

IN THE SUPREME COURT OF INDIA  
WRIT JURISDICTION  
WRIT PETITION (CIVIL) NO. 880 OF 2017

**IN THE MATTER OF:**

Association for Democratic Reforms & Another ...Petitioners

VERSUS

Union of India & Others ...Respondents

**COUNTER AFFIDAVIT ON BEHALF OF UNION OF INDIA**  
**(RESPONDENT NO.2)**

**Most Respectfully Showeth:**

I, K.K. Saxena, S/o Shri S.C. Saxena, aged about 58 years, working as Deputy Secretary in the Ministry of Law & Justice, Legislative Department having its office at Shastri Bhawan, New Delhi, do hereby solemnly affirm and state as under:

1. That I have read the contents of the Writ Petition and annexures filed by the petitioners and understood the contents therein. That I am aware of the facts and circumstances concerning the case based on records and I am competent to swear this affidavit on behalf of Respondent No.2 in my official capacity.
2. That each and every averment contained in the Writ Petition is denied except those that are specifically admitted hereunder. That before giving parawise reply to the grounds, the Answering Respondent seeks leave of this Hon'ble Court to make the following,

PRELIMINARY SUBMISSIONS:-

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**Maintainability/ Locus Standi**

3. That this Hon'ble Court has held time and again that a person acting bona fide interest in the proceeding of public interest litigation alone would have locus standi and can approach the court. This Hon'ble Court has further held in several cases that a person invoking the jurisdiction of this Hon'ble Court under Article 32 must approach the Court for the vindication of some fundamental rights of affected persons who are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law and not for any personal purpose. [Janata Dal Case, (1992) 4 SCC 305].
4. That the present petition, however, fails to demonstrate any violation of fundamental rights or arbitrary state action against persons unable to defend their rights.
5. That it is respectfully submitted that the chief prayers in the present petition seek Court to interfere in the law making powers of the legislature and as such are not maintainable.
6. That it is stated that the Finance Act, 2017 has amended Section 29C of the Representation of the People Act, 1951 ["RP Act, 1951", for short] so as to provide that the declaration of donation as required under the statutory provision would not apply in the case of such donations which are made by the way of electoral bonds. Hence, the political parties are not bound to make the mandatory declaration about the donation received by them to the Election Commission in respect of the donations received through electoral bonds. It is further submitted that the new provision under the RP Act, 1951 by

the way of amendment of Section 29C thereof has its basis in the newly introduced concept of 'electoral bonds' as envisaged in the Finance Act, 2017 thereby amending Section 31 of the Reserve Bank of India Act, 1934.

7. That it is submitted that said scheme of electoral bonds has been challenged in the petition and the issue would have a dependency upon the stand framed by Respondent No.1 in support of the scheme of 'electoral bonds' as proposed under the Finance Act, 2017.
8. That it is submitted that insofar as the issue of complete ban on receiving the donation in cash, as espoused in the present writ petition, it is stated that the existing provisions in the RP Act, 1991 do not contemplate any restriction on receiving donation in cash. However, in the impugned Finance Act, 2017, in Section 11, prescribing amendment in Income Tax Act, it has been contemplated while amending Section 13A thereof, that no political party would accept any donation in cash in excess of two thousand rupees; that is to say all donations in excess of two thousand rupees shall have to be accepted by an account payee cheque or account payee draft or using electronic clearing system or through electoral bond. The demand of the Petitioners for a complete ban on the acceptance of the donation by political parties in cash does not appear to be appreciable under the given social, economic and educational position of the people of the country qua their involvement in the democratic set up of the country.
9. That the petition does not provide any reasoning and logical object for imposing such a complete ban on receiving the donations in cash.

However, it may also be submitted that in view of the latest amendment in the Income Tax Act thereby provisioning the limit of two thousand rupees for accepting donations in cash would suffice the purpose and demand as is being espoused in this petition.

10. That it is further submitted that the judiciary may step in to fill gaps only where there is a statutory vacuum, but not where a valid law already occupies the field. Recently, in *Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477, this Hon'ble court while considering whether the existing legal remedies provide adequate safeguard against hate speeches by political/religious leaders, has held:

*"22. Be that as it may, this Court has consistently clarified that the directions have been issued by the Court only when there has been a total vacuum in law, i.e. complete absence of active law to provide for the effective enforcement of a basic human right. In case there is inaction on the part of the executive for whatsoever reason, the court has stepped in, in exercise of its constitutional obligations to enforce the law. In case of vacuum of legal regime to deal with a particular situation the court may issue guidelines to provide absolution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field. Thus, direction can be issued only in a situation where the will of the elected legislature has not yet been expressed.*

.....

26. In view of the above, the law can be summarised to the effect that if any action is taken by any person which is arbitrary, unreasonable or otherwise in contravention of any statutory provisions or penal law, the court can grant relief keeping in view the evidence before it and considering the statutory provisions involved. However, the court should not pass any judicially unmanageable order which is incapable of enforcement.

.....

28. Thus, we should not entertain a petition calling for issuing certain directions which are incapable of enforcement/execution. The National Human Rights Commission would be well within its power if it decides to initiate suo-motu proceedings against the alleged authors of hate speech.

However, in view of the fact that the Law Commission has undertaken the study as to whether the Election Commission should be conferred the power to de-recognise a political party disqualifying it or its members, if a party or its members commit the offences referred to hereinabove, we request the Law Commission to also examine the issues raised herein thoroughly and also to consider, if it deems proper, defining the expression "hate speech" and make recommendations to the Parliament to strengthen the Election Commission to curb the menace of "hate speeches" irrespective of whenever made. (Emphasis Supplied)

[See Also : S. Subramaniam Balaji v. State of T.N., (2013) 9 SCC 659, Pr 79]

11. In the light of above, it is submitted that the relief sought for in the present Writ Petition cannot be granted.

#### Miscellaneous

12. That the grounds taken and averments made in the Writ Petition which are contrary to the stand taken by the Answering Respondent in this affidavit are denied and disputed as incorrect and as being based on wrong submissions / statements of facts and law, hence, leave is sought for filing specific para-wise reply to each of the grounds taken in the Writ Petition, if so required and / or directed by this Hon'ble court in the interest of justice.
13. In light of the averments made hereinabove, it is prayed that the Writ Petition may be dismissed as being without any merit and also on the ground of evident lack of bona fides. It is further submitted that the writ petitioners are not entitled to any relief as prayed in the Writ Petition and the Writ Petition is liable to be dismissed.

Prayed and submitted accordingly in terms of the above.

14. That no new facts or documents which are not part of record have been pleaded or are being placed before this Hon'ble court.

**DEPONENT**


(फं. फं. सखरोना/K. K. SAXENA)  
उप सचिव/Deputy Secretary  
विधि और न्याय मन्त्रालय  
Ministry of Law & Justice  
(विधायी विभाग/Legislative Deptt.)  
नई दिल्ली / New Delhi

VERIFICATION :

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I, the above named deponent, do hereby verify that the factual contents set forth in the above reply affidavit are true to my knowledge as also derived from the records maintained. No part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on this the      day of March, 2018.

  
**DEPONENT**  
(श्री. के. साखेना / K. SAXENA)  
उप सचिव/Secretary  
विधि और न्याय मन्त्रालय  
Ministry of Law & Justice  
(विधायी विभाग/Legislative Deptt.)  
नई दिल्ली./New Delhi