

IN THE HIGH COURT OF DELHI AT NEW DELHI
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. _____ OF 2014

(IN THE MATTER OF PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC
REFORMS

...PETITIONER

VERSUS

UNION OF INDIA & ANR.

...RESPONDENTS

NOTICE OF MOTION

Please take notice that the accompanying Writ Petition will be listed before the Hon'ble Court on 21.05.2014 at 10:30 A.M. in the forenoon, or so soon thereafter as may be convenient to the Court.

Ms. KAMINI JAISWAL
ADVOCATE FOR PETITIONER
43, Lawyers Chamber
Supreme Court of India
New Delhi -110001
Tel.: 23385451

NEW DELHI
DATED: 20.05.2014

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To

The Deputy Registrar
High Court of Delhi at New Delhi

URGENT APPLICATION

Sir,

Will you kindly treat the accompanying Writ as an urgent one in accordance with the High Court orders and rules, the grounds of urgency are:

That by the accompanying Petition the Petitioner is seeking Implementation of the Law Commissions recommendation on the provision to monitor and regulate the Expenditure by the Political parties on and during the election. Since the Lok Sabha Election 2014 has just concluded, the said Implementation is necessary in the larger interest of the People of this Country, thus the present case is urgent.

Ms. KAMINI JAISWAL
ADVOCATE FOR PETITIONER
43, Lawyers Chamber
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MEMO OF PARTIES

IN THE MATTER OF:

Association for Democratic Reforms
Through Authorized Representative
O/O B-1/6, Hauz Khas,
New Delhi – 110016

... PETITIONER

VERSUS

1. Union of India
Through the Secretary
Ministry of Law, Justice and
Company Affairs
Shastri Bhavan
New Delhi
2. The Election Commission of India
Through the Chief Election Commissioner
Nirvachan Sadan
New Delhi

... RESPONDENTS

Ms. KAMINI JAISWAL
ADVOCATE FOR PETITIONER
43, Lawyers Chamber
Supreme Court of India
New Delhi -110001
Tel.: 23385451

NEW DELHI
DATED: 20.05.2015

SYNOPSIS

That the present Writ Petition under Article 226 of the Constitution of India is being filed, seeking appropriate Writ, Order or Direction for implementation of the Recommendation on the provision to monitor and regulate the Expenditure by the Political Parties, on and during the Election, made by the Law Commission in 170th Report, since the Representation of Peoples Act and the Election Rules, despite said recommendation, lacks such provision and the current political establishment has deliberately not enacted the law as per the recommendation.

The Hon'ble Supreme Court in various judgments including in Association for Democratic Reforms & Anr. [2002 (5) SCC 294] held that in exercise of its powers under Article 324 of the Constitution, the Election Commission would have sufficient power to give effect to the recommendation given by the Law Commission.

In sub-para 1 para 46, while summing up the legal and constitutional position, the Hon'ble Supreme Court stated that:

“The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word “elections” is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.”

Sub para 2 of para 46 is important and the same is quoted below:

“The limitation on plenary character of power is when Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in law is silent, Article 324 is a reservoir of power to act for the avowed purpose of having free and fair elections. The Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the elected laws or the rules. By issuing necessary directions, the Commission can fill the vacuum till there is legislation on

the subject. In Kanhiya Lal Omar Case [(1985) 4 SCC 628] the Court construed the expression “superintendence, direction and control” in Article 324 (1) and held that a direction may mean an order issued to a particular individual or a precept which may have to follow and it may be a specific or general order and such phrase should be construed liberally empowering the Election Commission to issue such orders.”

The Hon’ble Supreme Court in various judgments including the one recently pronounced in *Ashok Shankarrao Chavan Vs. Dr. Madhavrao Kinhalakar & Ors., Civil Appeal No. 5044 of 2014* on 05.05.2014, observed that in recent times the elections are fought on the might of the monies, received from the various illegal sources including from the unaccounted monies for the people and the corporate having vested interest, which seriously affects the fairness of the electoral process.

The Hon’ble Supreme Court also on various occasions has been pleased to take note of the corruption emanating into politics because of sourcing of illegal money. The Hon’ble Supreme Court has also been pleased to observe that the current legal provisions do not hold the Political Parties accountable. So far the Election Laws in place does not make the political parties accountable for the money collected from the various sources and the expenditure made on and during the election. Chapter VIII of the Representation of People Act 1951 only to a certain extent seeks to ensure the accountability by the candidates, unfortunately proviso of the said provision itself excludes accountability of any expense incurred by the political parties during the period of election.

That in view of several observations made by the Hon’ble Supreme Court regarding the illegal monies being spent by the Political Parties in the Election Process and the adverse affect of the same on maintaining the fairness of election process and also the existing laws which lack appropriate measures to address the aforesaid issues, *the 15th Law Commission chaired by Justice B.P. Jeevan Reddy also known as the 170th Law Commission report, observed as under;*

“4.1.1.....The object of the provision limiting the expenditure is two-fold. In the first place, it should be open to any individual or any political party howsoever small, to be able to contest an election on a footing of equality with any other individual or political party, howsoever rich and well financed it may be, and no individual or political party should be able to secure an advantage over others by reason of its superior financial strength.”

“4.1.4.1. The existing law does not measure up to the existing realities. The ceiling on expenditure is fixed only in respect of the expenditure incurred or authorised by the candidate himself but the expenditure incurred by the party or anyone else in his election campaign is safely outside the net of legal sanction. The spirit of the provision suffers violation through the escape route. The prescription of ceiling on expenditure by a candidate is a mere eye-wash and no practical check on election expenses for which it was enacted to attain a meaningful democracy. This lacuna in the law is, however, for the Parliament to fill lest the impression is reinforced that its retention is deliberate for the convenience of everyone. If this be not feasible, it may be advisable to omit the provision to prevent the resort to indirect methods for its circumvention and subversion of the law, accepting without any qualm the role of money power in the elections. This provision has ceased to be even a fig leaf to hide the reality.”

“4.1.6.1. In the very scheme of things and as pointed out by the Supreme Court in its various decisions, the bulk of the funds contributed to political parties would come only from business houses, corporate groups and companies. Such a situation sends a clear message from the political parties to big business houses and to powerful corporations that their future financial well being will depend upon the extent to which they extend financial support to the political party. Indeed most business houses already know where their interest lies and they make their contributions accordingly to that political party which is likely to advance their interest more. Indeed not sure of knowing which party will come to power, they very often contribute to all the major political parties. Very often these payments are made in black money. Section 293A of the Companies Act, 1965, as inserted in 1969, imposed a ban on the

companies making contributions to any political party or for any political person or for any political purpose. Unfortunately, this ban was lifted in 1985 by amending the Act. Under the present provision, a company is permitted to contribute amounts to a political party or for a political purpose to any person provided that the amount does not exceed five per cent of its average net profits. In the case of an Indian company of a multinational stature or in the case of any big business group, five per cent would mean a mind-boggling figure. As far back as 1957, Chagla C.J. pointed out the danger inherent in permitting the companies to make contributions to political parties (Koticha's case(1957) 27 Company Cases 604). He warned that "it is a danger which may grow apace and which may ultimately overwhelm and even throttle democracy in the country". As a matter of fact, an attempt made in 1976 to remove the ban imposed by Section 293A (as initially enacted) failed. It is amusing to note the 'Statement of Objects and Reasons' appended to the bill prepared in 1976. It stated that the ban was proposed to be lifted "with a view to permit the corporate sector to play a legitimate role within the defined norms in the functioning of our democracy"

Recommendation by the 170th Law Commission:

4.2.6. Accordingly, the Law Commission reiterates that a new section as proposed in the working paper (section 78A) should be inserted in the R.P.Act of 1951. It is further recommended that the provision as suggested should be numbered as sub-section (1) and sub-sections (2), (3) and (4) as proposed hereinafter should also be inserted in the said section.

(2) A political party which does not comply with any of the requirements of sub-section (1) shall be liable to pay a penalty of Rs. 10,000/- for each day of non-compliance and so long as the non-compliance continues. If such default continues beyond the period of 60 days, the Election Commission may de-recognise the political party after affording a reasonable opportunity to show cause.

(3) If the Election Commission finds on verification, undertaken whether suo motu or on information received, that the statement of accounts filed

under sub-section (1) is false in any particular, the Election Commission shall levy such penalty upon the political party, as it may deem appropriate besides initiating criminal prosecution as provided under law.

(4) Any orders passed under sub-sections (2) or (3) shall be directed to be published in the press and other media, for public information."

That since the current political system which mainly gets funded through various illegal means and also by the people and corporate agencies with the vested interests does not seem to be inclined to give effect to the aforesaid recommendations of the Law Commission.

That since our legislature, has failed to act on the recommendation made by the Law Commission, made keeping in view the concerns raised by the Hon'ble Supreme Court, the Election Commission has enough power to regulate the same by exercising the Power under Art. 324 of the Constitution of India.

Therefore the Petitioner is approaching this Hon'ble Court by filing the present Writ Petition Under Article 226 of the Constitution of India,

20.05.2014 HENCE THIS PRESENT WRIT PETITION

IN THE HIGH COURT OF DELHI AT NEW DELHI
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. _____ OF 2014

(IN THE MATTER OF A PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

Association for Democratic Reforms
Through Authorized Representative
O/O B-1/6, Hauz Khas,
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... PETITIONER

VERSUS

1. Union of India
Through the Secretary
Legislative Department
Ministry of Law, Justice and
Company Affairs
Shastri Bhavan
New Delhi
2. The Election Commission of India
Through the Chief Election Commissioner
Nirvachan Sadan
New Delhi

... RESPONDENTS

**WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA FOR VIOLATION OF
STATUTORY RIGHTS TO VOTE AND ARTICLE 19 OF
CONSTITUTION OF INDIA.**

To

The Hon'ble Chief Justice and
His Companion Justices of
The Hon'ble High Court of
Delhi at New Delhi.

The humble petition of the petitioner named above;

MOST RESPECTFULLY SHOWETH:

1. That the present Writ Petition under Article 226 of the Constitution of India is being filed, seeking appropriate Writ, Order or Direction seeking implementation of the Recommendation on the provision to monitor and regulate the Expenditure by the Political Parties, on the Election and during the Election, made by the Law Commission in 170th Report, since the Representation of Peoples Act and the Election Rules, despite said recommendation, lacks such provision and the current political establishment has deliberately not enacted the law as per the recommendation.

2. That the Petitioner association is an independent association of public spirited persons who have been actively crusading for the democratic rights of the people of this country and also to ensure free and fair elections in this country. The Petitioner association was set up in the year 1999 by a group of professors and alumni of the Indian Institute of Management, Ahmedabad (IIMA) as a non profit, non-political, non-partisan, non government organization, committed to the task of improving democracy and governance in India. The Organization was later registered under the Society Registration Act. A true copy of the certificate of registration of the Petitioner is annexed herewith and marked as **ANNEXURE P-1**.

That the petitioner has no personal interest in the litigation and that the petition is not guided by the self gain or for gain of any other person/institution/body and that there is no motive other than of public interest in filing the Writ Petition.

That the present petition has been filed in the interest of Citizens of This Country, for ensuring Greater Transparency in the Electoral Process.

That the Petitioner has the means to pay the costs, if any, imposed by the Court and on an undertaking to the Court in that respect.

3. The Petitioner association has been in the forefront of Electoral reforms in the country in the recent past. In an initiative towards building an informed, aware citizenry the Petitioner, on an earlier occasions had to approach this Hon'ble Court by filing CWP No. 7257 of 1999, seeking directions to the Election Commission, to give effect to one of the Recommendation made by the Law Commission, requiring the candidates to disclose the criminal antecedents, and assets and liabilities of candidates contesting elections to the Parliament and State Legislatures.

4. That on November 2, 2000 this Hon'ble Court, while allowing the above petition, held that for making a right choice it

is essential that relevant information regarding the past of the candidate should be disclosed in the interest of parliamentary democracy, which is a basic feature of the Constitution. The Court held that the voter and the citizen of this country have a fundamental right to such information, which shall make meaningful his/her fundamental right to express himself/herself in the elections. This Hon'ble Court also directed the Election Commission to use its powers under Article 324 of the Constitution to secure to voters the information regarding criminal antecedents, and assets and liabilities of candidates contesting elections to the Parliament and State Legislatures. Thus the recommendation made by the Law Commission was given effect to.

5. That the government run by the existing political system, was reluctant to give effect to the Judicial pronouncement of this Hon'ble Court and thus the aforesaid Judgment was challenged by the Union of India, before the Hon'ble Supreme Court through the Special Leave Petition. After carefully considering the submissions of the parties, the Hon'ble Supreme Court upheld and affirmed the reasoning and judgment of this Hon'ble Court (Union of India Vs. Association for Democratic Reforms & Anr. [2002 (5) SCC 294].

6. The dictum of the aforesaid judgment was that the Election Commission in exercise of its powers under Article 324 of the Constitution would have sufficient power to give effect to the recommendation given by the Law Commission.

In sub-para 1 para 46, while summing up the legal and constitutional position, the Hon'ble Supreme Court stated that:

“The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word “elections” is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.”

Sub para 2 of para 46 is important and the same is quoted below:

“The limitation on plenary character of power is when Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in law is silent, Article 324 is a reservoir of power to act for the avowed purpose of having free and fair elections. The Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the elected laws or the rules. By issuing necessary directions, the Commission can fill the vacuum till there is legislation on the subject. In Kanhiya Lal Omar Case [(1985) 4 SCC 628] the Court construed the expression “superintendence, direction and control” in Article 324 (1) and held that a direction may mean an order issued to a particular individual or a precept

which may have to follow and it may be a specific or general order and such phrase should be construed liberally empowering the Election Commission to issue such orders.”

Sub-para 7 of Para 46 of the judgment is important and the same is, therefore, quoted below:

“7. Under our Constitution, Article 19(1)(a) provides for freedom of speech and expression. 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. For this purpose, information about the candidate to be selected is must. Voter’s (little man citizen’s) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law breakers as law makers.”

7. The directions issued by the Hon’ble Supreme Court in the aforesaid judgment was sought to be given effect by the Election Commission, but the existing system was hell bent in stalling the process which was a step towards maintaining the transparency and fairness in the electoral process, for which they promulgated an Ordinance being Representation of People (Amendment) Ordinance 2002 (4). The present Petitioner along with few others challenged the said Ordinance before the Hon’ble Supreme Court (PUCL Vs UOI (2003) 4 SCC 39). The Hon’ble Supreme Court struck down the controversial provisions of the amended Act and directed the Election Commission to take necessary steps.

8. The aforesaid facts amply narrate the psyche of the existing Political System, which is hell bent on stalling the process of transparency and fairness of the Electoral Process. But, it was the Petitioners' and few other such organizations' effort that *now the* candidates contesting elections for the Parliament and State Assemblies are mandatorily required to submit affidavits along with their nomination papers giving information about criminal cases pending against them, if any; financial assets of the candidates, his/her spouse and dependents financial liabilities and educational qualifications of the candidate.

9. That the Petitioner Association along with National Election Watch (a conglomeration of more than 1200 organizations across the country), started to hold Election Watches for all Parliamentary and Assembly elections since 2002. The Association has also been conducting, various projects aimed at increasing transparency and accountability in the political and electoral system of the country.

10. That in December, 2002, first Election Watch was conducted for Gujarat Assembly Election. So far Petitioner Association along with National Election Watch, has conducted Election Watches for all Lok Sabha and Rajya Sabha elections and almost all state assembly elections since 2002 in the country.

11. That the Petitioner Association has also successfully mobilized and networked with a large number of civil society organizations all over the country. This in turn has helped in taking the campaign to grass-roots while strengthening the network of civil society across the country. The information is disseminated through various media including Press Conferences, toll free help lines, SMS campaigns, websites (myneta.info and adrindia.org) and outbound calls.

12. That the Petitioner Association towards achieving the goal, has also been following the income tax filings status of political parties. That in April 2008 in an Appeal filed by the Petitioner Association, the Central Information Commission (CIC), held that the Income Tax Returns of Political Parties would be made available in the public domain along with the assessment orders. The aforesaid Appeal was an outcome of persistent follow up by the Petitioner Association of an RTI Application for almost 2 years. In the process, the Association has also procured details income tax returns of 14 political parties and put these in the public domain.

13. The Petitioner Association/NEW also helped put up the information in the Register of Members' Interest of the Rajya Sabha in the public domain. The register contains crucial information regarding remunerative directorship, shareholding of controlling nature, regular remunerative activity, paid

consultancy and professional engagement of the Rajya Sabha members. This information was analyzed and released widely. The Petitioner Association is currently corresponding with the Speaker of the Lok Sabha to institute the same disclosure norms in the Lower House also.

14. That the Petitioner Association holds annual national conferences also, during 2012 Annual National Conference held at Bhubaneswar, the Petitioner Association released “Political party Draft bill”.

15. That the Petitioner Association has representation in the task force set up by the Central Vigilance Commission (CVC) to evolve a National Strategy to Combat Corruption. The Petitioner Association has been asked formally to be part of said committee.

16. In December 2011 Petitioner Association won the NASSCOM award for ICT led Innovation by Multistakeholder Partnerships, which was awarded for the Election Watch software of Petitioner Association and Webrosoft. The Election Watch Software (EWS), is the backbone of all Petitioner Association’s research work. EWS is the online tool used to feed information on antecedents of candidates. The changes were made to suit the new format of affidavits released by the ECI in 2011 and also for the analysis of election expenses. The online tool was also

expanded to include information on the performance of MLAs and Assemblies.

17. The Petitioner Association has support of about 1200 NGOs from all over the country and the Association in partnership with its partners has been organizing Citizen Election Watch for all major elections. The Petitioner Association's goal is to improve governance and strengthen democracy by continuous work in the area of Electoral and Political Reforms. The ambit and scope of work in this field is enormous, Hence, Petitioner Association has chosen to concentrate its efforts in the following areas pertaining to the political system of the country:

- *Corruption and criminalization in the political process.*
- *Empowerment of the electorate through greater dissemination of information relating to the candidates and the parties, for a better and informed choice.*
- *Need for greater accountability of Political Parties.*
- *Need for inner-party democracy and transparency in party-functioning and gaps in the disclosure of candidate's profile.*

18. That apart from the arena of electoral reforms, the Petitioner Association is also engaged in the broad field of political reform and is committed to the task of greater

transparency and accountability in government and polity. The Petitioner Association believes that the political parties play a pivotal role in a parliamentary democracy like our Country; it is the political parties which field candidates to contest elections, to act as peoples' representatives and as such function as the bridge between government and the governed.

19. The Petitioner Association is approaching this Hon'ble Court, since the corruption by the candidates and political parties in the Election Process and for the purposes of elections has crept into the political system through various means, and the funding from the unknown sources and through illegal means to the political parties and the candidates individually has literally made the sanctity of election process a farce.

20. The said fact has also been taken note by the Hon'ble Supreme Court in various judgments including the one recently pronounced in *Ashok Shankarrao Chavan Vs. Dr. Madhavrao Kinhalakar & Ors.*, CIVIL APPEAL NO.5044 OF 2014 on 05.05.2014, the relevant paragraphs is reproduced as under:

"48. It is common knowledge as is widely published in the Press and Media that nowadays in public elections payment of cash to the electorate is rampant and the Election Commission finds it extremely difficult to control such a menace. There is no truthfulness in the attitude and actions of the contesting candidates in sticking to the requirement of law, in particular to

Section 77 and there is every attempt being made to violate the restrictions imposed in the matter of incurring election expenses with a view to woo the electorate concerned and thereby, gaining their votes in their favour by corrupt means viz. by purchasing the votes. Therefore, this Court cannot turn a Nelson's eye and state that Section 77(1) and (3), as well as 78 would be relevant only for the purpose of ascertaining the corrupt practices under Section 123(6) of the Act and that such requirement of incurring bona fide and correct expenditure need not be a requirement for ascertainment for the Election Commission while exercising its powers under Section 10A of the Act. In fact, ascertainment of the requirement under Section 77(3) viz the expenses incurred, do not exceed the limit prescribed and can be made both for the purpose of an enquiry under Section 10A, as well as in the event of a candidate exceeding the limit as a corrupt practice for the purpose of invalidating the election. Therefore, the requirement under Section 77(3) has got twin objectives to be fulfilled.

“55. In recent times, when elections are being held it is widely reported in the Press and Media that money power plays a very vital role. Going by such reports and if it is true then it is highly unfortunate that many of the voters are prepared to sell their votes for a few hundred rupees. In fact, taking advantage of the weakness of the voters, exploitation to the maximum level is being carried out by those who aspire to become either Member of Parliament or State Legislature. We are pained to state that the sanctity of the status as a Member of the Legislatures, either Parliament or State Legislature are not being seriously weighed even by those who sponsor their candidature. It is a hard reality that if one is prepared to expend money to unimaginable limits only then can he be preferred to be nominated as a candidate for such membership, as against the credentials of genuine and deserving candidates. If such practices are to be simply ignored

and a laudable object with which the Act has been brought into the statute book as early as in the year 1950 and later on by the Act of 1951, wherein by virtue of the Constitutional provision under Article 324 an authority in the status of the Election Commission is created in order to supervise and control the elections, it must be stated that such an authority who is in ultimate control in the matter of holding of the elections should be held to be invested with the widest power of its kind specified in the Act. Therefore, when it comes to the question of interpretation of the extent of such power to be exercised by the said authority, we are convinced that the Court should have a very liberal approach in interpreting the nature of power and jurisdiction vested with the said authority, namely, the Election Commission. This view of ours is more so apt in the present day context, wherein money power virtually controls the whole field of election and that people are taken for a ride by such unscrupulous elements who want to gain the status of a Member of Parliament or the State Legislature by hook or crook.

56. In this context, we also keep in mind the Preamble to the Constitution which in liberal words states that the people of India having solemnly resolved to constitute India into a sovereign, social, secular, democratic, republic and to secure to all citizens justice, liberty, equality and fraternity. In such a large democratic country such as ours, if purity in elections is not maintained and for that purpose when the constitution makers in their wisdom thought it fit to create an authority, namely, the Election Commission and invested with it the power of superintendence, control and also to issue directions, it must be stated that such power invested with the said constitutional authority should not be a mere empty formality”

“101. We can also usefully refer to the decision referred to before us by Mr. Ashok Desai, learned Senior Counsel for the

Election Commission Union of India v. Association for Democratic Reforms & Anr. - 2002 (5) SCC 294, wherein this Court has highlighted the dire need for maintaining purity in the elections and for that purpose Article 324 to be interpreted in a broad perspective, acknowledging the wide powers invested with the Election Commission. Paragraph 17 of the said decision which is relevant for our purpose is as under:

“17. Ms Kamini Jaiswal, learned counsel appearing on behalf of the respondents in support of the decision rendered by the High Court referred to the decision in Kihoto Hollohan v. Zachillhu wherein while considering the validity of the Tenth Schedule of the Constitution, the Court observed: (SCC p. 741, para 179)

‘179. Democracy is a part of the basic structure of our Constitution; and rule of law, and free and fair elections are basic features of democracy. One of the postulates of free and fair elections is provision for resolution of election disputes as also adjudication of disputes relating to subsequent disqualifications by an independent authority.’

She, therefore, contended that for free and fair elections and for survival of democracy, entire history, background and the antecedents of the candidate are required to be disclosed to the voters so that they can judiciously decide in whose favour they should vote; otherwise, there would not be true reflection of electoral mandate. For interpreting Article 324, she submitted that this provision outlines broad and general principles giving power to the Election Commission and it should be interpreted in a broad perspective as held by this Court in various decisions.”

103. In the light of the above categoric statement made while holding that the rule of law and free and fair elections are the

basic features and facts of our democracy, Article 324 should be interpreted in a wide perspective giving power to the Election Commission which has to be recognized in a broad sense and not in a narrow one. We fully approve of the submissions of Mr. Ashok Desai, learned Senior Counsel on the above lines and we have already held that in order to ensure free and fair elections, the power vested with the Election Commission under Section 10A read along with the other provisions of the Act and the Rules, it should be held that Election Commission does possess the requisite powers under Section 10A to hold the necessary enquiry to ascertain the fact about the compliance of the statutory requirements in the matter of submission of accounts of the election expenses, i.e. the true, correct and bona fide expenses and that such expenses were within the prescribed limit of the Act.

104. We also wish to refer to the decision of this Court reported in People's Union for Civil Liberties (PUCL) & Anr. Vs. Union of India & Anr. - 2003 (4) SCC 399 which was brought to our notice by Mr. Ashok Desai, learned Senior Counsel. In paragraph 20 of the said decision, this Court has practically acknowledged the report of the National Commission to Review the Working of the Constitution appointed by the Union Government submitted in March, 2002. Paragraph 20 (4.14.1) and (4.14.3) can be usefully referred to show how as a matter of fact money power is playing a very detrimental role in the matter of elections which requires to be curbed, which are as under:

“20.....4.14.1. One of the most critical problems in the matter of electoral reforms is the hard reality that for contesting an election one needs large amounts of money. The limits of expenditure prescribed are meaningless and almost never adhered to. As a result, it becomes difficult for the good and the honest to enter legislatures. It also creates a high degree of compulsion for corruption in the political arena. This has progressively polluted

the entire system. Corruption, because it erodes performance, becomes one of the leading reasons for non-performance and compromised governance in the country. The sources of some of the election funds are believed to be unaccounted criminal money in return for protection, unaccounted funds from business groups who expect a high return on this investment, kickbacks or commissions on contracts etc. No matter how we look at it, citizens are directly affected because apart from compromised governance, the huge money spent on elections pushes up the cost of everything in the country. It also leads to unbridled corruption and the consequences of widespread corruption are even more serious than many imagine. Electoral compulsions for funds become the foundation of the whole superstructure of corruption.

4.14.3. Transparency in the context of election means both the sources of finance as well as their utilization as are listed out in an audited statement. If the candidates are required to list the sources of their income, this can be checked back by the Income Tax Authorities. 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. At the end of the election each candidate should submit an audited statement of expenses under specific heads. EC should devise specific formats for filing such statements so that fudging of accounts becomes difficult. Also, the audit should not only be mandatory but it should be enforced by the Election Commission.”

“ 110. At the end we can profitably refer to the basics of our democracy, which have been succinctly stated by His Lordship Justice V.R. Krishna Iyer in the Constitution Bench decision reported in Mohinder Singh Gill & Anr. v. Chief Election

Commission, New Delhi & Ors. - 1978 (1) SCC 405. To borrow His Lordship's expression stated in paragraph 2, the same are as under:

"2. Every significant case has an unwritten legend and indelible lesson. This appeal is no exception, whatever its formal result. The message, as we will see at the end of the decision, relates to the pervasive philosophy of democratic elections which Sir Winston Churchill vivified in matchless words:

'At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper — no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point.'

If we may add, the little, large Indian shall not be hijacked from the course of free and fair elections by mob muscle methods, or subtle perversion of discretion by men 'dressed in little, brief authority'. For 'be you ever so high, the law is above you.'

21. So far the Election Laws in place does not make the political parties accountable for the money collected from the various sources and the expenditure made on and during the election. Chapter VIII of the Representation of People Act 1951 only to a certain extent seeks to ensure the accountability by the candidates, unfortunately proviso of the said provision itself excludes accountability of any expense incurred by the political parties during the period of election.

22. That the Hon'ble Supreme Court, was only dealing with the existing provisions which provides for the financial accountability by the candidates, that too only during the elections, but the existing system of law, does not hold the political parties accountable for the funds raised through the illegal means and from the unknown sources, which gives them ample lee way to flout with the law. The Hon'ble Supreme Court also on various occasions has been pleased to take note of the corruption emanating into politics because of sourcing of illegal money. The Hon'ble Supreme Court has also been pleased to observe that the current legal provisions do not hold the Political Parties accountable.

22. Some of the Judicial Pronouncements, by the Hon'ble Supreme Court, very well show, how the current legal provision, does not address the issue of involvement of illegal money in the Election Process, and how the same is affecting the fairness in the electoral process.:

In Gadokh Yashwantrao Kankrao Vs E.V. alias Balesaheb Vikhe Patil & Others, 1994 SCC (1) 682:

"16....The existing law does not measure upto the existing realities. The ceiling on expenditure is fixed only in respect of the expenditure incurred or authorized by the candidate himself but the expenditure- incurred by the party or anyone else in his election campaign is safely outside the net of legal sanction. The spirit of the provision suffers violation through the escape route."

In Dr. P. Nalla Thampy Terah v. Union of India and Ors. [1985 Suppl. SCC 189], the Hon'ble Supreme Court while considering the validity of Section 77(1) of the Representation of People's Act, referred to the report of the Santhanam Committee on Prevention of Corruption, which says:

“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 as 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 recognized that political parties cannot be run and elections cannot be fought without large funds. But these funds should come openly from the supporters or sympathizers of the parties concerned.”

The Hon'ble Supreme Court in Dr. P. Nalla Thampy Terah vs Union Of India & Ors, 1985 AIR 1133, Page No. 5;

“By this petition under Article 32 of the Constitution, he challenges the validity of Explanation I to section 77(1) of the Representation of the People Act, 1951 (hereinafter referred to as "the Act") which gives a carte blanche to political parties to spend unlimited money for the election of the candidates sponsored by them. In practice, insofar as our little knowledge of political affairs goes, sky is the limit for such expenditure: Some call it millions, some call it billions.”

It was further observed by the Hon'ble Supreme Court :

"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 recognized that political parties cannot be run and elections be fought without large funds. But these funds should come openly from the supporters or sympathizers of the parties concerned.

It is the reluctance and inability of these parties to make small collections on a wide basis and the desire to resort to short cuts through large donations that constitutes the major source of corruption and even more of suspicion of corruption."

In Common Cause (A Registered Society) Vs. Union of India (AIR 1996 SC 3081), Supreme Court dealt with the issue of election expenses, while holding that the purity of election was fundamental to democracy and the Election Commission could ask the candidates about the expenditure incurred by the candidates and by a political party.

The Hon'ble Supreme Court summed up the position thus:-

"18...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.”

Page no. 8 and 9 observed;

“From these discussions, I have drawn the conclusion that most politicians are not interested in honest money funding for elections. Honest money entails accountability. Honest money restricts spending within legally sanctioned limits (which are ridiculously low). Honest money leaves little scope for the candidate to steal from election funds. Honest money funding is limiting. While the politicians want money for election, more importantly, they want money for themselves - to spend to hoard, to get rich. And this they can do only if the source of money is black .The corruption in quest of political office and the corruption in the mechanics of survival in power has thoroughly vitiated our lives and our times. It has sullied our institutions The corrupt politician groomed to become the corrupt minister, and, in turns the corrupt minister set about seducing the bureaucrat THINK OF ANY problem our society or the country is facing today, analyze it, and you will inevitably conclude, and rightly, that corruption is at the root of the problem. Prices are high. Corruption is the cause. Quality is bad. Corruption is the cause. Roads are pockmarked. Corruption is the cause. Nobody does a good job. Corruption is the cause. Hospitals kill. Corruption is the cause. Power-failures put homes in darkness, Corruption is the cause. Businesses go into bankruptcy. Corruption is the cause. Cloth is expensive. Corruption is the cause. Bridges collapse. Corruption is the cause. Educational standards have fallen. Corruption is the cause. We have no law and order. Corruption is the cause. People die from poisoning, through food, through drink, through medicines. Corruption is the cause. The list is endless. The very foundation of our nation, of our society, is now threatened. And corruption is the cause.”

Further in Page no. 9 and 10, the Court held;

“When the elections are fought with unaccounted money the persons elected in the process can think of nothing except getting rich by amassing black money. They retain power with the help of black money and while in office collect more and more to spend the same in the next election to retain the seat of power. Unless the statutory provisions meant to bring transparency in the functioning of the democracy are strictly enforced and the election-funding is made transparent, the vicious circle cannot be broken and the corruption cannot be eliminated from the country.”

“A political party which is not maintaining, audited and authentic accounts and is not filing the return of income before the income tax authorities cannot justifiably plead that it has incurred or authorized any expenditure in connection with the election of a party candidate. The expenditure "incurred or authorized in connection with the election of a candidate by a political party" can only be the expenditure which has a transparent source. Explanation 1 to Section 77 of the Income-tax Act does not give protection to the expenditure which comes from an unknown or black source. Bulk of income of a political party by way of contributions/donations is from companies. Section 293A of the Companies Act makes it mandatory that such contributions/donations are made in a transparent manner as provided under the said section. Similarly, Section 13A of the Income-tax Act lays down that all income derived from contributions/donations is exempt from income tax, only if a political party satisfies that (i) it keeps and maintains such books of accounts and other documents as would enable the assessing officer to properly deduce its income therefrom; (ii) it keeps and maintains a record of each voluntary contribution in excess of Rs.10,000 and of the names and addresses of persons who have made such contributions; and (iii) the accounts of political party are audited by a chartered

accountant or other qualified accountant. Sub-section 4B has been inserted in Section 139 of the Income Tax Act by Taxation Laws (amendment) Act, 1978 under which every political party is obliged to file every year a return of total income voluntarily. The total income for this purpose is to be computed without giving effect to the provisions of Section 13A of the Income Tax Act. If such total income exceeds the maximum amount which is not chargeable to tax, the liability of the political party to file return of income voluntarily arises. It is thus, obvious that Section 293A of the Companies Act read with Section 13A and other provisions of the Income Tax Act are with an avowed object of bringing transparency in the accounts and expenditure of the political parties. If a political party deliberately chooses to violate or circumvent these mandatory provisions of law and goes through the election process with the help of black and unaccounted money the said party, ordinarily, cannot be permitted to say that it has incurred or authorized expenditure in connection with the election of its candidates in terms of Explanation I to Section 77 of the R.P. Act.”

The Supreme Court observation in C.Narayanaswamy v. C.K. Jaffer Sharief (1994 (Supp) 3 SCC 170) and Gadakh Yashwantrao Kankarrao v. Balasaheb Vikhe Patil (1994(1) SCC 682;

"As the law stands in India today anybody including a smuggler, criminal or any other anti-social element may spend any amount over the election of any candidate in whom such person is interested, for which no account is to be maintained or to be furnished and any such expenditure shall not be deemed to have been expenditure in connection with the election, incurred or authorised by the candidate or by his election agent for the purpose of sub-section (1) of Section 77, so as to amount to a corrupt practice within the meaning of sub-section (1) of section 77, so as to amount to a corrupt practice within the meaning of sub-

section (6) of section 123. It is true that with the rise in the costs of the mode of publicity for support of the candidate concerned, the individual candidates cannot fight the election without proper funds. At the same time it cannot be accepted that such funds should come from hidden sources which are not available for public scrutiny. According to us, sub-section (6) of section 123 declaring "incurring or authorising of expenditure in contravention of section 77" a corrupt practice has lost its significance and utility with the introduction of the Explanation-I aforesaid which encourages corruption by underhand methods. If the call for "purity of elections" is not to be reduced to a lip service or a slogan, then the persons 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. But this has to be taken care of by Parliament."

The Supreme Court observation in Gajanan Krishnaji Bapat & Anr vs Dattaji Raghobaji Meghe & Ors, 1995 AIR 2284, Page No. 26;

"The General Elections - to decide who rules over 850 million Indians - are staged every 5/6 years since independence. It is an enormous exercise and a mammoth venture in terms of money spent. Hundreds and thousands of vehicles of various kinds are pressed on to the roads in the 543 parliamentary constituencies on behalf of thousands of aspirants to power, many days before the general elections are actually held. Millions of leaflets and many millions of posters are printed and distributed or pasted all over the country. Banners by the lakhs are hoisted. 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.”

23. That the Hon’ble Supreme Court also took note of the adverse effect of money which is sourced through the illegal means and by the people with the vested interest:

In Kanwar Lal Gupta vs Amar Nath Chawla & Ors, 1975 SCR (2) 269, the Hon’ble Supreme Court at Page no. 8, noted as under;

“It is difficult to generalize about the degree of influence which the large contributors may wield in shaping the policies and decisions of the political party which they finance. It is widely acknowledged, however, that, at the very least, they would have easy access to the leaders and representatives of the political party. But it would be naive to suggest that the influence ends with mere access. It may safely be assumed that hardly any politicians "would consciously sell their votes"; the result may be nearly the same, if one accepts Herbert Alexander's analysis of the subtle factors that influence a political party's actions : "Many politicians-who do what they honestly think is right, never realize that they are mere spokesmen for their financial supporters. A legislator can avoid a Conflict of interest by investing in government bonds, but he cannot chance the conditioning that leads him to believe that what is good for his former company or present backers is good for the country.”

“It is likely that some elected representatives would tend to share the views of the wealthy supporters of their political party, either because of shared background and associations, increased access or subtle influences which condition their thinking. In such event the result would be that though ostensibly the political Parties which receive such contributions may profess an ideology acceptable to the common man, they would in effect and substance be representative of a certain economic class and their policies and decisions would be shaped by the interests of that economic class. It was over a hundred years ago that John Stuart Mill observed that persons of a particular class who have exclusive governmental power, even if they try to act objectively, will tend to overlook the interests of other classes, or view those interests differently. And to this natural tendency may be added the fact that office bearers and elected representatives may quite possibly be inclined, though unconsciously and imperceptibly, to espouse policies and decisions-that will attract campaign contributions from affluent individuals and groups. It was said of the electoral process in the United States of America : "Members of the Rockefeller and Du Pont families invest in the election of a Republican President because they sense that if that party takes over the White House, their interests will gain more sympathetic attention-" "The central objective of contributions is access to the power of the elected official-" "For a gift of a few hundred dollars an individual may gain, in return, the intercession of a Congressman that will get him a government contract or a tariff provision that will ultimately net him or his business tens of thousands of dollars." It is obvious that pre-election donations would be likely to operate as post-election promises resulting ultimately in the casualty of the interest of the common man, not so much ostensibly in the legislative process as in the implementation of laws and administrative or policy decisions. The small man's chance is the essence of Indian democracy and that

would be stultified if large contributions from rich and affluent individuals or groups are not divorced from the electoral process. It is for this reason that our Legislators, in their wisdom, enacted a ceiling on the expenditure which may legitimately be incurred in connection with an election. This background must inform the court in the interpretation of this vital and significant provision in the election law of our country.”

The Hon'ble Supreme Court speaking on the object of the ceiling on the Election Expenditure, in *Kanwar Lal Gupta vs Amar Nath Chawla & Ors*, 1975 SCR (2) 269, at Page no. 2 stated as under:

“The objects of enacting a ceiling on the expenditure which may legitimately be incurred in connection with an election are:

(a) It should be open to any individual or to any political party, however small, to be able to contest an election on a footing of equality with any other individual or political party, however rich and well financed it may be, and no individual or political party should be able to secure an advantage over others by reason of its superior financial strength. The democratic process can function efficiently and effectively, for the benefit of the common good and reach out the benefits of self-government to the common man only if it brings about a participatory democracy in which every man, howsoever lowly or humble he may be, should be able to participate on a footing of equality with others. Now money plays an important part in the successful prosecution of an election campaign by buying advertisement and canvassing facilities, by providing the means for quick and speedy communications and movements and sophisticated campaign techniques, and also by the employment of paid workers where volunteers are found to be insufficient. Therefore, if one political party or individual has larger

resources available to it than another the former would certainly, under the present system of conducting elections, have an advantage over the latter in the electoral process.

(b) The other objective of limiting expenditure is to eliminate, as far as possible, the influence of big money in electoral process. If there were no limit on expenditure political parties would go all out for collecting contributions and obviously the largest contributions would be from the rich and the affluent who constitute but a fraction of the electorate. It is likely that some elected representatives would tend to share the views of the wealthy supporters of their political party, either because of shared background and association, increased access or subtle influences which condition their thinking. In such an event, the result would be that though ostensibly the political parties which receive such contributions may profess an ideology acceptable to the common man, they would in effect and substance be the representatives of a certain economic class, and their policies and decisions would be shaped by the interests of that economic class. Persons of a particular class who have exclusive governmental power, even if they tried to act objectively, would tend to overlook the interests of other classes or view those interests differently. To this natural tendency may be added the fact that office bearers and elected representatives may quite possibly be inclined, though unconsciously and imperceptibly, to espouse the policies and decisions that will attract campaign contributions from affluent individuals and groups. Pre-election donations would be really to operate as post-election promises resulting ultimately in the casualty of the interest of the common man. The small man's chance is the essence of Indian democracy and that would be stultified if large contributions from rich and affluent individuals or groups are not divorced from the electoral process."

Further in Page no. 8;

“The other objective of limiting expenditure is to eliminate as far as possible, the influence of big money in the electoral process. If there were no limit on expenditure, political parties would go all out for collecting contributions and obviously the largest contributions would be from the rich and affluent who constitute but a fraction of the electorate. The pernicious influence of big money would then play a decisive role in controlling the democratic process in the country. This would inevitably lead to the worst form of political corruption and that in its wake is bound to produce other vices at all levels. This danger has been pointed out in telling words in the following passage from the notes in Harvard Law Review, Vol. 66, p. 1260: “A less debatable objective of regulating campaign funds is the elimination of dangerous financial pressures on elected officials. Even if contributions are not motivated by an expected return in political favours, the legislator cannot overlook the effects of his decisions on the sources of campaign funds.”

24. That in view of several observations made by the Hon’ble Supreme Court regarding the illegal monies being spent by the Political Parties in the Election Process and the adverse affect of the same on maintaining the fairness of election process and also the existing laws which lack appropriate measures to address the aforesaid issues, *the 15th Law Commission chaired by Justice B.P. Jeevan Reddy also known as the 170th Law Commission report, observed as under;*

“4.1.1.....The object of the provision limiting the expenditure is two-fold. In the first place, it should be open to any individual or any political party howsoever small, to be able to contest an election on a footing of equality with any other individual or political party, howsoever rich and well financed it may be, and no

individual or political party should be able to secure an advantage over others by reason of its superior financial strength."

"4.1.4.1. The existing law does not measure up to the existing realities. The ceiling on expenditure is fixed only in respect of the expenditure incurred or authorised by the candidate himself but the expenditure incurred by the party or anyone else in his election campaign is safely outside the net of legal sanction. The spirit of the provision suffers violation through the escape route. The prescription of ceiling on expenditure by a candidate is a mere eye-wash and no practical check on election expenses for which it was enacted to attain a meaningful democracy. This lacuna in the law is, however, for the Parliament to fill lest the impression is reinforced that its retention is deliberate for the convenience of everyone. If this be not feasible, it may be advisable to omit the provision to prevent the resort to indirect methods for its circumvention and subversion of the law, accepting without any qualm the role of money power in the elections. This provision has ceased to be even a fig leaf to hide the reality."

"4.1.6.1. In the very scheme of things and as pointed out by the Supreme Court in its various decisions, the bulk of the funds contributed to political parties would come only from business houses, corporate groups and companies. Such a situation sends a clear message from the political parties to big business houses and to powerful corporations that their future financial well being will depend upon the extent to which they extend financial support to the political party. Indeed most business houses already know where their interest lies and they make their contributions accordingly to that political party which is likely to advance their interest more. Indeed not sure of knowing which party will come to power, they very often contribute to all the major political parties. Very often these payments are made in black money. Section 293A

of the Companies Act, 1965, as inserted in 1969, imposed a ban on the companies making contributions to any political party or for any political person or for any political purpose. Unfortunately, this ban was lifted in 1985 by amending the Act. Under the present provision, a company is permitted to contribute amounts to a political party or for a political purpose to any person provided that the amount does not exceed five per cent of its average net profits. In the case of an Indian company of a multinational stature or in the case of any big business group, five per cent would mean a mind-boggling figure. As far back as 1957, Chagla C.J. pointed out the danger inherent in permitting the companies to make contributions to political parties (Koticha's case(1957) 27 Company Cases 604). He warned that "it is a danger which may grow apace and which may ultimately overwhelm and even throttle democracy in the country". As a matter of fact, an attempt made in 1976 to remove the ban imposed by Section 293A (as initially enacted) failed. It is amusing to note the 'Statement of Objects and Reasons' appended to the bill prepared in 1976. It stated that the ban was proposed to be lifted "with a view to permit the corporate sector to play a legitimate role within the defined norms in the functioning of our democracy"

“4.3.4. Conclusions - After considering views expressed by the participants in the seminars and by various persons and organisations in their responses and after perusing relevant literature on the subject, the Law Commission is of the opinion that in the present circumstances only partial state funding could be contemplated more as a first step towards total state funding but it is absolutely essential before the idea of state funding (whether partial or total) is resorted, the provisions suggested in this report relating to political parties (including the provisions ensuring internal democracy, internal structures) and maintenance of accounts, their auditing and submission to Election Commission

are implemented. In other words, the implementation of the provisions recommended in Chapter One Part Three should be a pre-condition to the implementation of the provisions relating to partial state funding set out in the working paper in the Law Commission (partial funding, as already stated, has also been recommended by the Inderjit Gupta Committee). If without such pre-conditions, state funding, even if partial is resorted to, it would not serve the purpose underlying the idea of state funding. The idea of state funding is to eliminate the influence of money power and also to eliminate the influence of money power and also to eliminate corporate funding, black money support and raising of funds in the name of elections by the parties and their leaders. The state funding, without the aforesaid pre-conditions, would merely become another source of funds for the political parties and candidates at the cost of public exchequer. We are, therefore, of the opinion that the proposals relating to state funding contained in the Inderjit Gupta Committee Report should be implemented only after or simultaneously with the implementation of the provisions contained in this Report relating to political parties viz., deletion of Explanation 1 to Section 77, maintenance of accounts and their submission etc. and the provisions governing the functioning of political parties contained in chapters I and II of Part IV and chapter I of Part III. The state funding, even if partial, should never be resorted to unless the other provisions mentioned aforesaid are implemented lest the very idea may prove counter-productive and may defeat the very object underlying the idea of state funding of elections.”

Recommendation by the 170th Law Commission:

4.2.6. Accordingly, the Law Commission reiterates that a new section as proposed in the working paper (section 78A) should be inserted in the R.P.Act of 1951. It is further recommended that the

provision as suggested should be numbered as sub-section (1) and sub-sections (2), (3) and (4) as proposed hereinafter should also be inserted in the said section.

(2) A political party which does not comply with any of the requirements of sub-section (1) shall be liable to pay a penalty of Rs. 10,000/- for each day of non-compliance and so long as the non-compliance continues. If such default continues beyond the period of 60 days, the Election Commission may de-recognise the political party after affording a reasonable opportunity to show cause.

(3) If the Election Commission finds on verification, undertaken whether suo motu or on information received, that the statement of accounts filed under sub-section (1) is false in any particular, the Election Commission shall levy such penalty upon the political party, as it may deem appropriate besides initiating criminal prosecution as provided under law.

(4) Any orders passed under sub-sections (2) or (3) shall be directed to be published in the press and other media, for public information."

True Copy of Relevant Extract of the 170th Law Commission report is annexed herewith and marked as **ANNEXURE P-2**

25. That since the current political system which mainly gets funded through various illegal means and also by the people and corporate agencies with the vested interests does not seem to be inclined to give effect to the aforesaid recommendations of the Law Commission.

26. The corruption by means of unaccounted, illegal sources of money from the unknown sources seriously affects the voters

statutory rights as well as the freedom of speech and expression as guaranteed by Article 19(1)(a), as for the purpose of securing such illegal money the political parties are going to any extent and in such process, the deserving and capable candidates, who can provide a better representation to the people of this country do not get equal playing field and thus the people of this Country, do not get appropriate information for them to exercise their right to vote effectively.

27. In the recent past there has been drastic change in the political equation in this country. The said change was inevitable in view of the existing corrupt system which was in existence. The said change has also brought to our realization, the fact that in case all the appropriate legal procedures are put in place and if the Election Commission is given free hand to exercise its power within the Constitutional limits, the fairness and the sanctity of the Election Process can very much be maintained resulting into giving the true colors to the Indian Democracy. The said changes also brought to our realization that several deserving and capable leaders of this country could not come forward to be party to the Election Process only because of the corrupt practices prevailing in the existing system.

28. That since our legislature, has failed to act on the recommendation made by the Law Commission, made keeping in view the concerns raised by the Hon'ble Supreme Court, the Election Commission has enough power to regulate the same by exercising the Power under Art. 324 of the Constitution of India. Though on the issue of exercise of power under Art. 324 of the Constitution of India, there are several dicta of the Hon'ble Supreme Court, and for the convenience of this Hon'ble Court the following paragraphs culled out from *Common Cause (A*

registered society) Vs. Union of India, AIR 1996,SC 3081 at Page no 14 can be safely relied;

“Even so, situations may arise which enacted law has not provided for. Legislators are not prophets but pragmatists So it is that the Constitution has made comprehensive provision in Article 324 to take care of surprise situations- that power itself has to be exercised, not mindlessly nor mala fide, not arbitrarily nor with partiality but in keeping with the guidelines of the rule of law and not stultifying the Presidential notification nor existing legislation. More is not necessary to specify: less is insufficient to leave unsaid. Article 324, in our view, operates in areas left unoccupied by legislation and the words 'superintendence, direction and control, as well as 'conduct of all elections' are the broadest terms. Myriad maybes, too mystic to be precisely presaged, may call for prompt action to reach the goal of free and fair election. It has been argued that this will create a constitutional despot beyond the pale of accountability; a Frankenstein's monster who may system into elected despotism - instances of such phenomena are the tears of history. To that the retort may be that the judicial branch, at the appropriate stage, with the potency of its benignant power and within the leading strings of 'legal guidelines, can call the bluff, quash the action and bring order into the process. Whether we make a triumph or travesty of democracy depends on the man as much as on the Great National Parchment. Secondly, when a high functionary like the Commissioner is vested with wide powers the law expects him to act fairly and legally. Article 324 is geared to the accomplishment of free and fair elections expeditiously.”

The Hon'ble Supreme Court in Gajanan Krishnaji Bapat & Anr vs. Dattaji Raghobaji Meghe & Ors, 1995 SCC (5) 347, Page No.

26, while taking note of the current practice, opined that the lacuna in law needs to be filled in by appropriate measures:

“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 practice being followed as per the evidence introduces the possibility of receipts of money from the candidate himself or his election agent for being spent for furtherance of his election, without getting directly exposed, thereby defeating the real intention behind Explanation I to Section 77 of the Act. It is, therefore, appropriate for the Legislature or the Election Commission to intervene and prescribe by Rules the requirements of maintaining true and correct account of the receipt and expenditure by the political parties by disclosing the sources of receipts as well. Unless, this is done, the possibility of purity of elections being soiled by money influence cannot really be ruled out. 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.....”

29. That the reluctance of the existing Political Establishments to give effect to the Recommendation of the 170th

Law Commission report, has only permitted the corruption to percolate further in the Electoral Process. The political parties and election campaigns are central to the health of democracies. However, over a period, we have over time burgeoning election expenditure, political party funding, and inadequate reporting and disclosure laws. A lot of black money is involved in the expenses of the political parties as well as the candidates. Sometimes black money is generated by business houses and individuals to evade corporate and income taxes, later it is pumped back to political parties and candidates to garner favorable policy decisions. The corporate donations to political parties have not reduced party's dependence on black money.

In our current electoral and political system, those who are willing and are able to utilize black money dominate politics. Political Party's preference for wealthy candidates has given rise to a new breed of 'political entrepreneurs' who are ready to invest huge chunks of their wealth in contesting elections, in the hope of further enhancing their personal wealth. Given the magnitude of resources that political parties need to raise for election campaigns, they prefer candidates who can raise resources for the party as well as finance their own campaigns.

In fact, as per the analysis of data collated by the Petitioner, wealthier candidates have almost double the chances of being given tickets by the Political Parties and also of winning elections,

compared to other candidates. As a matter of fact, political party's preference for wealthy candidates has the pernicious impact of increasing the participation of criminals in electoral politics.

30. The Petitioner, in furtherance to its object have regularly been collating data. The analysis of the candidates fielded by various political parties in Lok Sabha Election, 2014, would demonstrate, as to how the aforesaid apprehension as was expressed by the Hon'ble Supreme Court is now turning into reality. True Copy of the Consolidated Executive Summary analyzing the affidavits of the Candidates Contesting in the Lok Sabha Election, 2014 prepared by the Petitioner are annexed herewith and marked as **ANNEXURE P-3**

31. That another perspective can be obtained by looking at the proportion of donations these Political Parties receive and the amount they report to the Election Commission. At present, parties are required to report donations of Rs. 20,000 and above to the Election Commission with disclosure of donor identities. These amounts to only 25% of the receipts and 75% of the donations are from unknown sources. Therefore, most of the time, maximum money received goes unaccounted. Because of the present cap system it leaves a lot of scope for soiling the purity of elections by money influence. Therefore, it is more important to put ceiling on the expenditure of the political parties

as well as to change the present system of reporting of election expenditure.

32. The Petitioners towards their object has been regularly collecting data and has been analyzing the same. The Analysis of Income, Expenditure and Donations received by the National Political Parties between FY 2004-05 & 2011-12 and also during few of the Assembly Elections, would demonstrate maximum income of the Parties come from unknown sources and in cash, and in several cases the Parties, due to shortcoming in the law requiring accountability do not even submit the Expenditure Statements. The Reports also show that major chunk of the donations come from the Corporate Houses, who definitely have vested interest in supporting one or the other political parties, and the concern for the same has been expressed by the Hon'ble Supreme Court and also the Law Commission. The True Copies of the Reports prepared by the Petitioners are annexed herewith and marked as **ANNEXURE P-4 COLLY**

Bribery, vote for cash, undue influence, election eve grants etc are all listed as corrupt practices and electoral offences under Section 125 and Section 123, Part VII, Chapter 1 respectively of the Representation of People Act, 1951. By bringing a ceiling and more stringent laws with respect to election expenditure, these evils can be checked to a certain extent. Some of these offences

infact, constitute both electoral offences and corrupt practices (e.g bribery, undue influence)

33. Based on various media reports, it is apparent that two of the Major National Political Parties, have left no stones unturned when it comes to spending on advertisements. Though the same is the situation during all the Assembly and Parliament Election, this Election has gone beyond expectation.

The Election Commission of India, declared dates of polls on 5th March, 2014, but Bhartiya Janta Party had announced its Prime Ministerial Candidate, well in advance ie. On 13th September, 2013 and immediately the BJP PM candidate, started campaigning. The fact is, that if the current laws are seen the details of the Expenditure incurred on such campaigns, would not be declared by the party.

The Expenditure incurred on the Publicity, Media Reports, Travelling by Chartered Planes etc, much before the Notification for the Election Dates was issued, if taken at their face value, would be mammoth, and the current law does not provide any provision to make the Parties accountable for the same. The fact, which is also reflected in the Report submitted by the Petitioner, and even otherwise it is common knowledge that the Big Corporate Agencies, those who have vested interest, invest for

these Political Parties. It was also widely reported that, these Business Houses put all their resources at the services of these Political Parties, and there is no explanation by any of the Political Parties for the same, if the same should not be considered as bribery what else should be. There is always one or the other interest involved on these Business Houses. True Copies of the Media Reports are annexed herewith and marked as **ANNEXURE P-5 COLLY**

The schedule of various rallies being conducted by the Bhartiya Janta Party, procured from their website shows an increased number of rallies per day compared to what it was before declaration of date of polls by Election Commission of India. The Party also pumped in about 43 Star Campaigners to address rallies, on which the monies would be spent, but the source for the same in the absence of appropriate law in place could not be ascertained. The Media Report, quotes anonymous sources to state that the BJP's advertisement plan would cost about Rs 5,000 Crores (Five Thousand Crores), and the People of this Country would have no clue from where does it come.

The media reports under point 1 state that BJP would be spending about Rs 5,000 crores during Lok Sabha, 2014 while the party has declared a total income of only Rs 1304.22 crores in 7 years (between FY 2004-05 and 2011-12), If this would not lead to corruption in Politics, what else would? True Copies of the

Media Reports and the Income Tax Details of BJP are annexed herewith and marked as **ANNEXURE P-6 COLLY**

34. The Indian National Congress, also has not been far behind, when it comes to spending on and for election. They brought in about 40 Star campaigners. It was reported in media that Congress is likely to spend Rs.500 Crore to polish Rahul Gandhi's image.

35. As reported in media the 2009 elections saw a total spending of Rs 500 crore, the 2014 polls will see at least around Rs 2,000 crore being spent on ad campaigns. The Congress alone is said to have planned to spend around Rs 500 Crore for its poll campaign. The party has allocated Rs 400 crore for its mass media ads, which include, television, print, radio, outdoor and digital and around Rs 100 crore for on-ground activities. True Copies of the Media Reports are annexed herewith and marked as **ANNEXURE P-7 COLLY**

36. The only way of reducing the adverse effect is bringing greater transparency in the functioning of electoral and political processes under the current system. Election Commission of India has issued directions that political parties will give a statement of expenses on election after 75 days of State Assembly Elections and 90 days for Lok Sabha Elections. It is

common experience that since there is no limit on the election expenditure of political parties, they effectively start their election campaign almost one year before elections. The Media Report, which shows various illegal methods as Cash Distribution, Liquor Supply and various such methods to attract the voters and the campaigners, start well in advance, rather the Parties own Bank Account Statements show that huge sum of amount is withdrawn over one year before the date of declaration of election dates by EC. True Copies of Media Reports and the Account Statement of BJP and Congress are annexed herewith and marked as **ANNEXURE P-8 COLLY**

37. The statements submitted after 75/90 days of election serve no purpose. Hence, political parties should be directed to submit statements of election expenditure periodically, say once in a month, starting one year before elections are due. Once the elections notification is issued the frequency of submitting election expenditure statement should be once every 3-4 days. The same is necessary because a lot of hectic action takes place in the heat and bustle of elections and monitoring the expenditure on those activities and keeping a tally on that expenditure after 75/90 days of conclusion of elections becomes impossible. If the statements are submitted to ECI with greater frequency and are made public by ECI then citizens at large will be able to assist ECI in monitoring the accuracy of this expenditure. Getting a realistic and accurate assessment of actual (as opposed to be declared by the political parties) expenditure during elections is necessary so that the nation knows how much money is spent on election

At present it is very difficult to ascertain the source of unaccounted/black money. Big enterprises which fund these political parties in turn expect a quid pro quo if the party wins the election. Hence, at times, mostly policies are made by the government to favour the donors and the corporate giants which directly goes against the interest of a common man and nation at large.

38. That the Present system of funding and election expenditure laws has driven parties, candidates and politicians to misuse the government's discretionary powers over resource allocation to raise funds for election campaigns and political parties. Parties and candidates tend to use their term of office to fill their coffers for future elections and for nursing their constituencies. They raise these resources through any means available.

Lack of any effective system of internal democracy, transparency, and accountability within political parties has also reinforced corrupt fund-raising and the lack of financial accountability. Given the dependence of the system on large electoral expenditures, compared to the nominal spending limits, parties remain opaque in their fund-raising and electoral expenditures, as well as in their accounting and reporting of both.

39. It becomes even more essential to have a law in place to make Political Parties accountable, as Political parties are the

only non-institutionalized body in our country those who have been granted complete tax exemption. There is a very lax system of checking over their income and expenditure even though thousand crores of rupees is always in question. As such, the People of the Country, those who have to exercise their vote, do not know, if the Party likely to come in power, has interest in their welfare or the People with financial power, who have left nothing to please the likely Political Bosses, and further these Political Parties have put such law in place which further take away peoples money, which could otherwise be collected in the form of tax. As such, if a person donating to the Political Parties gets Tax Exemption, there is no reason for them or the Party to hide behind the curtain, unless there is some oblique motive behind the same. The Election Commission of India being conscious of the same has voiced its concern for withdrawing the Tax Exemption Granted to the Political Parties. True Copies of the Media Reports are annexed herewith and marked as

ANNEXURE P-9 COLLY

40. The accounting method adopted by political parties, so far is not transparent as the parties do not follow the format suggested by the Election Commission of India, and in the absence of the law, the Election Commission of India is handicapped in ensuring any compliance. In such state of affairs though it is duty of the Legislature to put law in place but since the same would be to their own detriment, they have not till date been put in place. True Copies of the Election Expenditure

Statement Submitted by Indian National Congress and Bhartiya Janta Party are being annexed herewith and marked as **ANNEXURE P-10 COLLY**

41. Therefore the Petitioner is approaching this Hon'ble Court by filing the present Writ Petition Under Article 226 of the Constitution of India, on the following amongst the other grounds:-

GROUND

- A. Because the existing law does not measure upto the existing realities. The ceiling on expenditure is fixed only in respect of the expenditure incurred or authorized by the candidate himself but the expenditure incurred by the party or anyone else in his election campaign is safely outside the net of legal sanction. The spirit of the provision suffers violation through the escape route. The prescription of ceiling on expenditure by a candidate is a mere eye-wash and no practical check on election expenses for which it was enacted to attain a meaningful democracy.
- B. Because the People of India are entitled to know the source of expenditure incurred by the political parties and by the candidates in the process of election. The elections in the country are fought with the help of money power which is gathered from black sources and once elected to power, it becomes easy to collect tons of black money, which is used for

retaining power and for re-election and that this vicious circle had polluted the wellspring of democracy in the country.

- C. Because the purity of election is fundamental to democracy and the Election Commission under Art. 324 of the Constitution of India is empowered to direct the Political Parties to submit the details of the expenditure incurred by the candidates and by a political party.
- D. Because with the prevalence of corruption at high political levels, by the manner in which funds are collected by political parties, especially at the time of elections, necessitates that the conduct of political parties should be regulated by strict principles in relation to collection of funds and electioneering.
- E. Because to ensure free and fair election the transparency in the functioning of political parties in general, and their funding in particular is inevitable, as the same only leads to corruption in the Politics and also does not give level playing field to every candidate and it is the Voter who suffers, who does not get free choice to elect its representative, more so when the transparency of information is vital to flawless functioning of constitutional democracy.

- F. Because the current laws of the land do not make it mandatory for political parties to disclose the sources of their funding, and even less so the manner of expending those funds. It is public interest to know regarding the funding details of the Political Parties, which would enable the citizen to make an informed choice about the political parties to vote for.
- G. Because the political parties influence the exercise of political power; transparency in their organization, functions and, more particularly, their means of funding is a democratic imperative, and, therefore, is in public interest. “Democracy requires an informed citizenry” and that transparency of information is vital to flawless functioning of constitutional democracy.
- H. Because Political financing and its potentiality for distorting the functioning of the government, has been the subject of wide public debate in contemporary democracies. Non-transparent political funding could, by exposing political parties, and through them the organs of State, which come under the control or its influence, to the corrupting influence of undisclosed money, can inflict irreversible harm on the institutions of government. There is public purpose in preventing such harm to the body-politic.”

- I. Because when the elections are fought with unaccounted money the persons elected in the process can think of nothing except getting rich by amassing black money. They retain power with the help of black money and while in office collect more and more to spend the same in the next election to retain the seat of power. Unless the statutory provisions meant to bring transparency in the functioning of the democracy are strictly enforced and the election-funding is made transparent, the vicious circle cannot be broken and the corruption cannot be eliminated from the country.
- J. Because the expenditure "incurred or authorized in connection with the election of a candidate by a political party" can only be the expenditure which has a transparent source. Bulk of income of a political party by way of contributions/donations is from companies. Section 293A of the Companies Act makes it mandatory that such contributions/donations are made in a transparent manner as provided under the said section. Similarly, Section 13A of the Income-tax Act lays down that all income derived from contributions/donations is exempt from income tax, only if a political party satisfies that (i) it keeps and maintains such books of accounts and other documents as would enable the assessing officer to properly deduce its income there from; (ii) it keeps and maintains a record of each voluntary contribution in excess of Rs.10,000 and of the names and addresses of persons who have made such contributions; and (iii) the accounts of political party are audited by a chartered accountant or other qualified accountant. Sub-section 4B has been inserted in Section 139 of the Income Tax Act by Taxation Laws (amendment) Act, 1978 under which every political party is obliged to file every year a return of total income voluntarily. The total income for this purpose is to be computed without giving effect to the provisions of Section 13A

of the Income Tax Act. If such total income exceeds the maximum amount which is not chargeable to tax, the liability of the political party to file return of income voluntarily arises. It is thus, obvious that Section 293A of the Companies Act read with Section 13A and other provisions of the Income Tax Act are with an avowed object of bringing transparency in the accounts and expenditure of the political parties.

K. Because where the enacted law has failed to provide for the provision to achieve the object of legislation and the Constitution has made comprehensive provision in Article 324 to take care of surprise situations, the same has to be exercised, keeping with the guidelines of the rule of law. Article 324, operates in areas left unoccupied by legislation and the words superintendence, direction and control, as well as 'conduct of all elections' are the broadest terms. The high functionary like the Election Commission is vested with wide powers, the law expects him to act fairly and legally. Article 324 is geared to the accomplishment of free and fair elections expeditiously.

L. Because the law as stands in India today anybody including a smuggler, criminal or any other anti-social element may spend any amount over the election of any candidate in whom such person is interested, for which no account is to be maintained or to be furnished and any such expenditure shall not be deemed to have been expenditure in connection with the election, incurred or authorised by the candidate or by his election agent for the purpose of sub-section (1) of Section 77, so as to amount to a corrupt practice within the meaning of sub-section (6) of section 123. It cannot be accepted that funds should come from hidden sources which are not available for public scrutiny. Sub-section (6) of section 123 declaring

"incurring of authorising of expenditure in contravention of section 77" a corrupt practice has lost its significance and utility with the introduction of the Explanation-I aforesaid which encourages corruption by underhand methods.

M. Because the large contributors wield influence in shaping the policies and decisions of the political party which they finance. Though ostensibly the political Parties which receive such contributions may profess an ideology in effect and substance be representative of a certain economic class and their policies and decisions would be shaped by the interests of that economic class. The pre- election donations would be likely to operate as post- election promises resulting ultimately in the casualty of the interest of the common man. The small man's chance is the essence of Indian democracy and that would be stultified if large contributions from rich and affluent individuals or groups are not divorced from the electoral process and the same is possible only if the transparency in the financing and accounting of the Political Parties are enforced by bring appropriate law in place or by the Directions of the Election Commission.

N. Because the limits of expenditure currently prescribed are meaningless and almost never adhered to. As a result, it becomes difficult for the good and the honest to enter legislatures. It also creates a high degree of compulsion for corruption in the political arena. This has progressively polluted the entire system. Corruption, because it erodes performance, becomes one of the leading reasons for non-performance and compromised governance in the country.

- O. Because the sources of some of the election funds are believed to be unaccounted criminal money in return for protection, unaccounted funds from business groups who expect a high return on this investment, kickbacks or commissions on contracts etc. in such process the citizens are directly affected because apart from compromised governance, the huge money spent on elections pushes up the cost of everything in the country. It also leads to unbridled corruption and the consequences of wide spread corruption are even more serious than many imagine. Electoral compulsions for funds become the foundation of the whole super structure of corruption.
- P. Because the objects of enacting a ceiling on the expenditure which may legitimately be incurred in connection with an election are that it should be open to any individual or to any political party, however small, to be able to contest an election on a footing of equality with any other individual or political party, however rich and well financed it may be, and no individual or political party should be able to secure an advantage over others by reason of its superior financial strength.
- Q. Because the democratic process can function efficiently and effectively, for the benefit of the common good and reach out the benefits of self-government to the common man only if it brings about a participatory democracy in which every man, howsoever lowly or humble he may be, should be able to participate on a footing of equality with others.
- R. Because the objective of limiting expenditure is to eliminate, as far as possible, the influence of big money in electoral process. If there were no limit on expenditure political parties would go

all out for collecting contributions and obviously the largest contributions would be from the rich and the affluent who constitute but a fraction of the electorate. It is likely that some elected representatives would tend to share the views of the wealthy supporters of their political party, either because of shared background and association, increased access or subtle influences which condition their thinking. In such an event, the result would be that though ostensibly the political parties which receive such contributions may profess an ideology acceptable to the common man, they would in effect and substance be the representatives of a certain economic class, and their policies and decisions would be shaped by the interests of that economic class.

S. Because it is elementary that each and every citizen has an inalienable right to full and effective participation in the political process of the legislatures and this requires that each citizen should have equally effective voice in the election of the members of the legislatures. That is the basic requirement of the Constitution. This equal effective voice--equal opportunity of participation in the electoral process--would be denied if affluence and wealth are to tilt the scales in favour of one political party or individual as against another. The democratic process can function efficiently and effectively for the benefit of the common good and reach out the benefits of self-government to the common man only if it brings about a participatory democracy in which every man, howsoever lowly or humble he may be, should be able to participate on a footing of equality with others. Individuals with grievances, men and women with ideas and vision are the sources of any society's power to improve itself.

- T. Because the existing law does not measure up to the existing realities. The ceiling on expenditure is fixed only in respect of the expenditure incurred or authorised by the candidate himself but the expenditure incurred by the party or anyone else in his election campaign is safely outside the net of legal sanction. The spirit of the provision suffers violation through the escape route. The prescription of ceiling on expenditure by a candidate is a mere eye-wash and no practical check on election expenses for which it was enacted to attain a meaningful democracy.
- U. Because if candidates are to be subject to the limitation of the ceiling, but the political parties sponsoring them or their friends and supporters are to be free to spend as much as they like in connection with elections, the object of imposing the ceiling would be completely frustrated and the beneficent provision enacted in the interest of purity and genuineness of the democratic process would be wholly emasculated. The mischief sought to be remedied and the evil sought to be suppressed would enter the political arena with redoubled force and vitiate the political life of the country.
- V. Because 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. The practice being followed as per the evidence introduces the possibility of receipts of money from the candidate himself or his election agent for being spent for furtherance of his election, without getting directly exposed, thereby defeating the real intention. It is, therefore, appropriate for the Legislature or the Election Commission to intervene and prescribe by Rules the requirements of maintaining true and correct account of the

receipt and expenditure by the political parties by disclosing the sources of receipts as well. Unless, this is done, the possibility of purity of elections being soiled by money influence cannot really be ruled out.

W. Because it is necessary that the impact of money power which has eliminated from electoral contest many men and women of undoubted ability and credibility for want of requisite financial support should be able to reenter the field to make the people's choice meaningful. This can be achieved only if elections are contested on a positive vote and the comparison is between the merits and abilities of the contestants without the influence of power and pelf and not between their comparative demerits and the support of money power. Apart from the other adverse consequences, the growing influence of money power has also the effect of promoting criminalization of politics.

X. Because the increasing role of money power in elections is one of the maladies which sometimes reduce the credibility of elections by placing some wealthy candidates in a distinctly advantageous position as compared to other deserving candidates. The result of such an election cannot reflect the true choice of the people. Such system deprives qualified and able persons of the prerogative to represent the masses.

Y. Because the current law in place makes it very difficult to ascertain the source of unaccounted/black money. Big enterprises which fund these political parties in turn expect a

quid pro quo if the party wins the election. Hence, at times, some policies are made by the government to favour the donors and the corporate giants which directly goes against the interest of a common man and nation at large.

Z. Because the present system of funding and election expenditure laws has driven parties, candidates and politicians to misuse the government's discretionary powers over resource allocation to raise funds for election campaigns and political parties. Parties and candidates tend to use their term of office to fill their coffers for future elections and for nursing their constituencies. They raise these resources through any means available.

AA. Because lack of effective system of internal democracy, transparency, and accountability within political parties has also reinforced corrupt fund-raising and the lack of financial accountability. Given the dependence of the system on large electoral expenditures, compared to the nominal spending limits, parties remain opaque in their fund-raising and electoral expenditures, as well as in their accounting and reporting of both.

BB. Because currently about 75% of the donations received by the Political Parties are sourced from unknown sources. Therefore, most of the time, maximum money received goes unaccounted. Because of the present cap system it leaves a lot of scope for

soiling the purity of elections by money influence. Therefore, it becomes even more important to put some ceiling on the expenditure of the political parties as well as to change the present system of reporting of election expenditure.

CC. Because much of the actual spending is never captured in the prescribed limits and also do not include party and independent supporter spending. A candidate has an incentive to doctor his accounts and report expenses below the official ceiling, because expenditure in excess of the limit can result in candidate's disqualification and the loss of his seat.

DD. Because bribery, vote for cash, undue influence, election eve grants etc are all listed as corrupt practices and electoral offences under Section 125 and Section 123, Part VII, Chapter 1 respectively of the Representation of People Act, 1951. By bringing a ceiling and more stringent laws with respect to election expenditure, these evils can be checked to a certain extent.

EE. Because various media reports, show that in the current Lok Sabha election two major national parties have left no stones unturned when it comes to spending on advertisements. While the ECI declared dates of polls on the 5th March, 2014, BJP announced its PM candidate on the 13 September, 2013, and immediately he started campaigning in various states. Detailed accounts of such campaigns may or may not be declared by the

party 3 months after the date of polls. If the media reports are even taken at their face value, the amount involved is too exorbitant to ignore. If a party declares how much it is spending in the present, it would only increase transparency as the figures can be verified against what is happening on the ground.

FF. Because it is known that more than thousands of crores of rupees is involved in both Assembly and General elections. So unless a cap is introduced, a level playing field is not available for the contesting parties.

GG. Because while the Representation of Peoples Act, 1951 provides powers to the Election Commission of India for disqualification of candidates if they submit false information, there are no such rules to penalize political parties for non-compliance of ECI's guidelines on election expenditure.

HH. Because if the expenditure statement is submitted frequently by the party, it would be easier to keep track of whether or not the statements are true apart from the ease of checking these with the consolidated report. Any discrepancies will automatically get highlighted.

II. Because the only way of reducing the adverse effect on the election process of the unaccounted and illegal money is to bring greater transparency in the functioning of electoral and political processes under the current system. ECI has issued

directions that political parties will give a statement of expenses on election after 75 days of state assembly elections and 90 days for Lok Sabha elections. It is common experience that since there is no limit on the election expenditure of political parties, they effectively start their election campaign almost one year before elections are due and thus the object of such direction gets frustrated.

42. That the Petitioners have not filed any Petition before any High Court or this Hon'ble Court seeking the same or similar relief.

P R A Y E R

WHEREFORE, it is most respectfully prayed that this Hon'ble Court may be graciously pleased to:-

- i) Issue a writ, order or direction to the Election Commission of India, to exercise its Power under Art. 324 of the Constitution of India; to:
 - a) Implement the recommendation made by the 170th Law Commission of India, with regards to the financial accountability by the Political Parties; and
 - b) Introduce ceiling on the election expenditure of political parties, on and during the Elections; and

- c) Direct the Political Parties to submit expenditure statements, beginning one year prior to the elections; and
- d) Direct the Political Parties to submit the Account Statements of Income and Expenditure, periodically, ie. once a month before the declaration of the election, and at least once a week during the elections;
- ii) Pass such other order or direction, which this Hon'ble Court deems it fit and proper under the circumstances of the case.

FILED BY:

Ms. KAMINI JAISWAL
ADVOCATE FOR PETITIONER
43, Lawyers Chamber
Supreme Court of India
New Delhi -110001
Tel.: 23385451

DRAWN BY:
Abhimanue Shrestha
Advocate

Filed On: 20.05.2014

IN THE HIGH COURT OF DELHI AT NEW DELHI
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. _____ OF 2014

(IN THE MATTER OF PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC
REFORMS

...PETITIONER

VERSUS

UNION OF INDIA & ANR.

...RESPONDENTS

AFFIDAVIT

I, Jagdeep Chhokar S/o Shri Raghbir Singh aged about 69 years O/O B-1/6, Hauz Khas, New Delhi – 110016, applicant of the above named, do hereby solemnly affirm and declare as under:

1. That being the Founder Trustee of the Petitioner Association in the aforesaid Writ Petition, I am well conversant with the facts and records of the case and therefore I am competent to swear this affidavit.
2. That I have read and understood the contents of the Writ Petition and state that the contents thereof are true and correct to my knowledge and based on the records of the case.
3. That I have filed the present petition as a Public Interest Litigation.
4. That I have gone through the Delhi High Court (Public Interest Litigation) Rules, 2010 and do hereby affirm that the present Public Interest Litigation is in confirmatory thereof.
5. I have no personal interest in the litigation and neither myself nor anybody in whom I am interested would in any manner benefit from the relief sought in the present litigation save as a member of general public. This Petition is not guided by self gain or gain of any person, institution, body and there is no motive other than of public interest in filing this petition.

6. I have done whatsoever inquiry/investigation which was in my power to do, to collect all data/material which was available and which was relevant for this court to entertain the present petition. I further confirm that I have not concealed in the present petition any data/material/information which may have enabled this court to form an opinion whether to entertain this petition or not and/or whether to grant any relief or not.

7. I further state that all the Annexure to this Writ Petition are true copies of their respective original

DEPONENT

VERIFICATION:

I the above named deponent do hereby verify that the contents of the aforesaid affidavit from para 1 to 7 are true and correct to the best of my knowledge, no part of it is false nothing material has been concealed there from.

Verified at New Delhi on this the ___day of May, 2014.

DEPONENT