

# Presentation to Honourable Judges at NJA Bhopal

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# Overview

- Situation today
- Overview of Supreme Court Judgments on Electoral and Political Reforms
- Pending Legislations
- Way forward

# Situation Today: Wealth of MPs and Candidates

- Average Declared Wealth of Candidate: Rs.3.16 crore
- Average wealth of MP: Rs.14.61 crore
- Average Wealth in 2009 Rs.4.5 crores
- For re-elected MPs:
  - There are 165 re-elected MPs
  - Average wealth has gone up from Rs.5.38 crores to Rs.12.78 crores – or over 137%

# Criminal Records

- 186 MPs have a criminal case
- 112 have a serious criminal case
- It has gone up from 2009:
  - 2009: 162;      2014: 186
  - 2009: 74;      2014: 112
- Problem: Do voters vote for them? Or do political parties put up such candidates?
- In red alert constituencies, 3 or more candidates have serious criminal cases against them: whom can the voter choose?

# Summary Crime records 2014 Parliament

	# of Candidates	Crime	% crime	Serious Crime	% Ser Cr
Overall	8163	1398	17.13%	889	10.89%
<b>Parties with &gt; 10 seats</b>	<b>1185</b>	<b>336</b>	<b>28.35%</b>	<b>191</b>	<b>16.12%</b>
All Parties	4981	1091	21.90%	701	14.07%

# Wealth and Crime

	Avg wealth of cand	Avg wealth with crime	Avg wealth +serious crime
Overall	3.16	7.65	8.74
<b>Parties with &gt; 10 seats</b>	<b>11.93</b>	<b>14.51</b>	<b>14.78</b>
All Parties	3.89	9.06	10.23

# Winners, Candidates and Crime

LS 2014	Total	Crime record
Winners	543	186
Cand	8163	1398
%	6.7%	13.3%

# Serious Crime and Wealth

LS 2014	Total	Serious Crimr	Ser Cr+1cr	Ser Cr+5cr	Ser Cr+10cr
Winners	543	112	93	52	32
Cand	8163	889	397	176	107
%	<b>6.7%</b>	<b>12.6%</b>	<b>23.4%</b>	<b>29.5%</b>	<b>29.9%</b>



# Situation Summary

- Wealth, crime and black money dominate elections in many pockets of India
- Voters often have little choice
- Use of black money and over spending is vitiating democracy. It is also against the law
- Political parties are responsible for giving tickets to candidates

# Recent Landmark Judgments

- Candidate has to inform the party about criminal cases pending against him/her.
- The political party shall put up on its website the aforesaid information of candidates having criminal antecedents.
- The candidate and political party shall declare in newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. The court has held that by wide publicity it means that the same shall be done at least thrice after filing of the nomination papers.
- Note 1: Non-disclosure of assets and sources of income would amount to 'undue influence' – a corrupt practice under Section 123(2) of the RP Act of 1951 – recent Judgment of Supreme Court
- Note 2: The genesis of this are the 2002 and 2203 Supreme Court Judgments requiring candidates to give sworn affidavits with their financial and criminal records.

# Right to Information

- The Central Information Commission (CIC) has ruled that the Income tax returns of political parties should be made public
- In another ruling it said political parties should be declared public authorities under the RTI
- Political Parties refuse to follow the ruling. Matter now in the Supreme Court

# Supreme Court Judgments

- Asking for fast track Courts monitored by Honourable High Courts to dispose off cases against politicians within one year.
- Cases still pending after 5 years
- Recently 12 fast track Courts set up, but still too few
- Point for consideration: speed up trails
- Genesis: 10<sup>th</sup> March, 2014 **SC** directed all High Courts cases of sitting MPs and MLAs under Section 8(1), 8(2) and 8(3) of the RP Act, shall be concluded within one year. Trial shall be conducted on a day-to-day basis as far as possible.

# Supreme Court Judgments

- Elected MPs and MLAs who are convicted during their term will be immediately disqualified. Not being followed in some State Assemblies under the pretext that the Speaker has to remove them
- Those convicted by lower Court but pending appeal in a higher Court are still debarred from elections. Supreme Court says only sentence stayed, not the conviction

# More Judgments

- Directed the Election Commission of India (ECI) to bring the issue of election related “freebies” under the ambit of the Code of Conduct  
*Civil Appeal No 5130 of 2013 (Arising out of SLP (C) No 21455 of 2008), S Subramaniam Balaji vs Government of Tamil Nadu.*
- Returning officers should reject nomination papers of candidates who do not provide all relevant information about their assets, liabilities, and criminal cases if any.
  - Writ Petition (civil) No 121 of 2008, *Resurgence India vs Election Commission of India*, 13 September 2013.

- **Disproportionate asset increase of the MPs and MLAs:**
- On 16<sup>th</sup> February, 2017, following relief was granted by the court:
- Sources of income of spouse and dependents to be included in form 26 (affidavits).
- Permanent mechanism for scrutiny of affidavits.
- Non-disclosure of assets and sources of income would amount to ‘undue influence’ – a corrupt practice under Section 123(2) of the RP Act of 1951.
- Information regarding the contracts, if any with the appropriate government either by the candidate or his/her spouse and dependents.

# Pending Important Cases in Supreme Court

- Electoral Bonds
- Political Parties under RTI are public authorities
- Foreign Funding of two National Parties. Convicted by Delhi High Court, now in Supreme Court
- Law Amended with retrospective effect. That is challenged in the Supreme Court
- Delhi High Court: Petition to impose a limit on the election expenditure of political parties.
- No compliance on providing information on political party expenditure in elections.



# Way Forward

- Honourable Judges to consider speedy disposal of electoral cases and those against MLAs and MPs
- To consider petitions and PILs on non compliance of Supreme Court Judgments. In particular
  - Candidates not giving signed statements on criminal records to party
  - Party not putting it up on website and not publishing it widely in the print and electronic media
  - This amounts to undue influence if we interpret another Judgment
- EC has a new mobile app for reporting electoral malpractice. Honourable Courts may consider this in disposing off election petitions