

## **Background on ADR and National Election Watch**

### **Efforts to strengthen democracy and governance**

#### **1. Background**

Early 1999: 11 IIM-Ahmedabad professors get together to form Association for Democratic Reforms to work on electoral reforms.

August 1999: ADR files PIL in Delhi High Court seeking disclosure of pending criminal cases by candidates contesting elections to parliament and state assemblies.

November 02, 2000: Delhi High Court upholds above PIL.

December 2000: Government of India appeals to Supreme Court against the judgment of Delhi High Court.

May 02, 2002: Supreme Court rejects the appeal and upholds the High Court judgment.

June 28, 2002: Election Commission issues orders to implement the Supreme Court judgment.

July 08, 2002: All party meeting decides to amend Representation of People Act to prevent/dilute the Supreme Court's orders.

August 22, 2002: Cabinet sends Ordinance for amending the Representation of People Act, to President for signature.

August 23, 2002: President returns the Ordinance.

August 24, 2002: Cabinet sends the Ordinance to the President a second time, the President signs, in keeping with the convention.

October 2002: PILs filed in Supreme Court, including one by ADR, challenging the constitutional validity of the amendment to the Representation of People Act, done by above Ordinance.

March 13, 2003: Supreme Court declares above amendment of the Representation of People Act as "illegal, null and void" and restores its May 02, 2002 judgment.

March 27, 2003: Election Commission issues orders implementing the Supreme Court judgment.

2002-till date: First ADR, and now National Election Watch, conduct Election Watches in all Parliament and State Assembly elections, collecting copies of affidavits filed by candidates, and collating and summarizing the information given by candidate under oath.

**Data for over 50,000 candidates, self-declared by the candidates themselves under the Supreme Court order, is now available.**

2007: Files RTI applications before Election Commission and the Tax authorities seeking information whether Political Parties file their contribution reports as per Sec 29(A) of RPA (Representation of Peoples' Act) 1951 to get tax benefits under Sec 13A of Income Tax Act, 1961

21 Jun 2007: EC response contains details on 21 parties's contribution report. Many parties are listed for not submitting the reports ever. Tax Authorities refuse to divulge the information

2008: CIC on 2<sup>nd</sup> appeal allows tax returns of political parties to be made public and directs the authorities to furnish copies of the IT returns of the parties to public

2008: Scrutiny of copies of the return reveals that all the parties have availed benefit under Sec 13 A of the Income Tax Act, even those who have not filed their statutorily mandated contribution reports before Election Commission.

2008: Files a PIL in Supreme Court to issue order to conduct an inquiry to examine all defaulting parties whom have been given benefit of section 13A of Income Tax Act and to take appropriate action against the defaulting political parties to recover the income tax due from them from the date of default till date

Nov, 14 2008: Supreme court sets the PIL aside saying that the time is not appropriate to take up the PIL.

Jan 2009: Discussion with network partners to strategize on next steps.

### **Impact of ADR's work**

Filed and won two landmark judgments on candidate disclosure of criminal and financial records from the Supreme Court in May 2002 and March 2003. Since then over a thousand NGOs around the country in partnership with ADR did Citizen

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Election Watch for all major elections since December 2002, disclosing candidate background information to the media and the public.

The Election Commission has backed this work and the Chief Election Commissioner (CEC) has attended each year's Annual National Conference on Electoral and Political Reforms.

A National level political leader contacted ADR during the UP Election Watch in 2007 and wanted the list of candidates for his party with details. This indicates that at the top level, leaders are becoming concerned about the type of candidates they are putting up. This also happened in the Karnataka 2008 Assembly Elections.

Bihar Election Watch in October-November 2005 resulted in intense pressure on the Chief Minister Designate due to the extensive media coverage of candidate background. As a result, for the first time perhaps in decades, Bihar has a Council of Ministers without any known criminal record.

Both the major National political parties - the BJP and the Congress have started prior candidate scrutiny and checking the financial and criminal record of ticket aspirants.

Civil Society non-partisan Election Watches are springing up in different states. In the recent Lok Sabha 2004 Elections, 19 States and 5 Union Territories carried out Election Watches. A compendium of this data was released by the CEC at the Bangalore Conference. We now estimate that about **a thousand NGOs** around the country would have participated in Election Watch activities, mostly in collaboration with ADR.

Members of Parliament (MPs) lined up to clear lakhs of rupees of outstanding dues to the Government for rent, electricity, phone bills and so on to avoid embarrassing disclosures while filing nomination papers.

The Election Commission has completed a massive exercise based on the Gujarat Election Watch report to verify information filed by candidates in the nomination papers and affidavits, and has started proceedings against candidates with false declarations. They are now currently doing that for the subsequent elections as well.

A Bill on Electoral Expenses was passed in September 2003. The EC has taken it one step forward and asked candidates to file a statement of expenses every 3 days during the campaign. The EC has also made this information (in addition to the affidavits filed by candidates disclosing financial, criminal and educational background) available to citizens on request to Returning Officers, District Election Officers and the CEOs.

The issue of corruption and tainted Ministers has now come to the forefront. The recent Bihar November 2005 Elections were a small turning point. For the first time in decades, Bihar has a Cabinet without any tainted Ministers. The civil society pressure due to media disclosure was intense and the CM responded favourably.

First time candidates are largely clean. However there seems to be a grandfather clause where established leaders would continue to contest elections.

A detailed analysis shows that in Bihar where there was only one tainted candidate, the electorate largely rejected him/her.

The Election Commission including the new CEC is solidly backing civil society initiatives like these. They inaugurated Civil Society led National Conferences on Electoral Reforms in Ahmedabad, Jaipur, Jabalpur, Bangalore, Patna and this year (2007), in Lucknow. These Conferences were action oriented and resulted in successful Election Watch campaigns. The EC also helped in making candidate nomination papers available.

The EC has issued several very significant orders in the last one or two years relating to candidate disclosure, enforcing that affidavits are complete, taking action against false affidavits on the basis of complaints, and disclosing electoral expenses. These orders empower the citizen and strengthen her right to information.

Work on cleaning up political parties has started. This includes using RTI to get financial and organizational information on all major parties out in the public domain, and using the media, workshops and seminars, and working with the EC and the Standing Committee of Parliament to get changes done. In addition to advocacy and lobbying, we will also bring out reports on the State of Political Parties. Work is in progress.

In April 2008, ADR obtained a landmark ruling from the Central Information Commission saying that Income Tax Returns of Political Parties would now be available in the public domain along with the assessment orders. ADR and its partners are now using that in the Lok Sabha campaign for the 2009 general elections.

Using the information above, ADR has filed a PIL asking that those parties that have not given a list of all donors above Rs.20,000 as required by law should be asked to pay taxes. The PIL has been admitted.

Karnataka Assembly Elections, 2008: There was a reduction in the number of candidates with serious offenses put by parties. These offenses include murder, attempt to murder, bribery, cheating, forgery, causing hurt by dangerous weapons, rape, theft and outraging the modesty of women. There were 93 such cases against candidates in the 2008 elections, down from 217 in the 2004 assembly elections.

Mr. L.K. Advani, Leader of the Opposition gave a press statement that their party, the BJP would not field candidates with criminal records (October 2008). He said even if they were "winnable", they would not be given tickets. A similar announcement was given by Rahul Gandhi of the Congress a couple of months back.

## **Some eminent persons who are or have been involved with this initiative**

1. Justice M.N. Venkatachaliah, former Chief Justice of India
2. Justice Jeevan Reddy, former Supreme Court Judge and Chairman of the Law Commission
3. Justice B.J. Divan, former Chief Justice of the Gujarat High Court
4. (Late) Justice P.D. Desai, former Chief Justice of the Gujarat High Court
5. Justice T.U. Mehta, former Chief Justice of the Gujarat High Court
6. Mr. V. T. Shah, former DG Police, Gujarat
7. Mr. Julio Rebeiro, former DG Police, Maharashtra
8. Admiral Ram Tahiliani, former Head of the Indian Navy, and President of Transparency International
9. Mr. J.M. Lyngdoh, former Chief Election Commissioner of India
10. Mr. T.S. Krishnamurthy, former Chief Election Commissioner of India
11. Mr. C G Somiah, Former Comptroller and Auditor General of India
12. Justice Shiva Shankar Bhatt, former Justice of the Karnataka High Court
13. Mr. L.C. Jain, Former Planning Commission; Former High Commissioner to South Africa
14. Mr. T R Satish Chandran, Former Chief Secretary; Karnataka, Former Governor Goa
15. Dr. Samuel Paul, former Director of IIM Ahmedabad
16. Dr. Narayan Sheth, former Director of IIM Ahmedabad
17. Mr. Ramachandra Guha, eminent Historian and columnist
18. Mr. P.S. Appu, IAS, former Secretary to the Government of India
19. Mr. P.V. Shenoi, IAS, former Secretary to the Government of India
20. Mr. K C Sivaramakrishnan, , former Secretary to the Government of India
21. Mr. I.C. Dwivedi, former DG Police, Uttar Pradesh
22. Justice Sachidanand Awasthi, former Judge of the MP High Court
23. Mr. B.G. Deshmukh, former Cabinet Secretary, Government of India
24. Justice Chandrashekar Dharmadhikari, former Justice of the Mumbai High Court
25. Mr. D.M. Sukhtankar, Former Chief Secretary; Maharashtra
26. Lt. Gen. Y.D. Sahasrabudhe, Former Director General Army Service Corps
27. General (Retd) Shankar Roychowdhury, Former General, Indian Army

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