

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

Writ Petition (Civil) No. Of 2015

PUBLIC INTEREST LITIGATION

In the matter of:

1. Association for Democratic Reforms
Through Its Founder-Trustee
Prof. Jagdeep S Chhokar
T-95A, C.L. House, 1st Floor,
(Near Gulmohar Commercial Complex)
Gautam Nagar, New Delhi-110049 ... Petitioner No.1

2. Shri Subhash Chandra Agrawal
S/o Late Shri Om Prakash,
R/o 1775, Kucha Lattushah, Dariba,
Chandni Chowk, Delhi-110006 ... Petitioner No.2

VERSUS

1. Union of India
Through the Cabinet Secretary
Cabinet Secretariat
Rashtrapati Bhawan,
New Delhi-110004 ... Respondent No.1

2. Election Commission
Through its Secretary
Nirvachan Sadan, Ashoka Road
New Delhi-110001 ... Respondent No.2

3. Indian National Congress
Through its General Secretary
24, Akbar Road, New Delhi-110011 ... Respondent No.3

4. Bharatiya Janta Party
Through its General Secretary
11, Ashoka Road,
New Delhi-110001 ... Respondent No.4

5. Communist Party of India (Marxist) (CPM)
Through its Central Secretary,
A.K. Gopalan Bhawan,
27-29 Bhai Vir Singh Marg
New Delhi-110001 ... Respondent No.5

6. Communist Party of India (CPI)
Through its General Secretary
Ajoy Bhawan, 15,
Com. Inderjit Gupta Marg,
New Delhi-110001

... Respondent No.6

7. Nationalist Congress Party (NCP)
Through its General Secretary/
Public Relations Officer
10, Dr. Bishambar Das Marg,
New Delhi -110001

... Respondent No.7

8. Bahujan Samaj Party (BSP)
Through their General Secretary,
12, Gurudwara Rakabganj Road,
New Delhi-110001

... Respondent No.8

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 herein are filing the instant writ petition in public interest under Article 32 of the Constitution of India for the enforcement of Rights under Articles 14, 19 and 21 of the citizens. The petitioners through the instant writ petition seek greater transparency and accountability in the functioning of all recognized national and regional political parties in the country. The petitioner through this petition seeks that in accordance with the CIC order dated 03.06.2013 all recognized national parties should be brought under the Right to Information Act, 2005 as "public authorities", and thereby fulfill all obligations under the provisions of the said Act. The petitioner through this petition seeks an appropriate writ directing all national and regional political parties to disclose for public scrutiny complete details of their income, expenditure, donations and funding including details of donors making donations to these political parties and their electoral trusts.

2. The petitioner no. 1 is Association for Democratic Reforms (ADR). 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 the Hon'ble High Court of Delhi ordered all election candidates to declare their criminal records and financial assets, a judgment which was later upheld by the Hon'ble Supreme Court. 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 petitioner organization's annual income is Rs. 6,95,97,119 (FY/13-14) (PAN No. AAAAAA2503P). Petitioner No. 1 not being an individual does not have a National UID number. The Petitioner No. 2 is a renowned RTI activist with many successful RTI litigations to his credit. He is the Guinness Book Record Holder for the maximum number of Letters to the Editor published in various newspapers. The petitioner no. 2's annual income is Rs. 6,00,000 (PAN No. AADPA2188G). National UID number of petitioner no. 2 is 625211292019. 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.
3. The petitioners had earlier approached the 6 political parties seeking response to certain queries under the RTI Act and thereafter had approached the Central Information Commission (CIC). The CIC clubbed their complaints (CIC/SM/C/2011/001386 and CIC/SM/C/2011/000838) and *vide* order dated 03.06.2013 (Annexure P1) held the 6 political parties to be public authorities under Section 2(h) of the RTI Act. However, upon non-compliance of the CIC order, the petitioners moved the CIC vide complaints dated 11.12.2013, 27.08.2013, 10.12.2014 and 23.12.2014. The CIC has *vide* order dated 16.03.2015 (Annexure P2) stated that the previous order dated 03.06.2013 declaring that political parties are public authorities under RTI Act is final and binding.

4. The instant petition highlights the present practice wherein political parties in power *de facto* have significant control over legislatures and executive, especially in light of Schedule 10 of the Constitution of India that makes it compulsory for a member of either House of Parliament or the Legislative Assembly or either House of the Legislature of the State to toe the party line, failing which the member stands to be disqualified, and thereby reflects the stronghold a political party has on its elected MPs and MLAs. However, at the same time important information about political parties, their income, expenditure, complete details of donors are not disclosed by political parties for public scrutiny and for the right of information of an average voter. The instant petition also relies on the decision/order dated 03.06.2013 of the CIC that declared 6 national political parties namely the INC, BJP, CPI(M), CPIO, NCP and BSP to be “public authorities” under section 2(h) of the RTI Act.

Role of Political Parties and the Tenth Schedule

5. Political parties form a critical and significant part of the democratic functioning of the country. The Tenth Schedule of the Indian Constitution incorporated by the Constitution (52nd Amendment) Act, 1985 makes reference to political parties. This deals with the disqualification of a person as a member of either house of parliament or the legislative assembly/council on grounds of defection. The Tenth Schedule provides right to the political parties so as to decide whether an MP/MLA should be in the Parliament or legislative assembly/council not. The representatives have to vote as well as work according to the directions of the party (party whip) to which they belong. Therefore, it can be said that political parties exercise a significant hold and power over their elected MPs/MLAs and this power is not confined only to the manner of voting but it also extends to their conduct. The relevant provision of the Tenth Schedule is reproduced below:

2. Disqualification on ground of defection—(1) Subject to the provisions of paragraphs 3, 4 and 5, a member of a House

belonging to any political party shall be disqualified for being a member of House—

(a) if he has voluntarily given up his membership of such political party; or

(b) if he votes or abstains from voting in such House contrary to any direction issued by the Political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

6. Thus, a member of either houses of parliament or state legislature or council, as the case may be, is bound to follow the instruction of his original political party in all matters that are put to vote in the House, failing which he will be disqualified, unless of course condoned by the original political party.

7. In *Kihota Hollohon v. Zachilhu* (AIR 1993 SC 412), explaining the rationale underlying the Tenth schedule, this Hon'ble Court stated that:

“These provisions of the Tenth Schedule give recognition to the role of political parties in the political process. A political party goes before the electorate with a particular programme; it sets up candidates at the election on the basis of such programme; a candidate is therefore elected on the basis of the party programme. The provisions of Paragraph 2(1)(a) proceed on the premise that political propriety and morality demand that if such a person, after the election, changes his affiliation and leaves the political party which had set him up as a candidate at the election, then he should give up his Membership of the legislature and go back to the electorate” (Para 6)”

8. In Central Information Commission's order CIC/AT/A/2007/01029 &01263-01270, dated 29.04.2008, it was held that even though political parties are non-governmental but they wield and influence

the exercise of governmental power and thus it is important for political parties to be transparent. The relevant part of the order reads:

“28. Political parties are a unique institution of the modern Constitutional State. These are essentially civil society institutions and are, therefore, non-governmental. Their uniqueness lies in the fact that in spite of being nongovernmental, political parties come to wield or directly or indirectly influence, exercise of governmental power. It is this link between State power and political parties that has assumed critical significance in the context of the Right of Information — an Act which has brought into focus the imperatives of transparency in the functioning of State institutions. It would be facetious to argue that transparency is good for all State organs, but not so good for the political parties, which control the most important of those organs. For example, it will be a fallacy to hold that transparency is good for the bureaucracy, but not good enough for the political parties which control those bureaucracies through political executives”

9. Political parties are integral to parliamentary democracy since it is the political parties that form the government and run the governance. This has been further elucidated by the Law Commission of India in its 170th Report on ‘Reform of the Electoral Laws’ in May 1999. In the said report the Commission had made a recommendation for transparency in the functioning of political parties specially focusing on internal democracy, financial transparency and accountability in their working. Para 3.1.2.1 of the Report reads:

“...it must be said that if democracy and accountability constitute the core of our constitutional system, the same concepts must also apply to and bind the political parties which are integral to parliamentary democracy. It is the political parties that form the government, man the Parliament and run the governance of the country. It is therefore, necessary to introduce internal democracy, financial transparency and accountability in the working of the political parties. A political party which does not respect democratic principles in its internal working cannot be expected to respect those

principles in the governance of the country. It cannot be dictatorship internally and democratic in its functioning outside” (Para 3.1.2.1).

CIC Orders dated 03.06.2013 and 16.03.2015 declaring political parties as “public authorities”

10. It is submitted that the Central Information Commission in its order dated 03.06.2013 declared 6 national political parties namely the INC, BJP, CPI(M), CPIO, NCP and BSP to be “public authorities” under section 2(h) of the RTI Act. The relevant part of the said order is reproduced below:

“In view of the above discussion, we hold that INC, BJP, CPI(M), CPIO, NCP and BSP have been substantially financed by the Central Government under section 2(h)(ii) of the RTI Act. The criticality of the role being played by these Political Parties in our democratic set up and the nature of duties performed by them also point towards their public character, bringing them in the ambit of section 2(h). The constitutional and legal provisions discussed herein above also point towards their character as public authorities. The order of the Single Bench of this Commission in Complaint No. CIC/MISC/2009/0001 and CIC/MISC/2009/0002 is hereby set aside and it is held that AICC/INC, BJP, CPI(M), CPI, NCP and BSP are public authorities under section 2(h) of the RTI Act.”

A copy of CIC order dated 03.06.2013 in complaint nos. CIC/SM/C/2011/001386 and CIC/SM/C/2011/000838 is annexed as **Annexure P1** (pages_____).

11. However, none of the 6 political parties complied with the said order. Upon non-compliance, the petitioners made a fresh complaint before the CIC *vide* complaint no. CIC/CC/C/2015/000182 for non-compliance of its own order by the six major political parties. CIC *vide* its order dated 16.03.2015 restated its previous order and held that the 6 national political parties are public authorities and the previous order of 03.06.2013 is final and binding. It was held thus:

“68. What emerges from the discussions in the hearings is as follows:

(1) *The enquiry under Section 18 can be brought to a close. The respondents were absent en bloc from the hearings on 21.11.2014 and 07.01.2015, and no useful purpose will be served by fixing another date*

(2) *The Commission's order of 03.06.2013 is binding and final. It has not been affected by any judicial or legislative intervention. The respondents have been declared public authorities, but they have not taken the steps prescribed for implementation. The impediment has come because the respondents have not appointed the CPIOs as directed, hence the RTI applications referred to in the order of 03.06.2013 are still pending.*

(3) *The Commission is not geared to handling situations such as the present instance where the respondents have disengaged from the process. The Commission, having declared the respondents to be public authorities, is unable to get them to function so. This unusual case of willful non-compliance highlights the need to identify the legal gaps and lacunae in the implementation mechanism. An obvious conclusion is that in cases such as this, the Commission is bereft of the tools to get its orders complied with."*

A copy of CIC order dated 16.03.2015 in Complaint No. CIC/CC/C/2015/000182 is annexed as **Annexure P2** (pages_____).

Right of Information as part of Article 19(1)(a)

12. The preamble to the Right to Information Act, 2005 reads: *"...democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed"*.

13. The right to information in a democracy is a well-recognized in both international and domestic law. Article 19(1) and (2) of the International Covenant on Civil and Political Rights (ICCPR) states:

(1) *Everyone shall have the right to hold opinions without interference.*

(2) *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

14. It is undisputed that the right of information is part of fundamental right in terms of Article 19(1)(a) of the Constitution of India. Voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. To meet this purpose, information about the political parties is a must. This Hon'ble Court in a number of cases has declared that the most important value of the functioning of a healthy and well-informed democracy is transparency. In *State of Uttar Pradesh v. Raj Narain and Ors* (1975) 4 SCC 428, a constitution bench of this Hon'ble Court observed that "*the right to know which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security*". The Court further observed, "*In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing...*"

15. In *S.P. Gupta v. President of India and Ors*, (1981 Supp (1) SCC 87), a seven-Judge Bench of the Hon'ble Supreme Court of India made the following observations regarding the right to information:

"There is also in every democracy a certain amount of public suspicion and distrust of government varying of course from time to time according to its performance, which prompts people to insist upon maximum exposure of its functioning. It is axiomatic that every action of the government must be actuated by public interest but even so we find cases, though not many, where governmental action is taken not for public good but for personal gain or other extraneous considerations. Sometimes governmental action is influenced by political and other motivations and pressures and at times, there are also instances of misuse or abuse of authority on the part of the executive, NOW, if secrecy were to be observed in the functioning of government and the processes of government were to be kept hidden from public scrutiny, it would tend to promote and encourage oppression, corruption and misuse or abuse of authority,

for it would all be shrouded in the veil of secrecy without any public accountability. But if there is an open government with means, of information available to the public there would be greater exposure of the functioning of government and it would help to assure the people a better and more efficient administration. There can be little doubt that' exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration. It has been truly said that an open government is dean government and a powerful safeguard against political and administrative aberration and inefficiency."

16. A three-Judge bench of this Hon'ble Court in *Union of India v Association of Democratic Reforms* (2002) 5 SCC 294 directed the Election Commission to call for from prospective candidates for election information relating to their criminal antecedents, assets and liabilities and educational qualifications and held such information to be part of fundamental right of citizens under Article 19 (1)(a). It was held that:

"The right to get information in a democracy is recognised all throughout and is a natural right flowing from the concept of democracy."

17. This Honb'le Court in *People's Union for Civil Liberties vs. Union of India* (2003) 4 SCC 399 struck down Section 33-B of the Representation of the People (Third Amendment) Act, 2002 and held that:

"A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures.

(E) It is established that fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. During the last more than half a decade, it has been so done by this court consistently. There cannot be any distinction between the fundamental rights mentioned in Chapter III of the Constitution and the declaration of such rights on the basis of the judgments rendered by this Court”

18. The Representation of the People Act, 1951 (RPA) lays down the law regarding the conduct of elections, qualifications and disqualifications for membership of Parliament and State Legislatures and registration of political parties. Section 29A of the RPA, deals with the registration of associations and bodies as political parties with the Election Commission. Sub-section (5) of Section 29A reads:

(5) The application under sub-section (1) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, wherein the association or body shall affirm true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

19. Thus, at the time of registration itself all political parties in their memorandum or rules and regulations specifically affirm to bear true faith and allegiance to the Constitution of India. Sub-section (7) of Section 29A adds stringency to the above provision by stating that no association or body shall be registered as a political party under this section unless the memorandum or rules and regulations of such association or body conforms to the provisions of sub-section (5) of Section 29A. Sub-section (7) and (8) of 29A are reproduced below:

(7) After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable

opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purposes of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body.

Provided that no association or body shall be registered as a political party under this sub-section unless the memorandum or rules and regulations of such association or body conform to the provisions of sub-section (5).

20. It is submitted that since all registered political parties affirm their allegiance to the Constitution of India and such allegiance is made compulsory under sub-section (7) of Section 29A, it is implied that political parties so registered must furnish information to the public under the right of information under Article 19(1)(a) of the Constitution of India.

Income and expenditure of political parties

21. Political parties rely heavily on donations for contesting elections and running their daily affairs. They receive huge sums of money in the form of donations and contributions from corporate, trusts and individuals. Section 29C of the Representation of People Act, 1951 mandates that political parties must submit their contribution details received in excess of Rs 20,000 from any person or a company to the ECI annually in order to enjoy a 100% tax exemption. Section 29C states:

29C. Declaration of donation received by the political parties.—

(1) The treasurer of a political party or any other person authorized by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely:—

(a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year;

(b) the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.

22. Law Commission of India in its 255th Report titled “Electoral Reforms” dated March 2015 has also proposed its recommendations on the issue of disclosure obligations of political parties. In its Summary of Conclusions and Recommendations on Page 216 of the Report it has been recommended that:

“Political parties should be required to maintain and submit annual accounts, duly audited by a qualified and practicing chartered accountant from a panel of such accountants maintained for the purpose by the Comptroller and Auditor General, to the ECI every financial year. These accounts will fully and clearly disclose all the amounts received by the party and the expenditure incurred by it. The ECI will then upload these accounts online or keep them on file for public inspection on payment of fee.”

[Para 2.31(b)6]

A copy of the relevant pages of the Law Commission of India’s 255th Report titled “Electoral Reforms” dated March 2015 is annexed as **Annexure P3** (pages_____).

23. A study conducted by National Election Watch and Association for Democratic Reforms dated 24.02.2015 gives a comprehensive analysis of donations received by National Parties for the financial year 2013-14 and finds that there is incomplete disclosure of information in the donations report of political parties making it difficult to link the donations with the donors. The data analysed in this report is based on the Contribution Reports submitted by the parties to the Election Commission for the financial year 2013-14 and is available on the Election Commission’s website. The relevant section from the said study on incomplete disclosure of donations received by specific political parties is reproduced below. A copy of the said report by National Election Watch and Association of Democratic Reforms is Annexed as **Annexure P4** (pages_____).

“X. Incomplete disclosure of information in the donations report

- i. INC has not followed the format prescribed by the ECI in declaring its donations details. The column for declaring PAN details of donors is not provided in the contributions reports.*

Without the PAN details, it would be difficult to link the donors against their donations and hence trace the money trail.

- ii. As Rs 1.578 crores was received by INC in cash, without PAN details, verification of such funds would be difficult.*
- iii. A total of Rs. 2.88 lakhs was declared by INC as an outstanding amount thereby not declaring the mode of payment of these funds. These outstanding funds have been added to the total donations received by the party, assuming that they have been collected.*
- iv. A total of Rs 17.40 lakhs was declared by the National Parties without disclosing mode of payment of these donations. Thus it would not be possible to easily trace the donations to an individual or a corporate.*
- v. A total of Rs 6.66 crores was declared by INC, CPI and CPM as amounts received by cheque/DD without disclosing corresponding cheque/DD numbers, name of the bank/ branch on which the cheque was drawn, etc. which would aid in tracking the donations. These incomplete details account for 9% of the total donations received in cheque/DD/ fund transfer.*

24. It is submitted that full details of all donors and their donations should be made available for public scrutiny under the RTI. It is noteworthy that the same is already in practice in various countries such as United Kingdom, Germany, United States of America, Australia, Japan, and Philippines. Similar practice is also followed in France, Italy, Brazil, Bulgaria, Bhutan and Nepal. In none of these countries is it possible for sources of funds to the tune of crores of Rupees to be unknown, but it is so in India. A detailed comparative analysis of Election Expenditure, Disclosure and Contribution in some of the aforementioned countries is provided in the 255th Report of the Law Commission of India (page 19 of the annexed Report). It is submitted that all political parties must be directed to provide complete information about funding and source of such funding under RTI.

25. Many political parties adopt the coupon system for the purposes of collecting funds whereby they issue coupons in lieu of receipts to donors for cash contributions. In most cases these cash donations make

it difficult to establish the identity of the donor. In this way the majority of cash donations received by political parties remain unaccounted for in the books of accounts, as only those amounts would be recorded for which a receipt has been issued.

26. A study dated 25.06.2014 conducted by National Election Watch and Association for Democratic Reforms titled '*Analysis of Income Tax Returns Filed and Donations Received by National Parties- FY 2012-13*', contains an analysis of sources of income and items of expenditure of National political parties. The study shows that the sources of income of political parties remain largely unknown. At present, political parties are not required to reveal the name of individuals or organizations giving less than Rs.20,000. As a result, over 75% of the funds cannot be traced and are from 'unknown' sources. A copy of the said study dated 25.06.2014 by National Election Watch and Association for Democratic Reforms is annexed as **Annexure P5** (pages_____).

The aforesaid study makes the following observations about sources of income and funding trends of specific political parties:

- i. From the table below, there is no standardization nor consistency in the parties' declaration of their sources of funds.*
- ii. Of the major sources of income, sale of coupons has been listed by most of the major political parties. Income for INC from the sale of coupons/publication amounted to Rs. 312.24 crores (73.25% of total income) while NCP received Rs. 3.76 crores from the sale of coupons (14.16% of total income).*
- iii. Voluntary contributions and donations have been listed as the next major source of income by the National Parties. Bahujan Samaj Party declared that it did not receive any donations above Rs 20,000 during FY 2012-13, though the party's total income declared in its ITR was Rs 87.63 crores.*
- iv. 57.11% of total Income for CPM has been received through donations while BJP's donations amount to 83.76% of its total income.*

27. It is submitted that by not disclosing complete information about donations and sources of income by political parties ambiguity is created in the mind of the voter about who is financing a particular party and to what extent. This Hon'ble Court in its judgment dated

13.09.2013 in *Resurgence India v. Election Commission of India & Anr* (AIR 2014 SC 344) had declared that no part of a candidate's affidavit should be left blank. In a similar way no part of form 24A submitted by political parties providing details of donations above Rs. 20,000 should be allowed to be left blank. In addition, political parties should be directed to keep a complete record of all donations received and the same should be disclosed for public scrutiny under RTI.

28. This Hon'ble Court in various judgments has observed the need for accountability, complete disclosure of donations, sources of funds, income, expenditure and maintenance of accounts of political parties. In *Common Cause v. Union of India* (1996 (2) SCC 752) observed that more than one thousand crore of rupees are spend on elections but there is no accountability, no disclosure about the source of such money, no maintenance of accounts or auditing and that such display of black money cannot be permitted in a democracy where rule of law prevails.

“Flags go up, walls are painted, and hundreds of thousands of loud speakers play-out the loud exhortations and extravagant promises. VIPs and VVIPs come and go, some of them in helicopters and air-taxis. The political parties in their quest for power spend more than one thousand crore of rupees on the General Election (Parliament alone), yet nobody accounts for the bulk of the money so spent and there is no accountability anywhere. Nobody discloses the source of the money. There are no proper accounts and no audit. From where does the money come nobody knows. In a democracy where rule of law prevails this type of naked display of black money, by violating the mandatory provisions of law, cannot be permitted.” (para 18)

29. The National Commission to Review the Working of the Constitution, (NCRWC) appointed by the Union government for reviewing the working of the Constitution in their report dated March 2002 made the recommendation that there ought to be a system of auditing and monitoring of the accounts of political parties. This recommendation has also been cited by the Supreme Court in its order dated 13.03.2003, in Writ Petition (Civil) No. 515 of 2002 (*Association for Democratic Reforms vs. Union of India* and another). The relevant section from the report reads:

4.14.3 *“The Commission recommends that the political parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend. These accounts should be monitored through a system of checking and cross-checking through the income-tax returns filed by the candidates, parties and their well-wishers.”*

Chapter 4 of Volume I titled “Electoral processes and Political Parties” of the said Report lays down the following recommendations:

“4.30.4 The law should make it compulsory for the parties to maintain accounts of the receipt of funds and expenditure in a systematic and regular way. The form of accounts of receipt and expenditure and declaration about the sources of funds may be prescribed by an independent body of Accounts & Audit experts, created under the proposed Act. The accounts should also be compulsorily audited by the same independent body, created under the legislation which should also prepare a report on the financial status of the political party which along with the audited accounts should be open and available to public for study and inspection.

4.30.5 The Commission recommends the enactment of an appropriate provision making it compulsory for the political parties requiring their candidates to declare their assets and liabilities at the time of filing their nomination before the returning officers for election to any office at any level of government.

4.30.6 The authority for registration, de-registration, recognition and derecognition of parties and for appointing the body of auditors should be the Election Commission whose decisions should be final subject to review by the Supreme Court on points of law.”

A copy of the relevant section of the Report submitted in March 2002 by the National Commission to Review the Working of the Constitution (NCRWC) is annexed as **Annexure P6** (pages_____).

30. Election Commission of India in its *Proposed Electoral Reforms*(2004) expressed similar views and has recommended that:

9. Compulsory Maintenance of Accounts by Political Parties and Audit thereof by Agencies Specified by the Election Commission.

The Commission considers that the political parties have a responsibility to maintain proper accounts of their income and expenditure and get them audited by agencies specified by the Commission annually. While making this proposal in 1998, the Commission had mentioned that there was strong need for transparency in the matter of collection of funds by the political parties and also about the manner in which those funds are expended by them. Although in an amendment made last year, vide the Election and Other Related Laws (Amendment) Act, 2003, a provision has been made regarding preparation of a report of contributions received by political parties in excess of Rs.20,000/-, this is not sufficient for ensuring transparency and accountability in the financial management of political parties. Therefore, the political parties must be required to publish their accounts (at least abridged version) annually for information and scrutiny of the general public and all concerned, for which purpose the maintenance of such accounts and their auditing to ensure their accuracy is a pre-requisite. The Commission reiterates these proposals with the modification that the auditing may be done by any firm of auditors approved by the Comptroller and Auditor General.

The audited accounts should be available for information of the public.

A copy of the relevant section of the Proposed Electoral Reforms (2004) submitted by the Election Commission of India is annexed as **Annexure P7** (pages_____).

31. In *C. Narayanaswamy v. C.K. Jaffer Sharief* (1994 Supp (3) SCC 170), this Hon'ble Court observed that candidates should not be allowed to plead ignorance about who have made contributions towards their success in an election. It was stated thus:

“If the call for purity of elections is not to be reduced to a lip service or a slogan, then the persona investing funds, in furtherance of the prospect of the election of a candidate must be identified and located. The candidate should not be allowed to plead ignorance about the persons who have made contributions and investments for the success of the candidate concerned at the election. (para 22)

32. This Hon'ble Court in *Gajanan Bapat v. Dattaji Meghe* (1995 (5) SCC 347) criticised the practice followed by political parties in not maintaining the accounts of receipts of sales of coupons, donations and expenditure incurred in connection to elections of its candidates. The Hon'ble Court made the following observation about political parties:

"We wish, however, to point out that though the practice followed by political parties in not maintaining accounts of receipts of the sale of coupons and donations as well as the expenditure incurred in connection with the election of its candidate appears to be a reality but it certainly is not a good practice. It leaves a lot of scope for soiling the purity of election by money influence. Even if the traders and businessmen do not desire their names to be publicised in view the explanation of the witnesses, nothing prevents the political party and particularly a National party from maintaining its own accounts to show total receipts and expenditure incurred, so that there could be some accountability...The political parties must disclose as to how much amount was collected by it and from whom and the manner in which it was spent so that the court is in a position to determine "whose money was actually spent" through the hands of the Party."

33. Similarly, in *Dr. P. Nalla Thampy Terah v. Union Of India & Ors* (1985 SCC Supp 189) a constitution bench of this Hon'ble Court held that:

"The public belief in the prevalence of corruption at high political levels has been strengthened by the manner in which funds are collected by political parties, especially at the time of elections. Such suspicions attach not only to the ruling party but to all parties, as often the opposition can also support private vested interests as well members of the Government party. It is, therefore, essential that the conduct of political parties should be regulated in this matter by strict principles in relation to collection of funds and electioneering. It has to be frankly recognised that political parties cannot be run and elections be fought without large funds. But these funds should come openly from the supporters or sympathisers of the parties concerned."

34. The petitioner has not filed any other writ petition regarding the matter in dispute in this Hon'ble Court or any High Court throughout the territory of India. The petitioner has no better remedy available.

GROUND:

- A. Because political parties enjoy a stronghold over their elected MP's and MLAs under Schedule 10 of the Constitution of India that makes it compulsory for a member of either House of Parliament or the Legislative Assembly or either House of the Legislature of the State to abide by the directions of the political parties, failing which the member stands to be disqualified.
- B. Because information about political parties, their income, expenditure, details of donors and is not disclosed by political parties for public scrutiny and for the right of information of an average voter thereby violating Article 19(1)(a) of the Constitution
- C. Because Central Information Commission in its order dated 03.06.2013 has already declared 6 national political parties namely the INC, BJP, CPI (M), CPIO, NCP and BSP to be "public authorities" under section 2(h) of the RTI Act.
- D. Because the said order of CIC is final and binding upon political parties. Despite this, none of the 6 political parties complied with the order of the CIC. Upon the non-compliance of the said order, the petitioners made a fresh complaint before the CIC *vide* complaint no. CIC/CC/C/2015/000182 for non-compliance of its own order by the six major political parties. CIC *vide* its order dated 16.03.2015 restated its previous order and held that the 6 national political parties are public authorities and the previous order of 03.06.2013 is final and binding.
- E. Because the Law Commission of India in its 170th Report on 'Reform of the Electoral Laws' in May 1999 recommended for transparency in the functioning of political parties specially focusing on financial transparency and accountability in their functioning.

- F. Because right of information is part of fundamental right in terms of Article 19(1)(a) of the Constitution of India. In this regard, voter's speech or expression in time of elections would include casting of votes, that is to say, voter speaks out or expresses by casting vote. To meet this purpose, information about the political parties is a must.
- G. Because this Hon'ble Court in a number of cases has declared that the most important value of the functioning of a healthy and well-informed democracy is transparency. In *State of Uttar Pradesh v. Raj Narain and Ors* (1975) 4 SCC 428, a constitution bench of this Hon'ble Court observed that "*the right to know which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security*". The court made similar observations in *S.P. Gupta v. President of India and Ors*, (1981 Supp (1) SCC 87).
- H. Because Section 29A of the Representation of the People Act, 1951 (RPA) states that all political parties must affirm their allegiance to the Constitution of India and such allegiance is made compulsory for the purpose of registration under sub-section (7) of Section 29A. Therefore, political parties so registered must furnish information to the public under the right of information under Article 19(1)(a) of the Constitution of India, since right of information has been held to be a part of freedom of speech and expression under Article 19(1)(a).
- I. Because political parties receive huge sums of money in the form of donations and contributions from corporate, trusts and individuals but do not disclose complete information about the source of such donations. A study conducted by National Election Watch and Association for Democratic Reforms dated 24.12.2014 gives a comprehensive analysis of donations received by National Parties for the financial year 2013-14 and finds that there is incomplete disclosure of information in the donations report of political parties making it difficult to link the donations with the donors. Because

this is a deliberate attempt by political parties to keep the information about their sources of income, donations received and expenditure etc outside the purview of public scrutiny.

J. Because the Law Commission of India in its 255th Report on Electoral Reforms dated March 2015 has also proposed its recommendations on the issue of disclosure obligations of political parties. In its Summary of Conclusions and Recommendations (Page 216 of the Report) it has been recommended that:

“Political parties should be required to maintain and submit annual accounts, duly audited by a qualified and practicing chartered accountant from a panel of such accountants maintained for the purpose by the Comptroller and Auditor General, to the ECI every financial year. These accounts will fully and clearly disclose all the amounts received by the party and the expenditure incurred by it. The ECI will then upload these accounts online or keep them on file for public inspection on payment of fee.”

K. Because the practice of disclosing full details about the income and expenditure of political parties is already in practice in various countries such as Germany, France, Italy, Brazil, Bulgaria, Bhutan, Nepal, the United States and Japan. In none of these countries is it possible for sources of funds to the tune of crores of Rupees to be unknown, but it is so in India.

L. Because many political parties adopt the coupon system for the purposes of collecting funds whereby they issue coupons in lieu of receipts to donors for cash contributions. In most cases these cash donations make it difficult to establish the identity of the donor. In this way the majority of cash donations received by political parties remain unaccounted for in the books of accounts, as only those amounts would be recorded for which a receipt has been issued.

M. Because according to the findings of a study dated 25.06.2014 conducted by National Election Watch and Association for Democratic Reforms titled ‘*Analysis of Income Tax Returns Filed and Donations Received by National Parties – FY 2012-13*’, there is

no standardization for declaring sources of income and hence no consistency in the parties' declaration of their sources of funds.

- N. Because by not disclosing complete information about donations and sources of income by political parties ambiguity is created in the mind of the voter about who is financing a particular party and to what extent.
- O. Because this Hon'ble Court in its judgment dated 13.09.2013 in *Resurgence India v. Election Commission of India &Anr* (AIR 2014 SC 344), had declared that no part of a candidate's affidavit should be left blank. In a similar way no part of form 24A submitted by political parties providing details of donations above Rs. 20,000 should be allowed to be left blank. In addition, political parties should be directed to keep a complete record of all donations received and the same should be disclosed for public scrutiny under RTI.
- P. Because the Election Commission of India in its report on *Proposed Electoral Reforms* (2004) made recommendations for compulsory maintenance and auditing of accounts of political parties. ECI in this report recommends that, "... *political parties must be required to publish their accounts (at least abridged version) annually for information and scrutiny of the general public and all concerned, for which purpose the maintenance of such accounts and their auditing to ensure their accuracy is a pre-requisite. The Commission reiterates these proposals with the modification that the auditing may be done by any firm of auditors approved by the Comptroller and Auditor General.*"
- Q. Because what the constitution obliges upon the State, it also obliges upon political parties. If democracy and accountability constitute the core of our constitutional system, the same concepts must also apply to and bind the political parties which are integral to parliamentary democracy.
- R. Because it is the right of the common voter to have all the requisite information about political parties, especially since they have

already been declared to be “public authority” vide CIC order dated 03.06.2013, which is final and binding.

PRAYERS:

In view of the facts & circumstances stated above, it is prayed that this Hon’ble Court, in public interest, may be pleased to:

- a. Issue appropriate writ declaring all national and regional political parties to be public authorities under the Right to Information Act, 2005 as per CIC orders dated 03.06.2013 and 16.03.2015 and thereby fulfill all obligations under the provisions of the said Act.
- b. Issue an appropriate writ directing all national and regional political parties to mandatorily disclose the following for public scrutiny:
 - i. Complete details about their income as well as expenditure
 - ii. Entire details of donations and funding received by them, irrespective of the amount donated
 - iii. Full details of donors making donations to them and to electoral trusts
- c. Issue any other appropriate writ that this Hon’ble Court may deem fit and proper in the facts & circumstances of the case.

Through

Prashant Bhushan
Counsel for the Petitioner

Drawn by: Ms. Neha Rathi

Drawn and Filed on:

New Delhi