a law is passed the Legislature basically corrects the errors which have been pointed out in a judicial pronouncement. Resultantly, it amends the law, by removing the mistakes committed in the earlier legislation, the effect of which is to remove the basis and foundation of the judgment. If this is done, the same does not amount to statutory overruling.

23. However, the Legislature cannot set at naught the judgments which have been pronounced by amending the law not for the purpose of making corrections or removing anomalies but to bring in new provisions which did not exist earlier. The Legislature may have the power to remove the basis or foundation of the judicial pronouncement but the Legislature cannot overturn or set aside the judgment, that too retrospectively by introducing a new provision. The legislature is bound by the mandamus issued by the Court. A judicial pronouncement is always binding unless the very fundamentals on which it is based are altered and the decision could not have been given in the altered circumstances. The Legislature cannot, by way of introducing an amendment, overturn a judicial pronouncement and declare it to be wrong or a nullity. What the Legislature can do is to amend the provisions of the statute to remove the basis of the judgment."

This is exactly what the Legislature has done. By introducing the amendment the Legislature has overturned the decision of the Hon'ble High Court of Delhi against which SLPs were dismissed by this Hon'ble Court. There was no anomalies

pointed in the Judgment and it also cannot be said that the judgment was based on an incorrect understanding of law. So the question to rectify anything or to remedy the situation does not arise at all. The Legislature has brought in a new provision by way of amendment so that all its actions which were earlier illegal as per FCRA, 1976 can be legalized.

13. That on 21.03.2018 the Petitioner No.2 sent another letter to the same recipients to whom the earlier letter dated 03.02.2018 expressing his displeasure over passing of the Finance Bill, 2018 by the Lok Sabha allowing the retrospective amendment mentioned above. The Petitioner also produced a relevant extract from the website of the Norwegian Sovereign Wealth Fund managed by that country's Finance Ministry which had made the following observation:

> *"On the 13th of September 2013, the Ministry of Finance received a recommendation from the Council of Ethics to exclude the company Sesa Sterlite from the GPFG. The recommendation builds on an earlier recommendation to exclude the company Vedanta Resources Ltd. (Vedanta) and two of its subsidiaries, which operate in India. The Ministry followed the Council's recommendation to exclude Vedanta and its two subsidiaries in 2007. Sesa Sterlite is a newly established subsidiary of Vedanta. The Council's assessment is that the relevant operations in India, which are currently run through the company Sesa Sterlite, present an unacceptable risk of environmental damage*

and serious violations of human rights. The Council has regularly updated its assessment of Vedanta and the basis for exclusion is still considered to be present. The Ministry of Finance, in accordance with the Council's recommendation, has decided to exclude Sesa Sterlite from the Fund's investment universe, as well as to maintain the exclusion of Vedanta."

14. It is important to note that the backdrop of the amendment is the contempt petition filed in the Delhi High Court by the petitioners after the dismissal of the SLPs filed by the two political parties. The Hon'ble Delhi High Court on 21.03.2017 had issued contempt notice to Union of India on a petition filed by the petitioners (Contempt Petition (C) 233 of 2017). The petitioners had argued that the amendment in FCRA 2010 with effect from 26.09.2010 would not come to the aid of the two political parties. The High Court specifically recorded the contention of the petitioners that amendment made by Finance Act 2016 would not help the two political parties. A copy of the Delhi High Court order dated 21.03.2017 passed in Contempt Petition (C) 233 of 2017 is annexed as **Annexure P7** (Pg _____).

15. Faced with the contempt, the Central Government had filed an application for extension of time for complying with the judgment. Hon'ble Delhi High Court,

vide order dated 09.10.2017, gave the Government time of 6 months from the date of the order, as a last opportunity, to take action against the two political parties for violations of FCRA. A copy of the Delhi High Court order dated 09.10.2017 passed in WPC 131 of 2017 is annexed as **Annexure P8** (Pg _____).

16. That on 30.03.2018 the Respondent notified the Finance Act, 2018 applicable. The amendments introduced through the new Finance Act, 2018, passed as a money bill thereby bypassing the Rajya Sabha, are unconstitutional and violate doctrine of separation of powers which is part of the basic structure of the Constitution. That the Constitution of India distinguishes between an Ordinary Bill, a Money Bill and a Financial Bill. Article 110(1) defines a money bill and Article 109 provides for the special procedure in respect of money bills. It states that a money bill can be introduced only in the Lower House. A Money Bill as per Article 110(1) is a Bill which contains *only* provisions dealing with all or any of the following matters, namely-

(a) the imposition, abolition, remission, alteration or regulation of any tax;
(b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;

(c) the custody of the consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;
(d) the appropriation of moneys out of the consolidated Fund of India;
(e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;
(f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or
(g) any matter incidental to any of the matters specified in sub-clause (a) to (f).

In view of Article 117(1), a Bill which makes provisions for any of the above mentioned matters, and additionally with any other matter is called a Financial Bill. Therefore, the Finance Bill, 2017 may be a Money Bill if it deals *only* with the matters specified above, and not with any other extraneous matter as otherwise it would be categorised as a Financial Bill.

That since the Rajya Sabha does not possess co-ordinate power with Lok Sabha in case of a Money Bill, the Lok Sabha has effectively bypassed the Rajya Sabha by voting the same as a Money Bill, though amendment to FCRA cannot be stated to be an amendment which can be covered in the definition of a Money Bill.

GROUNDS:

A. Because the said amendments in question have opened the floodgates to unlimited corporate donations to political parties and anonymous financing by Indian as well as foreign companies which can have serious repercussions on the Indian democracy. The Finance Act, 2016 has amended the Foreign Contribution Regulation Act (FCRA), 2010, to allow foreign companies with subsidiaries in India to fund political parties in India, effectively, exposing the Indian politics and democracy to international lobbyists who may want to further their agenda.

B. The Finance Act, 2018 has amended the Foreign Contribution Regulation Act (FCRA), 2010 with effect from 1976 in an attempt to over-turn the judgement passed by the Hon'ble High Court of Delhi in the case titled *Association For Democratic Reforms vs Union Of India & Ors* dated 23.03.2014 which is unconstitutional under our constitutional scheme.

C. Because these Amendments pose a serious danger to the autonomy of the country and are bound to adversely affect electoral transparency, encourage corrupt practices in politics and have made the unholy nexus between politics and corporate houses more opaque and treacherous and is bound to be misused by special interest groups and corporate lobbyists, and thus are in violation of Articles 14 and 21 of the Constitution of India.

D. Because if the recent amendments are not set aside, foreign countries and corporate houses and extremely wealthy lobby groups can have a stranglehold on the electoral process and governance. Such activities, if allowed, can result in a situation that legislation, regulations etc. can be ultimately be passed and laws brought in to favour of these corporates and lobby groups at the expense of the common citizens of the country.

E. Because this will lead to the creation of shell companies and rise of *benami* transactions to channelize the undocumented money into the political and electoral process in India. The new amendments contravene the bare text of the Constitution. The present petition therefore, highlights this breach which is particularly disturbing, because the legislation imperils our core liberties and rights guaranteed under the Constitution, in manners both explicit and insidious.

F. Because the Constitution of India distinguishes between an Ordinary Bill, a Money Bill and a Financial Bill. Article 110(1) defines a money bill and Article 109 provides for the special procedure in respect of money bills. It states that a money bill can be introduced only in the Lower House. A Money Bill as per Article 110(1) is a Bill which contains *only* provisions dealing with all or any of the following matters, namely- (a) the imposition, abolition, remission, alteration or regulation of any tax; (b) the regulation of the borrowing of money or the

giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India; (c) the custody of the consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund; (d) the appropriation of moneys out of the consolidated Fund of India; (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure; (f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or (g) any matter incidental to any of the matters specified in sub-clause (a) to (f). In view of Article 117(1), a Bill which makes provisions for any of the above mentioned matters, and additionally with any other matter is called a Financial Bill. Therefore, the Finance Bill, 2018 may be a Money Bill if it deals *only* with the matters specified above, and not with any other extraneous matter as otherwise it would be analysed as a Financial Bill. However, an amendment to FCRA cannot be categorized as a Money Bill.

G. Because it is a settled principle of law that the legislature can pass an amendment to an existing law to cure the defect in that law. When the Court held BJP and INC guilty of accepting

donations from ‘Financial Source’ as prohibited in FCRA, 1976, then in no circumstance whatsoever can any political party in power use the powers vested in the legislature to cure the guilt on its part by bringing any law or amendment to an existing law. Recently in the case of State of Karnataka and Ors. v. Union of India and Ors, dated 16.03.2018, this Hon’ble Court held that:

> *“22. On analysis of the aforesaid judgments it can be said that the Legislature has the power to enact validating laws including the power to amend laws with retrospective effect. However, this can be done to remove causes of invalidity. When such a law is passed the Legislature basically corrects the errors which have been pointed out in a judicial pronouncement. Resultantly, it amends the law, by removing the mistakes committed in the earlier legislation, the effect of which is to remove the basis and foundation of the judgment. If this is done, the same does not amount to statutory overruling.*
>
> *23. However, the Legislature cannot set at naught the judgments which have been pronounced by amending the law not for the purpose of making corrections or removing anomalies but to bring in new provisions which did not exist earlier. The Legislature*

may have the power to remove the basis or foundation of the judicial pronouncement but the Legislature cannot overturn or set aside the judgment, that too retrospectively by introducing a new provision. The legislature is bound by the mandamus issued by the Court. A judicial pronouncement is always binding unless the very fundamentals on which it is based are altered and the decision could not have been given in the altered circumstances. The Legislature cannot, by way of introducing an amendment, overturn a judicial pronouncement and declare it to be wrong or a nullity. What the Legislature can do is to amend the provisions of the statute to remove the basis of the judgment."

H. Because the legislature by extending the scope of amendment to the already repealed FCRA, 1976 has tried to get away with the guilt on the part of BJP and INC as recognized by the Hon'ble High Court and this is nothing but breach of the principle of Separation of Powers. In catena of judgments it has been held by this Hon'ble Court that Separation of Powers though not specifically mentioned in the Constitution but is still an entrenched principle. In *State of Tamil Nadu v. State of Kerala* and Another reported as *9 (2014) 12 SCC 696* the Constitution Bench of this Court again dealt with the

question as to whether the Legislature could set at naught the decision of the superior courts. After referring to a large number of judgments, this Court laid down the following principles:-

> *"(i) that the doctrine of separation of powers is an entrenched principle in the Constitution of India even though there is no specific provision in the Constitution;*
>
> *(ii) Independence of Courts from Executive and Legislature is fundamental to the rule of law and one of the basic tenets of the Indian Constitution;*
>
> *(iii) the doctrine of separation of powers between the three organs of the State – Legislature, Executive and the Judiciary is a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Consequently, a law can be set aside on the ground that it breaches the doctrine of separation of powers since that would amount to negation of equality under Article 14 of the Constitution of India;*
>
> *(iv) the High Courts and the Supreme Court are empowered by the Constitution of India to determine whether a law made by the Parliament or State Legislature is void;*

(v) the doctrine of separation of powers applies to the final judgments of the courts. The Legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aliunde;

(vi) if the Legislature has the power and competence to make a validating law it can make the law retrospective;

(vii) even where the law is enacted by the Legislature appears within its competence but if in substance it is shown as an attempt to interfere with the judicial process, such law can be invalidated being in breach of the doctrine of separation of powers."

The same principle has been reiterated in *Cheviti Venkanna Yadav vs. State of Telangana and Others* reported as *10 (2017) 1 SCC 283* in the following terms:-

"30.....The legislature has the power to enact laws including the power to retrospectively amend laws and thereby remove causes of ineffectiveness or invalidity. When a law is enacted with retrospective effect, it is not considered as an encroachment upon judicial power when the legislature does not directly

overrule or reverse a judicial dictum. The legislature cannot, by way of an enactment, declare a decision of the court as erroneous or a nullity, but can amend the statute or the provision so as to make it applicable to the past……"

I. Because the Legislature by bringing the amendment is trying to legalise the actions of the political parties of accepting donations from 'Financial Sources' and this is just a clear case of doing something indirectly which cannot be done directly. In the case of *Asst. Commnr. Of Agri. Income Tax & v. M/S. Netley 'B' Estate & Ors* on 17 March, 2015, it was held by this Hon'ble Court that:

"The consistent thread that runs through all the decisions of this Court is that the legislature cannot directly overrule the decision or make a direction as not binding on it but has power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law of the Constitution and the legislature must have competence to do the same."

PRAYERS

The Petitioners respectfully pray that this Hon'ble Court may be pleased to:

a) Issue a writ of declaration or any other appropriate writ declaring the amendments introduced in FCRA 2010 by Section 236 of Finance Act, 2016 and by Section 217 of the Finance Act, 2018 to be void, illegal and unconstitutional;

b) Pass any other further order as this Hon'ble Court may deem fit and proper in the interest of justice.

Petitioners Through:

PRASHANT BHUSHAN

Counsel for the Petitioners

Drawn by: Ms. Neha Rathi

Drawn & Filed On: April 2018

New Delhi