

To:

**The Special Investigation Team on Black Money under the chairmanship of
Hon'ble Mr. Justice M.B. Shah, former Judge of Supreme Court of India**

Subject Matter:

Circulation of unaccounted money in activities related to electoral process

Submission of Memorandum From:

Association for Democratic Reforms and National Election Watch

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1.0 INTRODUCTION

The subject being addressed by the SIT (Special Investigation Team) is quite complex. To address the issue comprehensively, we need to look at social, administrative, governance and other issues. The Association for Democratic Reforms (ADR), however, would limit itself to the political aspects as we are sure that other organizations will be addressing other issues.

While it is crucial to bring back the black money stashed abroad, the extent of unaccounted black money within India needs equally close monitoring. Given a choice of priority, Indian authorities should be chasing black money in circulation within the country rather than the illicit billions held in foreign banks. It is common knowledge that money stashed away abroad is an insignificant amount compared with the unaccounted money within India.

In the clamour for recovering black money stashed abroad, bigger issues have received less attention - *the manner in which Political Parties finance themselves and the lack of financial disclosure by our elected representatives.*

These revelations highlight the opaque handling of funds by political parties as well as the fact of dubious sources of income for the political parties and the influence of black money in elections.

There is the hard reality that for contesting an election one needs a huge amount of money. It has become difficult for a good, honest person with modest means to contest elections and enter the legislatures. The big money spent on elections escalates the cost of everything in the country. Electoral compulsions for funds has become the foundation for the whole superstructure of corruption. A high degree of compulsion for corruption is created in the political arena which has progressively polluted the entire system. Corruption erodes performance and becomes a prime cause for nonperformance and compromised governance. Also the limits of election expenditure prescribed are almost never adhered to.

The reality is that India's major political parties fund themselves to a large extent with unaccounted money, their audited accounts revealing only a fraction of their actual expenditure. When black money is needed to fund politics and politicians, businesses generate black money to service this need. The patronage they buy in this manner allows them to make yet more money, both legitimate and tax evaded. To end this cycle, political funding has to get transparent and accountable in the first place. This is the place where the broom has to begin sweeping first. However, there is little sign of enthusiasm on this particular clean-up.

2.0 EXECUTIVE SUMMARY

2.1 Need for financial disclosure of Political Parties

- Analysis of IT Returns of National Parties between FY 2004-05 and 2012-13 shows that the total income of the parties from **unknown sources of income** amounted to **Rs.4,368.75 crores (72.98%** of total income of national parties).
- BSP has declared total income of **Rs.585.07 crores** between FY 2004-05 and 2012-13 of which **Rs.307.31 crores was from voluntary contributions**. But the names and other particulars of these ‘voluntary’ contributors are not known, as the party has maintained that no donations above Rs.20,000 was received thereby not declaring names of a single donor in 8 years.
- There are very few regional parties which submit their IT Returns and contribution reports to the respective authorities on a regular basis, annually.
- Political parties either do not file their **Election Expenditure statements** or do not file them on time. BJP and a few regional parties have not yet submitted their expenditure statements for Karnataka Assembly Elections held in 2013 when the deadline was 22nd July, 2013. Even for the Lok Sabha elections held in 2014, 15 political parties have not submitted their election expenditure statements when the deadline was 26th August, 2014.
- The **National Parties** declared a total of **Rs.381.81 crores as donations collected in cash during Lok Sabha elections** held in 2009 but the sources of these donations remain unavailable.

2.2 Parties’ reluctance to follow transparency guidelines

- In 2011 the **ICAI framed accounting formats** exclusively meant for political parties.
- In 2014 **ECI issued guidelines** on transparency and accountability in party funds similar to the notifications in 2013 so as to **increase financial transparency in political parties**.
- In response to such guidelines, the parties have **refused to follow the above guidelines**, taking a narrow technical and legal view.

2.3 Increase in unrecognized political parties

- Out of more than 1600 registered political parties, **only 464 contested in the Lok Sabha elections** held in 2014 thus **raising the question on the need for registering as a political party** when not actively taking part in the political process.
- (i) 100% tax exemption, (ii) need for declaring only those donations above Rs. 20,000 and (iii) restriction of ECI from de-registering a party are possible reasons for increased registrations.

2.4 Lack of scrutiny of financial disclosures

- INC and BJP were found guilty of taking donations from foreign sources by the Delhi High court [Petition in WP(C) No. 131 of 2013; Association of Democratic Reforms & another vs. Union of India].

2.5 Growth in Assets:

- There has been an extraordinary growth in assets declared by the candidates (contesting elections) shown in their self-declared affidavits submitted during their nomination for the 2009 and 2014 Lok Sabha Elections. 165 Re-elected MPs have shown a total increase in immovable assets **Rs.1232.43 crores or a 137% increase.**
- 396 re-contesting MPs (i.e. sitting MPs of 15th Lok Sabha 2009-2014 who contested the 2014 elections but may or may not got elected again) have shown a total increase in total assets worth **Rs.3366.58 crores or a 146% increase.**

2.6 Increase in assets compared to the incomes:

- The increase in assets of 161 re-elected MPs during their term in office (2009-2014) was compared with the accumulated total income of these MPs in five years, assuming that their annual income remained constant.
- The asset increase of these re-elected MPs exceeds their total accumulated income by Rs.787.70 crores.

2.7 MP IT Returns in Public Domain:

- ADR has urged the MPs to voluntarily disclose their ITRs so that the doubts regarding their finances can be resolved. We also have a complaint pending in Central Information Commission that this information contained in MPs IT returns is of public importance and should be put in public domain.

2.8 Liabilities and Unsecured Loans:

- A close analysis of the liabilities declared by MPs elected in 2014 Lok Sabha elections show that there are many MPs who have raised the big ticket unsecured loans from many big and small real estate companies.

2.9 Under-Reporting of Assets:

- There are reports that many MPs in 15th Lok Sabha under-reported their assets in their respective affidavits.

2.10 Non-disclosure by MPs in the Register of Interest:

- There are instances where the 2 Rajya Sabha MPs who were receiving salaries from the scam ridden company running a Ponzi scheme but the MPs never declared them in their register of interest declarations to Rajya Sabha.

2.11 Politically Exposed Persons:

- All financial and banking activities of the Domestic Politically Exposed Persons (DPEPs) should be tracked by the banks and other authorities.

2.12 Election Expenditure Statements:

- Even though candidates have constantly claimed that the election expenditure limit set is very low the average amount of money spent by them in the 2014 Lok Sabha elections is only about Rs.40.30 lakhs, which is 59% of the expense limit.
- 16 MPs have declared that the election expenditure incurred by them is more than their total assets declared during the elections.

3.0 POLITICAL PARTY FINANCES

3.1 Existing legal provisions

Under the sub-section 29(B) and 29(C) of The Representation of the People Act 1951 (RP Act) (mentioned below) laws regarding the acceptance of the donations by political parties and disclosure of the same have been laid out:

3.1.1 29B. Political parties entitled to accept contribution.—Subject to the provisions of the Companies Act, 1956 (1 of 1956), every political party may accept any amount of contribution voluntarily offered to it by any person or company other than a Government company:

Provided that no political party shall be eligible to accept any contribution from any foreign source defined under clause (e) of section 2 of the Foreign Contribution (Regulation) Act, 1976 (49 of 1976).

Explanation.—For the purposes of this section and section 29C,—

- (a) “company” means a company as defined in section 3;
- (b) “Government company” means a company within the meaning of section 617; and
- (c) “contribution” has the meaning assigned to it under section 293A, of the Companies Act, 1956 (1 of 1956) and includes any donation or subscription offered by any person to a political party; and
- (d) “person” has the meaning assigned to it under clause (31) of section 2 of the Income-tax Act, 1961 (43 of 1961), but does not include Government company, local authority and every artificial juridical person wholly or partially funded by the Government.

3.1.2 29C. Declaration of donation received by the political parties.—(1) The treasurer of a political party or any other person authorised by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely:

- a. the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year;
 - b. the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.
- (2) The report under sub-section (1) shall be in such form as may be prescribed.
- (3) The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorised by the political party in this behalf before the due date for furnishing a return of its income of that financial year under section 139 of the Income-tax Act, 1961 (43 of 1961), to the Election Commission.
- (4) Where the treasurer of any political party or any other person authorised by the political party in this behalf fails to submit a report under sub-section (3) then,

notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such political party shall not be entitled to any tax relief under that Act.]

Under the section 13A of the Income-tax Act, 1961-2014 the governing law regarding income-tax exemptions provided to political parties and conditions thereof have been laid down

3.1.3 [Special provision relating to incomes of political parties.

13A. Any income of a political party which is chargeable under the head 42[***] “Income from house property” or “Income from other sources” or 43[“Capital gains” or] any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party: Provided that—

(a) such political party keeps and maintains such books of account and other documents as would enable the 44[Assessing] Officer to properly deduce its income therefrom;

(b) in respect of each such voluntary contribution in excess of 45[twenty] thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and

(c) the accounts of such political party are audited by an accountant as defined in the Explanation below sub-section (2) of section 288 :

46[Provided further that if the treasurer of such political party or any other person authorized by that political party in this behalf fails to submit a report under sub-section (3) of section 29C of the Representation of the People Act, 1951 (43 of 1951) for a financial year, no exemption under this section shall be available for that political party for such financial year.]

47[Explanation.—For the purposes of this section, “political party” means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951).]

3.2 Need For Transparency In Financial Disclosures [Annual Income Tax Return (ITR) of Political Parties]:

According to above mentioned 29 (C) (1) of the RP Act 1951, the political parties are not required to report (to the Election Commission of India (ECI)) the name of the individuals or organizations from whom they have received donations of amount less than Rs.20,000.

ADR has analyzed the income tax returns (ITR) and contributions submitted by the National Political Parties i.e. INC, BJP, BSP, NCP, CPI and CPM to the ECI between FY 2004-05 and 2012-13. Following are the highlights of our analysis [**Annexure-1**]

- a. The total income of these six parties between FY 2004-05 and 2012-13 was **Rs.5,986.32 crores.**
- b. **Total income of political parties from known donors** (details of donors as available from contribution report submitted by parties to Election Commission, who have donated more than Rs.20,000 each) was **Rs.534.99 crores**, which is **8.94%** of the total income (Rs.5,986.32 crores) of these six parties.
- c. **Total income of political parties from other known sources** (e.g., sale of assets, membership fees, bank interest, sale of publications, party levy etc.) was **Rs. 1,082.58 crores**, or **18.08%** of the total income.
- d. **Total income of political parties from unknown sources** (income specified in the IT Returns whose sources are unknown) was **Rs.4,368.75 crores**, which is **72.98%** of the total income of the parties.

From the above observations, it can be safely concluded that under the current legal requirements, political parties are clearly not required to be completely transparent in their finances and a huge proportion of their income remains unaccounted for. There are unknown sources reported by political parties in their annual disclosure such as ‘sale of coupons’, ‘Aajiwani Sahayog Nidhi’, ‘relief fund’, ‘miscellaneous income’, ‘voluntary contributions’, ‘contribution from meetings/morchas’ etc. for which there is no information available in the public domain. An extreme example of the lack of transparency in the political parties’ disclosure is the BSP which claims that the party has not received a single donation above Rs.20,000 between the FY 2004-05 and FY 2012-13 thereby not declaring the names of even a single donor in 8 years. The total income of BSP between FY 2004-05 and FY 2012-13 in its IT Returns was Rs. 585.07 crores of which voluntary contribution was declared to be Rs. 307.31 crores (52.53% of total income).

This egregious level of opacity in the financial disclosure of political parties certainly points the needle of suspicion towards the dubious sources of income and their influence in our electoral process.

3.3 Submission of ITR and Contribution Reports by Political Parties

Apart from the above transparency issues, it has also been seen that only national parties and very few regional parties file their IT Returns and contribution reports on a regular basis every year. [**Annexure-2**]. As per 29C of the RP Act and 13A of the Income Tax Act, the political parties can only claim 100% tax exemption on their income if they file their ITR and contribution reports to the ECI.

3.4 Election Expenditure of Political Parties

In 1996 while directing the ECI to prescribe a pro-forma for the submission of election expenditure incurred by political parties in a particular election(s), Supreme Court, in Common Cause vs. Union of India (1996) said the following:

“..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...”

3.4.1 Despite the above Supreme Court judgment, political parties do not submit their election expenditure statements within the stipulated amount of time, i.e. within 75 days of Assembly Elections and 90 days of Lok Sabha Election, despite repeated reminders. sent by the ECI. [**Annexure-3a, 3b**]. These dilatory tactics regarding submissions of election expenditure, which is a blatant contempt of the Supreme Court’s judgment, being adopted by political parties may be to avoid the active public scrutiny of their election expenses. For example, under or non-reporting of election expenditure cannot be scrutinized if unavailable within the limited time as the expenditure reports are submitted after several months have elapsed and the public loses interest.

3.4.2 There are cases where parties do not submit their election expenditure statements even after years of a particular election. It can be observed that BJP has not yet submitted the election expenditure statement for Karnataka Assembly Election 2013 despite 18 months since completion of elections. Regional parties too follow a similar pattern of not submitting their expenditure statements within the time limit. [**Annexure-4**]

3.4.3 While not all political parties strictly follow the format specified by the ECI, the disclosure does not enable complete transparency and accountability. While the accounts are audited internally, **details of donors who made donations during election period still remain opaque**. For example, during Lok Sabha elections held in 2009, the 6 National Parties (INC, BJP, BSP, NCP, CPI and CPM) declared a total income from funds collected in cash during election period to be Rs. 381.81 crores [**Annexure-5a, 5b, 5c, 5d, 5e, 5f**] but details of those donors who made these contributions remain unavailable. These unnamed pre-election donations in huge denominations again cast a shadow of doubt on the sources of these funds, thus raising the spectre of black money.

3.4.4 In the political parties’ election expenditure format prescribed by the ECI, the parties are also required to report whether they have provided funds to individual candidates contesting election on their tickets. Also, there is a separate system of disclosure of election

expenditure incurred by the candidates where they declare the funds received by them from the parties apart from details of election expenditure. ADR, in its analysis, had observed that there was a mismatch in the funds allocated by parties to their MPs, as declared by them in their election expense submission, and funds received by the MPs from their parties, as declared by them in their expense submissions. [Annexure-6]

As an example, in 2009 Lok Sabha Elections, out of **277 MPs** from national parties, a total of **Rs.7,46,58,901 (~ Rs.7.46 crores)** was declared by **75 MPs** as received from their parties but The national parties have declared that **Rs. 14,19,12,228 (~ Rs.14.19 crores)** was given to **138 MPs**.

S. No.	Party	No. of MPs who have declared receiving aid from party	Total amount declared by MPs as received from party	No. of MPs to whom aid was given by the party	Total amount declared by party as given to MPs
1	INC	42	Rs.397.93 lakhs	123	Rs.1,234 lakhs
2	BJP	25	Rs 275.49 lakhs	0	0
3	BSP	1	Rs.2.50 lakhs	0	0
4	NCP	1	Rs.4 lakhs	0	0
5	CPI	1	Rs.18.57 lakhs	2	Rs.19.83 lakhs
6	CPM	5	Rs.48.09 lakhs	13	Rs.165.29 lakhs
Total		75	Rs.746.58 lakhs	138	Rs.1,419.12 lakhs

Table: 2009 Lok Sabha, MPs' declaration of aid for election expenses from the party

This discrepancy observed in our analysis was arrived at by comparing two sets of disclosures for the funds under the similar heads is again an example of either callous nature by which disclosures are made or a deliberate attempt to obfuscate the sources of funds, thereby raising serious doubt about the sources of money.

3.5 Political Parties' repeated reluctance in following the transparency guidelines:

3.5.1 In 2011 the ECI approached the Institute of Chartered Accountants of India (ICAI) to frame accounting formats exclusively meant for political parties. The objective of this move was to bring greater financial accountability in political parties especially in the upkeep of their finances. ICAI finally submitted the report namely "Uniform Accounting and Auditing Principles for the political parties". [Annexure-7] The ECI urged all the political parties to begin preparing their accounts and disclosures in the prescribed formats but such a change in accounting practices was **never adopted by any of the parties**.

3.5.2 In August 2014, ECI issued "Guidelines on transparency and accountability in party funds and election expenditure matter" in which the commission urged the parties to observe higher standards of transparency and accountability in respect to funds raised and expenditure incurred by them during both elections and in other times. [Annexure-8]

The Commission laid down a number of guidelines for the parties so that they begin to demonstrate greater transparency and accountability in their operations.

One of the prominent was that parties prepare and maintain the accounts according to the standards and principles as prescribed in ICAI report (mentioned in (a) above)

This was the Commission's fourth such attempt in two years (2013 and 2014) to come with such guidelines aiming at greater financial transparency in working of the political parties. Earlier in August 2013, February 2014 and August 214 the ECI came up with similar proposals. **[Annexure-9a, 9b, 9c]**

The responses of the parties to these guidelines have been very discouraging. In their responses they have been providing techno-legal arguments that would be tangent to the core matter instead of tackling the issues raised by the ECI head-on. **[Annexure-10]**

Such a recalcitrant attitude of political parties regarding the transparency in their finances also raises doubts about the nature of the money the parties are transacting in. Instead of welcoming the ECI's attempts, the parties have been stalling such moves in order to maintain a status-quo as far as their finances are concerned.

3.6 Growth in the number of political parties but very few contest elections

At present there are more than 1600 parties registered with the ECI, but not all of them contest elections. For example in the Lok Sabha 2014 elections, only 464 parties contested the elections. **The ECI does not have powers to de-register a party** even when it doesn't demonstrate any semblance of political activity- the very purpose for which it got registered with ECI at the fiRs.t place. Such a behavior of these dormant parties often raises question as to what was the real purpose behind these entities getting registered as political parties.

3.6.1 The tax-exemption provided to the political parties is one of the plausible reasons behind burgeoning number of political parties. There are instances when such parties that do not contest in elections regularly have been issued notices by CBDT and when these parties could not explain their finances, their income tax exemptions were disallowed **[Annexure-11]**

3.6.2 There are least three parties that have been found to be involved in money laundering activities and were issued notices by the Tax authorities. **[Annexure-11]**

3.6.3 There are parties that are relatively unknown with regard to political activity, but they would have donations received from sources located at such disparate geographical locations where the party would not have any presence. Also these little known parties would have donations running into crores. **[Annexure-12]**

3.6.4 The disclosure rule regarding sources of donations, i.e. only those contributions have to be reported to ECI that are in excess of Rs. 20,000, combined with 100% income tax exemptions provided to political parties and restriction of ECI from de-registering the parties that are not involved in active politicking might be providing to these dormant political parties all the necessary conditions to engage in dubious transactions involving unaccounted money.

3.7 Absence of scrutiny of financial disclosures of political parties

There is a lack of frequent and complete scrutiny of financial disclosures of political parties, i.e. of Income Tax Returns and contributions reports containing details of donors who have contributed more than Rs. 20,000 to a party, by either the Income Tax Department or by the ECI.

- 3.7.1 Such has been the state of affairs of the regulation regime of the political parties by either CBDT or ECI that neither of these two authorities would have the correct addresses of many parties. **[Annexure-11]**
- 3.7.2 There have been scenarios where members. of civil society have noticed infringements of section 29B of the RP Act where political parties have been found receiving donation from foreign sources. Delhi High Court has found INC and BJP guilty of receiving donation from foreign sources. **[Annexure-13]**
- 3.7.3 The ECI itself in an affidavit to Delhi High Court has said it does not have the wherewithal to investigate the infringements in the finances of parties. **[Annexure-14]**
- 3.7.4 There have been cases where a party has been found taking out (and terming the same in accounts as “amount written-off”) a big sum of money from its account and investing it in a private company. This discrepancy was also brought forward by a private citizen of the country and not by either CBDT or ECI. (The party fund collected by a particular party is 100% exempted from tax and should only be used for political purposes.) **[Annexure-15a, 15b]**
- 3.7.5 There are allegations where a political party has received crores of rupees from a scam ridden company running a Ponzi scheme. The party has shown these big amounts of money under the items such as “sale of paintings” in its financial statement. **[Annexure-16a, 16b]**

3.8 Seizures by the ECI of unaccounted cash, liquor, drugs etc. during elections

- 3.8.1 ECI has reported that during Lok Sabha 2014 elections around Rs.300 crores of unaccounted cash and more than 17,000 kg of drugs and huge amount of liquor, arms etc. **[Annexure-17]**
- 3.8.2 There would be occasions when ECI would catch a tranche of cash in a vehicle belonging to a particular candidate contesting the election, the candidate would get away by simply saying that the money belongs to the party and it is for distribution among candidates. The point to be noted here is that there is no ceiling on the election expense of a party and party can spend any amount on any candidate(s). **[Annexure-18a, 18b]**
- 3.8.3 There have been scenarios where ECI would come out with strict guidelines that during elections in an election-bound area nobody would be allowed to travel with an amount of cash more than a stipulated limit. But such a provision would be challenged in court of law under the pretext that it would hamper the business activity in the region and consequently such a guideline would be struck down by the court or some conditions would be attached to the provision that would render it toothless. **[Annexure-19]**

3.8.4 There have been cases where political parties would be widely using the helicopters during elections, the cost of which would be borne by a particular company or companies but these costs would never show up in the election expenditure statements of the candidates or parties. There are media reports of companies submitting statements that claim that they are providing such helicopters to the parties for free. **[Annexure-20]**

3.9 Media Reports

3.9.1 Income Tax department issues a notice to a party for unexplained Rs.60 crores in its accounts **[Annexure-21]**

3.9.2 Voters rioting outside the offices of a party when they find out the currency notes distributed by the party before election to bribe the voters were fake **[Annexure-22]**

3.9.3 Rs.10 crores were burgled from INC office in Mumbai and no police complaint was filed **[Annexure-23]**

3.9.4 Senior Rajya Sabha member alleges that Rajya Sabha seats are sold for Rs.80 crores **[Annexure-24]**

3.9.5 An outgoing Rajya Sabha member and his party trade charges that tickets are being sold by the party for Rs.100 crores each **[Annexure-25]**

3.9.6 A senior functionary of a recognized party announces that the tickets for the upper house of a state legislature are sold by the party **[Annexure-26]**

4.0 DISCLOSURES BY CANDIDATES

4.1 Extraordinary growth in assets of candidates (contesting elections) during 5 years, the duration between two consecutive elections.

4.1.1 For example, in Lok Sabha 2014 elections 165 MPs (who were sitting MPs of the 15th Lok Sabha 2009-2014) got re-elected. ADR compared the disclosures made by these MPs in their 2009 election affidavits with the disclosures made in the affidavits for the 2014 elections. The comparison revealed the following:

- i. 32 (out of 165 re-elected) MPs had shown an increase in total assets worth more than Rs.10 crores in five years.
- ii. 165 Re-elected MPs had declared total assets in 2009 worth Rs.894.63 crores whereas they had declared total assets in 2014 worth Rs.2127.07 crores.
- iii. 165 Re-elected MPs showed a total increase in immovable assets **Rs.1,232.43 crores or a 137% increase [Annexure 27]**

4.1.2 A corresponding analysis for 396 re-contesting MPs (i.e. sitting MPs of 15th Lok Sabha 2009 who contested the 2014 elections but may or may not get elected again) reveal the following:

- i. 70 re-contesting MPs showed an increase in total assets worth more than Rs.10 crores in five years.
- ii. 396 Re-contesting MPs had declared total assets in 2009 worth Rs.2,311.73 crores whereas they had declared total assets in 2014 worth Rs.5678.32 crores
- iii. 396 Re-contesting MPs showed a total increase in total assets worth **Rs.3,366.58 crores or a 146% increase [Annexure 28]**

4.2 Increase in assets compared to the incomes

4.2.1 Candidates have to declare both assets and income in their pre-election disclosure. If the assets declared by re-contesting candidates in 2014 Lok Sabha elections are compared to those declared by the same candidates in the 2009 elections, and those are compared with the approximate income that these candidates might have earned in intervening 5 years, following inferences follow:

- i. Number of *re-elected* MPs who have declared their Income details during Lok Sabha 2014 elections: 161
- ii. Total annual income of 161 re-elected MPs in 2014: Rs.88.53 crores.
- iii. Accumulated total income in five years for the 161 re-elected MPs assuming that the annual income of these MPs stayed constant over five years: Rs.442.70 crores

- iv. Total asset increase of 161 Re-elected MPs in five years: Rs.1230.40 crores
- v. Difference in total asset increase of 161 re-elected MPs and accumulated total income in five years of the re-elected MPs: Rs.1230.40 crores–Rs.442.70 crores = **Rs.787.70 crores**

4.2.2 Number of *re-contesting* MPs who have declared their Income details during Lok Sabha 2014 elections: 386

- i. Total annual income of 386 re-contesting MPs in 2014: Rs.267.05 crores.
- ii. Accumulated total income in five years for the 386 re-contesting MPs assuming that the annual income of these MPs stayed constant over five years: Rs.1335.25 crores
- iii. Total asset increase of 386 re-contesting MPs in five years: Rs.3353.45 crores
- iv. Difference in total asset increase of 386 re-elected MPs and accumulated total income in five years of the re-elected MPs: Rs.3353.45 crores–Rs.1335.25 crores = **Rs.2018.19 crores**

Only investigation of the financial disclosures of these 2009 MPs can bring out the truth behind this extraordinary increase in assets.

4.3 The suspicions surrounding above points (4.1) & (4.2) can be laid to rest if the information regarding sources of incomes of the elected representatives is in the public domain. We have urged the MPs to voluntarily disclose their ITRs, so that the doubts regarding their finances can be resolved but the response has not been positive. We also have a complaint pending in Central Information Commission that this information contained in MPs IT returns is of public importance and should be put in public domain. [**Annexure 29**]

4.4 In the white paper on black money authored by government in 2012, real estate industry has been found to one of the prime industry generating the black money. A close analysis of the liabilities declared by MPs elected in 2014 Lok Sabha elections show that there are many MPs who have raised the big ticket unsecured loans from many big and small real estate companies. [**Annexure 30a, 30b**]

4.5 There are reports that many MPs in 15th Lok Sabha under-reported their assets in their respective affidavits. [**Annexure 31**]

4.6 There are instances where the 2 Rajya Sabha MPs who were receiving salaries from the scam ridden company running a Ponzi scheme but the MPs never declared them in their register of interest declarations to Rajya Sabha. [**Annexure 32**]

4.7 A combination of points (4.4), (4.5) and (4.6) above raise a very pertinent need that these affidavit declarations by MPs should be scrutinized by relevant authorities.

4.8 All financial and banking activities of the **Domestic Politically Exposed Persons (DPEPs)** should be tracked by the banks and other authorities.

4.9 An analysis of the *election expenditure* submitted by the elected MPs reveal the following staggering facts: [**Annexure 33**]

4.9.1 **Less than 50% of the Limit:** Candidates have consistently claimed that the election expenditure limit set is very low. However, based on the election expense declarations of 540 MPs analysed from Lok Sabha, 2014 to the ECI, 178 MPs (33%) have declared election expenses of less than 50% of the expense limit in their constituency.

4.9.2 **Average Election Expenses:** Based on the election expense declarations of 540 MPs from Lok Sabha 2014 to the ECI, the average amount of money spent by them in the elections is only about Rs. 40.30 lakhs, which is 59% of the expense limit.

4.10 16 MPs have declared election expenditure incurred by them (Section 1) which is more than their total assets declared during the elections.

S.No.	Name	State	Constituency	Party	Expenditure incurred/authorized by			Total Assets	Difference in total assets and expenditure incurred by MP/his election agent
					MP/his election agent	Political party which setup him up	Any other association / body of persons/ individual		
1	Dr.Shrikant Eknath Shinde	Maharashtra	Kalyan	SHIV SENA	51,34,254	0	0	9,98,000 9 Lacs+	-41,36,254
2	Kamakhya Prasad Tasa	Assam	Jorhat	BJP	58,21,089	0	0	16,94,785 16 Lacs+	-41,26,304
3	Om Prakash Yadav	Bihar	Siwan	BJP	61,77,287	0	0	22,13,023 22 Lacs+	-39,64,264
4	Sumedha Nand Saraswati	Rajasthan	Sikar	BJP	39,57,463	0	6,56,725	34,311 34 Thou+	-39,23,152
5	Arpita Ghosh	West Bengal	Balurghat	AITC	40,43,072	10,00,000	8,000	5,44,790 5 Lacs+	-34,98,282
6	Saumitra Khan	West Bengal	Bishnupur	AITC	43,13,942	2,42,500	0	11,97,255 11 Lacs+	-31,16,687
7	Mahant Chand Nath Yogi	Rajasthan	Alwar	BJP	27,44,294	21,000	1,13,205	1,99,653 1 Lacs+	-25,44,641
8	Sankar Prasad Datta	Tripura	Tripura West	CPI(M)	38,40,118	51,745	0	13,20,900 13 Lacs+	-25,19,218
9	Savitri Bai Foole	Uttar Pradesh	Bahraich	BJP	35,91,541	0	2,85,587	11,21,491 11 Lacs+	-24,70,050
10	Manshankar Ninama	Rajasthan	Banswara	BJP	60,35,542	0	0	40,40,285 40 Lacs+	-19,95,257
11	Ashok Kumar.K	Tamil Nadu	Krishnagiri	AIADMK	28,51,259	10,000	17,94,200	11,76,436 11 Lacs+	-16,74,823
12	Rama Chandra Hansdah	Orissa	Mayurbhanj	BJD	51,21,172	0	0	36,30,888 36 Lacs+	-14,90,284
13	Dharmendra Kumar	Uttar Pradesh	Aonla	BJP	59,39,590	0	0	53,64,652 53 Lacs+	-5,74,938
14	Rameshwar Teli	Assam	Dibrugarh	BJP	14,72,164	0	6,49,650	9,77,943 9 Lacs+	-4,94,221
15	Anto Antony	Kerala	Pathanamthitta	INC	58,89,586	67,109	0	54,10,884 54 Lacs+	-4,78,702
16	Sadhavi Niranjan Jyoti	Uttar Pradesh	Fatehpur	BJP	45,24,481	0	0	41,23,779 41 Lacs+	-4,00,702

4.11 A deeper analysis of the election expenditure statements submitted by MPs after 2014 Lok Sabha elections brings out following inferences:

- a. Expense on Public Meeting, Rally, and Processions with Star Campaigners:** Out of the 540 MPs analyzed, 109 (20%) MPs have declared that they have not spent ANY amount on public meetings, processions etc. with Star Campaigners.
- b. Expense on Public Meetings, Rally, and Processions other than the ones with Star Campaigners:** Out of the 540 MPs analyzed, 24 (4%) MPs have declared that they have not spent ANY amount on public meetings, processions etc other than the ones with star Campaigners.
- c. Expense on Campaigning through electronic/print media:** 108 (20%) MPs have declared that they have not spent ANY amount on campaigning through Electronic/print media.
- d. Expense on Campaign Workers:** 100 (19%) MPs have declared that they have not spent ANY amount on campaign Workers.
- e. Expense on Vehicles used:** 5 (1%) MPs have declared that they have not spent ANY amount on Vehicles Used.
- f. Expense on Campaign Materials:** 72 (13%) MPs have declared that they have not spent ANY amount on Campaign Materials.
- g. Funds Raised from Political Party:** Out of the 540 MPs analyzed, 195 (36%) MPs have declared that they have not received any funds from political parties.
- h. Funds Raised through any person/ company/ firm/ associations/ body of persons etc. as loan, gift or donation etc:** Out of the 540 MPs analyzed, 166(31%) MPs have declared that they have not received any funds from *any person/ company/ firm/ associations/ body of persons etc. as loan, gift or donation etc.*
- i. Self-funds used for election campaign:** Out of the 540 MPs analyzed, 52 (10%) MPs have declared that they have not used any of their own funds for their election campaign
- j. Average funds raised from Political Parties (Party-wise):** On an average an MP from BJP raised 55% of his/her election expense funds from the political party. Similarly, an MP from INC raised 23% of his/her election expense funds, an NCP MP raised 97%, a CPI (M) MP raised 71%, an SP MP raised 63%, a TRS. MP raised 37% and an AITC MP raised 32% of their election expense funds from the political party.
- k. Average funds raised through any person/company/firm/associations/body of persons etc as loan, gift or donation etc (Party-wise):** On an average an MP from BJP raised 23% of his/her election expense funds from any

person/company/firm/associations/body of persons etc. as loan, gift or donation. Similarly, an MP from INC raised 47% of his/her election expense funds, an LJP MP raised 66%, a Shiv Sena MP raised 58%, an AIADMK MP raised 55%, an AITC MP raised 54%, a TRS. MP raised 43% and a BJD MP raised 37% of their election expense funds from any person/company/firm/associations/body of persons etc. as loan, gift or donation.

- 1. Average self-funds used (Party-wise):** On an average an MP from BJP raised 20% of his/her election expense funds from their own, personal funds. Similarly, an MP from INC raised 28% of his/her election expense funds from their own, personal funds, a YSRCP MP raised 81%, a TDP MP raised 76%, a BJD MP raised 48%, an AIADMK MP raised 42%, a Shiv Sena MP raised 38% and an SP MP raised 10% of their election expense funds from their own, personal funds.

These observations tell us that all is not well with election expenditure disclosures of the candidates and there is crying need to strict scrutiny of these submissions as well as of the overall election expenditure oversight mechanism put up during elections. It also raises the **possibility of black money finding its way into election expenditure.**

5.0 RECOMMENDATIONS OF ADR/NEW

5.1 Legislation for regulation and functioning of Political Parties: The need for a comprehensive Bill to strengthen political parties has been felt for some time. The Law Commission headed by Justice Jeevan Reddy and the Working Committee to Review the Constitution headed by former Chief Justice, M.N. Venkatachaliah have addressed this issue. The Election Commission and various leaders, intellectuals and scholars have also delved on this issue. National Election Watch (NEW) and the Association for Democratic Reforms (ADR: www.adrindia.org) have also reiterated the need for such a Bill.

The enclosed bill was drafted by a committee Chaired by Justice M.N. Venkatachaliah, former Chief Justice of India. The other members of the committee included Mr. Sudhish Pai, Advocate, Sri Kuriya Chamayya, former Law Secretary, Karnataka, Mr. Arakere Jayaram, Journalist, Sri B. Somashekara, former Minister, and Prof Trilochan Sastry, founder ADR. The draft has been put out for wider public discussion. It is up to the collective wisdom of all concerned people and Institutions to shape it into a form best suited for the country's needs. *The SIT may like to make appropriate recommendations in this regard.* [Annexure 34]

5.2 Ceiling on election expenditure of Political Parties: One of the important requirements to curb the influx of black money in the election process is to have a ceiling on the election expenditure. The object of limiting the election expenditure is that it should be open and possible for any individual or party, howsoever small, to contest an election on the basis of equality. The availability of disproportionately large resources is likely to lend itself to misuse or abuse for securing to the political party or individual possessed of such resources, undue advantages over others. This can produce antidemocratic effects.

As the Supreme Court said in Kanwarlal Gupta's case AIR 1975 SC 308, "Individuals with grievances, men and women with ideas and vision are the sources of any society's power to improve itself. Government by consent means that such individuals must eventually be able to find groups that will work with them and must be able to make their voices heard in these groups."

The other objective of limiting the election expenditure is to eliminate the influence of black money in the electoral process. The pernicious influence of black money is playing a decisive role in controlling the democratic process and that inevitably leads to the worst form of political corruption which in its wake has produced a snowballing effect at all levels. Hence, the crying need for a ceiling on Election Expenditure. The ceiling on expenditure has to be reasonable and realistic reflecting the increasing costs. This ceiling should be reviewed and fixed by the Election Commission from time to time and should include all expenses by the political party, friends, well-wishers., and any other expenses incurred for any political activity on its behalf by any individual or corporate entity. Such ceiling should be strictly enforced.

5.3 Accounting and Auditing of political parties: All political parties should conform to the guidance note on Accounting and Auditing of political parties,

issued by the Institute of Chartered Accountants of India (ICAI), and the Annual Accounts should be audited and certified by a qualified practicing Chartered Accountant from a panel approved by the ECI or the CAG.

5.4 ECI's Transparency Guidelines: The political parties should follow transparency guidelines issued by the ECI. The transparency guidelines issued on August 29 2014 require parties to file annual audited accounts with the Commission; maintain the names and addresses of individuals, companies and other donors irrespective of the amount; deposit cash received by political parties in its bank accounts within 10 working days, except the amount required to defray its day-to-day expenses; and make payments exceeding Rs.20,000 only by account payee cheque/draft.

5.5 Disclosure of Sources of Income of Candidates contesting elections: Re-contesting and re-elected candidates have shown huge increase in their assets. For ensuring that this increase is through legal and known sources, the candidate should declare their sources of income. MPs should put their IT returns in the public domain for complete transparency and scrutiny. Candidate's affidavit should be scrutinized for under-reporting and under-valuing of their assets.

5.6 Election Expenditure Statements: The election expenditure statements of the candidates as well the political parties should be filed on time and strictly as per the prescribed format. Severe action should be taken in case of non-compliance by the ECI. Election expenditure statements submitted by each party should be subjected to CAG audit.

5.7 Political Parties under RTI: The CIC had held, under section 2(h) (ii) of the RTI Act on June 3rd 2013, that the six national parties INC, BJP, BSP, NCP, CPI and CPM are Public Authorities and are required to respond to RTI applications. However, it's been more than 17 months since the CIC's order and till now none of the six political parties has complied with the CIC's order, nor has any of them taken any other recourse such as approaching the courts against the decision of the Commission, nor adopted any of the procedures for processing the RTI application as given in the transparency law. This is a clear case of open defiance of a statutory authority by the six political parties and is not conducive to the functioning of a democratic society. This non-compliance has a very serious detrimental effect on the state of democracy in the country at large and has created a sense of cynicism and pessimism in the population at large, creating the impression in the minds of the people at large that the rule of law exists only for the common persons, and all institutions and people who enjoy some authority, formal or informal, and political parties in particular, are above the law. [Annexure 35a, 35b, 35c]

Political Parties should comply with the CIC's decision and restore transparency and accountability in the democratic setup.

ANNEXURES

- [Annexure 1]- Sources of Funding of National Parties for FY 2004-05 to 2012-13 ○ Defaulting Political Parties – filing of Income Tax Returns
- [Annexure 2]-Defaulting National and State Recognized Parties as on 08.09.14
- [Annexure 3a]-Submission of Election Expenditure Statements for 2014 General Elections & Legislative Assembly of Andhra Pradesh, Odissa and Sikkim
- [Annexure 3b]-Submission of Election Expenditure Statements – Consolidated Statement of Defaulters as on 20.05.14
- [Annexure 5a, 5b, 5c, 5d, 5e, 5f]-Statements of Election Expenditure of Political Parties – General Election Lok Sabha 2009
- [Annexure 6]-ADR's Lok Sabha 2009 Election Expenditure Analysis
- [Annexure 7]-ICAI Guidance Note on Accounting & Auditing of Political Parties
- [Annexure 8]-Clarification of transparency guidelines for the political parties issued by Election Commission of India on 29.08.2014
- [Annexure 9a, 9b, 9c]- Clarification of transparency guidelines for the political parties issued by Election Commission of India during 2013 and 2014
- [Annexure 10]-Responses of Political Parties to the transparency guidelines of the ECI
- [Annexure 11]-ADR's article in Mint on Growth of political parties
- [Annexure 12]-Economic Times article 25th Feb 2014 on political outfits receiving donations from small companies and not contesting polls
- [Annexure 13]-High Court Judgement W.P.(C) 131/2013 ASSOCIATION FOR DEMOCRATIC REFORMS AND ANR versus Union of India AND ORS – Foreign Funding received by BJP and INC
- [Annexure 14]-Counter Affidavit of ECI in Foreign funding received by BJP and INC
- [Annexure 15a]-Income and Expenditure Account of INC for the Year ended 31-03-2011 – National Herald case
- [Annexure 15b]-Congress admitting taking money out of the party account and investing in National Herald
- [Annexure 16a]-Income and Expenditure Account of Trinamool Congress
- [Annexure 16b]- Financial Express article December 10th 2014 – Mamata Banerjee's paintbrush fetched TMC Rs. 6.47 crore.
- [Annexure 17]-ECI's seizures in the 2014 Lok Sabha Elections
- [Annexure 18]-ADR's RTI and its reply from the ECI on candidate being caught with cash and later the party claiming that the cash is from the party fund and not of the candidate
- [Annexure 19]-ECI's drive to restrict cash movement during elections opposed – HindustanTimes October 18 2012
- [Annexure 20]-How Political Parties hire aircrafts during elections – The Economic Times Mar 23 2013
- [Annexure 21]- IT lens on NCP account after Rs. 61.5 crore deposited in a year – The Economic Times 12 May 2014
- [Annexure 22]- Distribution of fake money during elections – PTI March 31 2014
- [Annexure 23]- 10 crore Congress war chest stolen before Maharashtra polls – The Times of India Nov 2 2014
- [Annexure 24]- Rs 80 crore for Rajya Sabha ticket – The Hindu July 29 2013
- [Annexure 25]- Akhilesh Das offered Rs 100 for Rajya sabha ticket – Economic Times Nov 6 2014
- [Annexure 26]- Gowda Jr talks of selling MLC seat – PTI Jul 7 2014
- [Annexure 27]- ADR's analysis of growth in assets of re-elected MPs 2014

- **[Annexure 28]**- ADR's analysis of growth in assets of re-contesting MPs 2014
- **[Annexure 29]**- ADR's appeal in CIC regarding MP IT returns in public domain
- **[Annexure 30]**- White Paper on Black Money 2012 Chapter 2 and Unsecured Loans and Liabilities declared by MPs 2014 take from real estate companies
- **[Annexure 31]**- Under-reporting and under-valuing of assets of MPs – The Indian Express 3rd Dec 2013
- **[Annexure 32]**- Register of Interest declared by Kunal Ghosh and Srinjoy Bose – alleged Saradha Scam and Media Reports of Kunal Ghosh and Srinjoy Bose in Saradha Scam
- **[Annexure 33]**- ADR's analysis of MPs declared Election Expenditure
- **[Annexure 34]**- The Political Parties (Registration and Regulation of Affairs, etc.) Draft Bill
- **[Annexure 35]**- CIC's 3rd June 2013 Order of bringing six political parties under RTI – declaring them public authorities
- **[Annexure 35a]**- Copy of Repeated reminders sent by CIC for complying with its 3rd June 2013 order
- **[Annexure 35b]**- Interim Order of CIC to six political parties for non-compliance of its 3rd June order