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**Fwd: Retrospective amendment of Foreign Contribution Regulation Act (FCRA), 1976 to condone Indian National Congress (INC), BJP and other political parties ill-advised, detrimental to the national interest and unethical**

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From: **EAS Sarma** <[eassarma@gmail.com](mailto:eassarma@gmail.com)>

Date: 3 February 2018 at 14:47

Subject: Retrospective amendment of Foreign Contribution Regulation Act (FCRA), 1976 to condone Indian National Congress (INC), BJP and other political parties ill-advised, detrimental to the national interest and unethical

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To

Shri Narendra Modi  
Prime Minister

Shri Arun Jaitley  
Union Finance Minister

Dear Shri Modi and Shri Jaitley,

**Subject:- Finance Bill of 2018- Retrospective amendment of Foreign Contribution Regulation Act (FCRA), 1976 to condone illegalities committed by Indian National Congress (INC), BJP and other political parties ill-advised, detrimental to the national interest and unethical**

I understand from today's news reports (**a copy of the report in today's Indian Express is enclosed**) that your government is once again adopting the inappropriate avenue of the Finance Bill to retrospectively amend FCRA, 1976 to

condone the illegalities committed by Congress, BJP and a few other political parties by unethically accepting political donations from foreign sources, though prohibited under that Act. **This, in my view, is not only illegal but it runs counter to the national interest, making a mockery of your so-called campaign of bringing in electoral reforms and enhancing honesty in the electoral system.**

To amend an existing law retrospectively to permit the political parties to accept donations from foreign companies raises **serious concerns about the government's intentions vis-a-vis the likely influence of foreign agencies over the electoral process in India and its likely adverse implications for the national interest.**

Both FCRA of 1976 and FCRA of 2010 rightly prohibited political parties and their members from accepting donations from foreign sources. The Representation of the People Act echoed these prohibitive provisions. It goes to the credit of the Parliamentarians at that time to have thought about the deleterious implications that foreign donations could have on the political parties and their implications for the national interest.

**Despite such clear legal provisions, both Congress and BJP blatantly sought and accepted donations from foreign sources year after year.**

I, along with Association for Democratic Reforms (ADR), filed a Writ Petition [W.P.(C) 131/2013] before Hon'ble Delhi High Court contesting the same. The latter pronounced their judgement on 28-3-2014 (**copy enclosed**) upholding the contention in our WP and directing the Union Govt to act against the political parties **within six months.**

Instead of complying with that judgement in an earnest and forthright manner, the two political parties, perhaps **with the tacit consent of your government**, chose to file appeals (SLP 18190/2014 & 32626/2014) before Hon'ble Supreme Court. **The appeals of Congress and BJP were dismissed by the apex court on 29-11-2016.** Though there was no interim order of the apex court against the High Court direction, the Union Home Ministry, for reasons best known to it, refrained from complying with the judgement dated 28-3-2014 of Hon'ble Delhi High Court. **A contempt petition filed by us against the government is presently pending before the Hon'ble Delhi High Court.**

Meanwhile, apparently with a view to "regularise" the illegalities committed by Congress and BJP, your government adopted the backdoor approach of introducing a retrospective amendment to FCRA of 2010 **through the unusual and inappropriate instrument of the Finance Act of 2016. Not satisfied with it and apparently eager to open the floodgates to foreign company donations**, your government went one step farther next year, once again through the backdoor of **Finance Act of 2017** and introduced amendments to Companies Act to lift the cap on political donations even by foreign companies and

introducing an element of anonymity in the donations to introduce opaqueness in company donations in favour of the political parties. **BJP has since been a significant beneficiary of these amendments**, clearly demonstrating how there was an inherent conflict of interest in NDA's decision making process.

Meanwhile, I have pointed out to your government (Ministries of Finance and Mines) the possibility of several companies, **especially mining companies**, over-invoicing their exports, laundering the differential amounts to undisclosed foreign accounts (**Panama & Paradise papers** corroborate this) and re-routing the illicitly deposited amounts to India, partly by way of political donations. **I have enclosed copies of the correspondence for your reference. Is it not ironic that the foreign black money that your government is ostensibly trying to get back for the country should indirectly fund electioneering by Congress, BJP and others?**

I thought that, in view of Shri Narendra Modi's repeated pronouncements to campaign against corruption, against black money and against malfeasance in electoral processes, the government would take my letters with the seriousness they deserve and ask the central investigating agencies such as CBI, ED and DRI (to whom I had marked copies of my correspondence) to institute independent investigations. I thought that your government would plug the inflow of foreign money into electioneering. I find that your government has not only ignored my concerns but also is, more than ever, determined to **"legalise" the illegalities even under FCRA of 1976** by using the Finance Bill for the current year so as to avoid the much needed detailed discussion on this in the Parliament. Since both BJP and Congress are co-partners in violating FCRA of 1976 as well as FCRA of 2010, perhaps, you will make sure that the amendments go through without providing an opportunity to the Parliament and the people of this country to discuss and debate! **Mr Modi, I feel highly disappointed and distressed!**

I feel deeply concerned that your government, contrary to what you have pronounced in your speeches time and again, should adopt the highly retrograde measure of retrospectively amending and neutralising the law made by the Parliament during the seventies with the sacred intent of preventing foreign companies and agencies from funding India's political parties and preventing them from influencing policies that affect the people of this country.

Anyone with the national interest at heart would hesitate even to think of tinkering with the salutary provisions of FCRA of 1976 and FCRA of 2010, as well as the corresponding provisions of the Representation of the People Act.

I write this letter with a feeling of extreme anguish and distress, as all my previous letters on the subject have failed to deter you from causing such an irreparable and long-term damage to the firewalls built by the members of the Parliament in 1976 against foreign influences on the integrity of the domestic electoral system. Looking at the track record of your

government so far, I would not be surprised if this letter too becomes a cry in the wilderness. Maybe some of us will then be constrained to seek judicial intervention to save the electoral process and the nation from the likely harm that such amendments would inflict.

I am circulating this letter widely to all political parties, the media and the public at large hoping that it will trigger a wider debate and discussion. I realise that only such a discussion can ultimately save the nation and its electoral system from marauding political parties.

You should realise that the people of India are far too nationalistic to ignore the machinations of the political parties. Whoever thinks otherwise will only be deluding himself or herself.

I still hope and pray that good sense will prevail on the government to desist from going ahead with the proposed statutory amendments.

If the NDA government genuinely believes in what it has been professing, it should revoke all retrospective amendments made so far to FCRA 2010, revoke the amendments to the Companies Act cited above, drop the regressive idea of opaque electoral bonds and introduce stringent penalties to be imposed on all such political parties that violate the law.

Regards,

Yours sincerely,

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Former Secretary to Govt of India  
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3-2-2018

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**3 attachments**



**FCRA amendment in finance Bill to help BJP, Congress escape scrutiny The Indian Express.pdf**  
1218K



**Gmail - money laundering in illegal mining of iron ore & manganese ore- Justice M B Shah Committee report- Implications of retrospective amendment to Foreign Contribution Regulation Act, 2010 and political donations.pdf**  
215K



**Delhi HC FCRA Order.pdf**  
412K