

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO OF 2019
(PIL UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

1. Union of India
Through the Secretary,
Ministry of Law & Justice,
Shastri Bhawan, New Delhi-110001,
2. Election Commission of India
Through the Director Law
Nirvachan Sadan,
Ashoka Road, New Delhi-110001

.....Respondents

PIL UNDER ARTICLE 32 SEEKING A WRIT IN THE NATURE OF MANDAMUS OR DECLARATION THAT SECTION 8(3) OF THE REPRESENTATION OF THE PEOPLE ACT 1951 IS VOID/UNCONSTITUTIONAL FOR BEING ARBITRARY, UNREASONABLE & VIOLATIVE OF ARTICLES 14 OF THE CONSTITUTION.

To,
THE HON'BLE CHIEF JUSTICE
AND LORDSHIP'S COMPANION JUSTICES
OF THE HON'BLE SUPREME COURT OF INDIA
HUMBLE PETITION OF ABOVE-NAMED PETITIONER
THE MOST RESPECTFULLY SHOWETH AS THE UNDER:

1. Petitioner is filing this writ petition as a PIL under Article 32 seeking a writ in the nature of mandamus or declaration that Section 8(3) of the Representation of the People Act 1951 is void and unconstitutional for being arbitrary, irrational and violative of Article 14 of the Constitution of India.
2. Petitioner has not filed any other petition either in this Hon'ble Court or in any other Court seeking same or similar directions as prayed for in this petition.

3. Petitioner's full name is Ashwini Kumar Upadhyay.

4. The facts constituting cause of action accrued on 12.03.2015, when the Law Commission of India submitted its 255th Report on "Electoral Reform" to the Executive but it did nothing to implement the suggestions till date.
5. The injury caused to the public is large. Public Servants are terminated from their services if convicted and sentenced to imprisonment even for two days. But, Section 8(3) of the RPA protects the legislators from disqualification even if they are convicted and sentenced to imprisonment for 20 months, hence, it is manifestly arbitrary, irrational & violative of Article 14 of the Constitution.
6. Petitioner has no personal interests, individual gain, private motive or oblique reasons in filing this PIL. It is not guided for gain of any other individual person, institution or body. There is no motive other than the public interest.
7. There is no civil, criminal or revenue litigation, involving petitioner, which has or could have any legal nexus, with the issue involved in this petition.
8. Petitioner has not submitted any Representation to the government because it has not even considered the recommendations of the Law Commission, Election Commission and other Prominent Commissions and Committees viz. NCRWC, Goswami Committee, Vohra Committee, Administrative Reform Commission.
9. There is no requirement to move any government authority for the relief sought in this PIL. There is no other remedy available except approaching this Hon'ble Court by way of instant PIL under Article 32 of the Constitution.

10. The petition seeks judicial redress against an unreasonable and irrational regime of tolerance for criminality created in favour of elected legislators vide Section 8(3) RPA, 1951, as further elaborated hereafter. Furthermore, the ever burgeoning and unabated criminalization of politics, has today muddled the clear stream of our democracy, thus necessitating urgent redress sought in present petition. It is most respectfully submitted that while for every other government or public servant, the law makes provision for their immediate suspension, to ensure probity in public life, as also to ensure that these services are kept beyond the pale of any reproach or doubt, Section 8(3) carves out a special distinction for elected legislators, inasmuch as it provides that mere conviction is not sufficient to incur a disqualification, but is super added with the requirement of a sentence of *'imprisonment for not less two years'*, for incurring disqualification, which is irrational, capricious and discriminatory and fails to admit of any rational basis for creating such an exception.
11. It is most respectfully submitted that public servants and government servants form the backbone of the administrative machinery of the State, and therefore, serve as the fulcrum of public life and administration in this country. While on the one hand, the elected legislators make laws, the responsibility for their scrupulous administration is reposed on the government officers, the police authorities and the members of the judiciary, without the coordination of which agencies, it is impossible to administer a huge country such as India. In that sense, government servants and public servants form the same class for the purpose of administration of laws in this country and to ensure that the rule of law prevails. Therefore, measures adopted for the purpose of ensuring probity in the life of public servants cannot be unreasonably extended to only some of

the sections of such class, while irrationally bracketing out some others who ultimately belong to the same class. Such a treatment defies the test of non-discrimination under Article 14 and further defies reason inasmuch as it fails to create any rational nexus between what the legislations seeks to attain and the exclusion of elected representatives who, in fact, form a part of the same class.

- 12.** Public Servants, viz. District Magistrate, District Judge and Police Officers etc. are terminated from their services, if they are convicted and sentenced to imprisonment even for two days. But, the Legislators, who are not only a 'Public Servant', as defined under the Prevention of Corruption Act, 1988, but also the 'Law Maker', are not disqualified, even if they are convicted for an offence and sentenced to imprisonment for twenty months, due to the operation of Section 8(3) of the Representation of the People Act, 1951. That's why petitioner is filing this PIL, seeking a writ in the nature of mandamus that Section 8(3), is void and unconstitutional for being arbitrary, unreasonable, violative of Article 14.
- 13.** The Apex Court had held that Legislators are 'Public Servant' under S. 2(c)(i), PCA. There is absolutely no doubt that MLA-MP receives salary and allowances and the same having been sanctified by the *Constitution* & law. Article 106 provides that "*the members of either House of the Parliament shall be entitled to receive salaries and allowances as may from time to time be determined by Parliament by law.*" The Law in pursuance thereof is "*The Salary, Allowances and Pension of Members of Parliament Act, 1954*" and Rules viz. (i) Travelling and Daily Allowances Rules 1957 (ii) Housing & Telephone Facilities Rules 1956 (iii) Medical Facilities Rules 1959 (iv) Allowances for Journeys Abroad Rules, 1960 (v) Constituency Allowance Rules, 1986 (vi) Advance for the Purchase of Conveyance Rules, 1986 (vii) Office Expense Allowance Rules, 1988.

14. It is respectfully submitted that civil servants under the Union function under the statutory framework of the All India Services Act, 1951 and Rules made thereunder (which includes the Indian Police Services) and the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The All India Services (Discipline and Appeal) Rules, 1969 stipulates under Rule 3(4) that, “*A member of the Service shall be deemed to have been placed under suspension by the Government concerned with effect from the date of conviction, if, in the event of conviction for a criminal offence, if he is not forthwith dismissed or removed or compulsorily retired consequent on such conviction, provided that the conviction carries a sentence of imprisonment exceeding forty-eight hours*”
15. Immediately, three aspects of the matter are noteworthy. *First*, it is the statutory expectation that the concerned government shall “forthwith” dismiss, or remove, or compulsorily retire any member of the Service, upon his conviction and a sentence of imprisonment exceeding forty-eight hours. *Secondly*, it is notable that the penalty of removal, dismissal and compulsory retirement is contemplated upon being convicted and sentenced to more than forty eight hours of incarceration. It is humbly submitted that the penalties of dismissal, removal and compulsory retirement are classified as major penalties under the Rules, and therefore, signifies the seriousness with which conviction by a competent criminal court is treated under the Rules. Moreover, the penalty of dismissal from services ordinarily entails disqualification for future employment under the Government. *Thirdly*, that in the circumstance that the concerned government fails to take the necessary steps as envisaged, such member shall, by operation of law, deemed to have been suspended. The sum and substance of the provision is indicative of the legislative intent of

maintaining a clean stream of public service through the All India Services, which is not permitted to be tainted by convicted individuals remaining in services or by continuing to render their services. The salutary provision only furthers the requirement of probity in public life and ensures that confidence in the All India Services is not jeopardized, in light of a convicted felon continuing in these Services.

16. In fact, the seriousness which the statutory Rules attach to the imposition of major penalties upon conviction on a criminal charge, becomes immediately palpable on perusal of Rule 14 of the All India Services (Discipline & Appeal) Rules, 1969, which is extracted in the relevant parts for immediate reference: *“14. Special Procedure in certain cases.-- Notwithstanding anything contained in rules 8 to 12-- (i) where any penalty is imposed on a member of the Service on the ground of conduct which has led to his conviction on a criminal charge; [...] (ii) ... (iii) ... the disciplinary authority may consider the circumstances of the case and make such orders thereon, as it deems fit.”* Therefore, in the circumstance that a major penalty is being imposed for reason of conviction of a member of the service on a criminal charge, the detailed procedure of inquiry need not be adhered to. Thus, the seriousness associated with a criminal conviction is immediately apparent.
17. Likewise under the Central Civil Services (Classification, Control and Appeal) Rules, 1965, a member of the civil services under Union is subjected to Rule 10, dealing with suspensions. Rule 10(2) provides, *“A government servant shall be deemed to have been placed under suspension by an order of appointing authority - (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding*

forty-eight hours; (b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours, and is not forthwith dismissed, or removed or compulsorily retired consequent to such conviction.” The applicable statutory regime is very similar to that applicable to IAS and IPS officers, and therefore, there is no scope of doubt about the seriousness with which the legislative scheme deals with convictions on criminal charges.

- 18.** A person cannot become a public servant - District Magistrate, District Judge etc. if he is convicted and imprisoned for merely two days, but he can become an MLA, MP and Minister even if convicted and imprisoned for: criminal conspiracy [S.120B(2)]; harbouring an officer, soldier, sailor, airman (S. 136); wearing the dress or carrying any token used by a soldier, sailor or airman with intent that it may be believed that he is such a soldier, sailor or airman (S. 140); being a member of an unlawful assembly (S. 143); joining an unlawful assembly armed with any deadly weapon (S.144); joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse (S. 145); rioting (S. 147); knowingly joining or continuing in an assembly of five or more person after it has commanded to disperse (S. 151); giving provocation with intent to cause riot (S. 153); Harbouring persons hired for an unlawful assembly (S. 157); Being hired to take part in unlawful assembly (S. 158); committing affray (S. 160); disobeying a direction of law with intent to cause injury to any person (S. 166); unlawfully engaging in trade (S. 168); unlawfully buying or bidding property (S. 169); personating a public servant (S. 170); giving false statement in connection with an election (S. 171G); illegal payments in connection with election (S. 171H); failure to keep election accounts (S. 171-I); absconding to

avoid service of summons or other proceeding from a public servant (S. 172); preventing the service or affecting of summons of notice, or removal of it when it has been affixed, or preventing a proclamation (S. 173). Non-obeying a legal order to attend at a certain place in person or by agent, (S. 174); omitting to produce document to public servant (S.175). omitting to give notice/information to public servant (S. 176); furnishing false information to a public servant (S. 177); refusing oath when duly required to take oath (S. 178); being legally bound to state truth, and refusing to answer questions (S. 179); refusing to sign a statement made to public servants when legally required (S. 180); giving false information to a public servant in order to cause him to use his lawful power to injury or annoyance of any person (S. 182); resistance to taking of property by the lawful authority (S. 183); obstructing sale of property offered for sale by authority of public servant (S. 184); bidding under a legal incapacity to purchase it (S. 185); Obstructing public servant in discharge of his public functions (S. 186); omission to assist public servant when bound by law to give such assistance (S. 187); disobedience to an order lawfully promulgated by a public servant (S. 188); threatening a public servant with injury to him (S. 189); threatening a person to induce him to refrain from making a legal application for protection from injury (S. 190); intentional Omission to give information of an offence by person legally bound to inform (S.202); giving false information respecting offence committed (S. 203); secreting/destroying any document to prevent its production as evidence (S.204); fraudulently suffering a decree to pass for a some not due (S. 208); false claim in a court of justice (S. 209); fraudulently obtaining decree (S. 210); false charge of offence made with intent to injure (S. 211); taking gift to help to recover movable property of which a

person has been deprived by an offence without causing apprehension of offender (S. 215); disobeying a direction of law with intent to save person from punishment/property from forfeiture (S.217); escaping from confinement (S.223); resistance/obstruction to his lawful apprehension (S. 224) and resistance/obstruction to lawful apprehension of another person (S. 225).

- 19.** An MLA and MP is not disqualified even if convicted and imprisonment for: intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding (S. 228); personation of a juror or assessor (S. 229); knowingly delivering any counterfeit count as genuine (S. 241); using a government stamp known to have been before used (S. 262); fictitious stamp (S. 263A); fraudulent use of false instrument for weighing (S. 264); fraudulent use of false weight or measure (S. 265); being in possession of false weights or measures for fraudulent use (S. 266); making/selling false weights or measures for fraudulent use (S. 267); negligently doing any act known to be likely to spread infection of any disease dangerous to life (S. 269); malignantly doing any act to know to be likely to spread infection of any disease dangerous to life (S.270); knowingly disobeying quarantine rule (S. 271); adulterating food or drink intended for sale, so as to make the same noxious (S. 272); selling any food or drink as food and drink, knowing the same to be noxious (S. 273); adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious (S. 274); offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated (S. 275); knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation (S. 276); making atmosphere noxious (S. 278); driving or riding

on a public way so rashly or negligently as to endanger human life (S. 279); navigating any vessel rashly or negligently as to endanger human life (S. 280); conveying for hire any person by water, in a vessel in such a state, or so loaded as to endanger his life (S. 282); causing danger, obstruction or, injury in any public way or line of navigation (S. 283); dealing with any poisonous substance so as to endanger human life (S. 284); dealing with fire or any combustible matter so as to endanger human life (S. 285); dealing with any explosive substance (S.286); committing public nuisance (S.290); continuance of nuisance after injunction to discontinue (S. 291); sale of obscene books (S. 292); obscene songs (S. 294); keeping a lottery office (S. 294A); destroying damaging or defiling a place of worship or sacred object with intent to insert the religion of a class of person (S. 295); causing a disturbance to an assembly engaged in religious worship (S. 296); trespassing in place of worship or sepulcher, disturbing funeral with intention to wound the feeling or to insult the religion of any person, or offering indignity to human corpse (S. 297); uttering any word or making any sound in the hearing or making gesture or placing any object in the sight of any person with intention to wound his religious feelings (S. 298); causing death by rash or negligent act (S. 304A); attempt to commit suicide (S. 309); concealment of birth by secret disposal of dead body (S. 318); voluntarily causing hurt (S. 323); voluntarily causing hurt on grave & sudden provocation (S. 334); doing an act which endangers human life/personal safety of others (S.336); causing hurt by an act which endangers human life (S. 337); causing grievous hurt by an act which endangers human life (S. 338); wrongfully restraining any person (S. 341); wrongfully confining any person(S. 342); wrongfully confining for 3 or more days (S. 343); keeping any person in

wrongful confinement, knowing that a writ has been issued for his liberation (S. 345); wrongful confinement in secret (S. 346); assault or use of criminal force other than grave provocation (S. 352); assault or use criminal force to deter a public servant from discharge of his duty (S. 353) and assault or use criminal force to a women with intent to outrage his modesty (S. 354).

- 20.** A person can continue to be an MLA or MP, even convicted and sentenced for: assault or use criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation (S. 355); assault or criminal force in attempt to commit theft of property (S. 356); assault or use criminal force in attempt wrongfully to confine a person (S. 357); assault or use criminal force on grave and sudden provocation (S. 358); mischief (S. 426); mischief, thereby causing damage (S. 427); mischief by killing, poisoning, maiming or rendering (S.428); mischief by destroying or moving landmark fixed by public authority (S. 434); criminal trespass (S. 447); house-trespass (S. 448); house-trespass in order to the commission of an offence punishable with imprisonment for life (S. 451); lurking house trespass/house-breaking (S. 453); dishonestly breaking open or unfastening any close receptacle containing or supposed to contain property (S. 461); forgery (S. 465); using a false property mark with intent to deceive or injure any person (S. 482); counterfeiting a property mark used by another, with intent to cause damage/injury (S. 483); knowingly selling goods marked with a counterfeit property mark (S. 486); removing, destroying or defacing property mark with intent to cause injury (S. 489); making or using documents resembling currency-notes or bank-notes (S. 489E); being bound to attend/supply the wants of person who is helpless from youth, unsoundness of mind or disease and voluntarily omitting to do so (S. 491); enticing or taking

away or detaining with a criminal intent a married women (S.498); defamation against the President or Vice-President or Governor or Administrator of union territory or a Minister in respect of his conduct in the discharge of his public function when instituted upon a complaint made by Public Prosecutor (S. 500); printing or engraving matter knowing it to be defamatory against the President or Vice-President or Governor or Administrator of Union Territory or Minister in respect of his conduct in the discharge of his public function when instituted upon a complaint made by the Public Prosecutor [S 501(a)]; insult intended to provoke breach of the peace (S 504); criminal intimidation (S. 506).

- 21.** Criminalization of politics in India has only grown. National Election Watch and Association for Democratic Reforms (ADR) has analyzed self-sworn affidavits of 539 out of 542 MPs of the present Lok Sabha. Elections in Vellore constituency had been cancelled and three MPs were not analyzed due to unavailability of their clear and complete affidavits on the ECI website at the time of making the Report. Out of 539 MPs, 233 (43%) MPs have declared criminal cases against themselves. Out of 542 elected candidates analyzed after 2014 General Election, 185 (34%) had declared criminal cases against themselves and out of 543 returned candidates analyzed after 2009 Lok Sabha election, 162(30%) had declared criminal cases against themselves. So, it is clearly evident that there is an increase of 44% in the number of Loksabha MPs with declared criminal cases against themselves since 2009.
- 22.** Presently 159(29%) MPs have declared serious criminal cases including cases related to rape, murder, attempt to murder, kidnapping, crimes against women etc. Out of 542 elected candidates analyzed after 2014 Lok Sabha elections, 112 (21%) had declared serious criminal cases against themselves. Out of 543

successful candidates analyzed after 2009 Lok Sabha election, 76 (14%) had declared serious criminal cases against themselves. So, there is an increase of 109 % in the number of returned candidates with declared serious criminal cases since 2009. Mr. Kuriakose from Idukki Constituency has 204 declared criminal cases including cases related to culpable homicide, house trespass, robbery, criminal intimidation etc. Total 30 MPs have declared cases of attempt to murder (Section 307), 19 MPs have declared cases related to crimes against women and out of these 19 MPs, 3 MPs have declared cases related to rape (S. 376). Total 29 MPs have declared cases related to Hate Speech.

- 23.** ADR Report indicates that chances of winning for a candidate with declared criminal cases in Lok Sabha 2019 is 15.5 % whereas for a candidate with clean background, is merely 4.7 %. Total 116 (39%) out of 301 winners from BJP, 29 (57%) out of 51 winners from INC, 10 (43%) out of 23 winners from DMK, 9 (41%) out of 22 winners fielded by AITC and 13 (81%) out of 16 winners from JD(U) have declared criminal cases against themselves in their affidavits. Total 87 (29%) out of 301 winners from BJP, 19 (37%) out of 51 winners from INC, 6 (26%) out of 23 winners from DMK, 4 (18%) out of 22 winners fielded by AITC and 8 (50%) out of 16 winners from JD(U) have declared serious criminal cases against themselves in their affidavits. Out of 539 MPs analyzed, 475 (88%) are crorepatitis. Out of 542 winners analyzed during Lok Sabha 2014 election, 443 (82%) winners were crorepatitis. Out of 543 winners analyzed during Lok Sabha 2009 election, 315 (58%) winners were crorepatitis. Total 265 (88%) out of 301 MPs of BJP, 43 (84%) out of 51 MPs of INC, 22 (96%) out of 23 MPs of DMK, 20 (91%) out of 22 MPs of AITC, 19 (86%) out of 22 MPs of YSRCP and 18 (100%) MPs of SS have declared assets worth more than Rs. 1 crore.

24. A total of 4 out of the 539 successful candidates analyzed have not declared their PAN details. The average assets of 225 re-elected MPs fielded by various parties including independents in 2014 was Rs 17.07 Crores. The average asset of these 225 re-elected MPs in 2019 is Rs 21.94 Crores. The average asset growth for these 225 re-elected MPs, between the Lok Sabha elections of 2014 and 2019 is Rs 4.87 Crores. Average % growth in assets for the 225 re-elected MPs is 29%.
25. Presently, 128 (24%) MPs have declared their educational qualification to be between 5th pass and 12th pass, while 392 (73%) MPs have declared having an educational qualification of graduate and above. One MP has declared himself to be just literate and One MP is illiterate. 194 (36%) MPs have declared their age to be between 25 and 50 years while 343 (64%) MPs have declared their age to be between 51 and 80 years. Two MPs have declared they are more than 80 years old. Presently, there are 77 (14%) women MPs. Out of 542 winners analyzed in the Lok Sabha elections 2014, 62 (11%) winners were women. Out of 543 winners in 2009 elections, 59 (11%) winners were women.
26. What is alarming is that the percentage of candidates with criminal antecedents and their chances of winning have actually increased steadily over the years. In fact, empirical analysis shows that, where the charges against a candidate are serious, it slightly increases the statistical probability of his winning the election. Criminals who earlier used to help politicians win elections in the hope of getting favours appear to have cut out the “middle man” in favour of entering politics themselves. Political parties in turn have become steadily more reliant on criminals as candidates not only because they “self-finance” their own elections in an era where election contests have become phenomenally expensive but also because candidates with criminal antecedents are more

likely to win than “clean” candidates. Political parties are competing with each other in a race to the bottom because they cannot afford to leave their competitors free to recruit criminals. Despite the above data, neither Government of India nor ECI have taken apposite steps to tackle the menace of criminalization. Hence this Hon’ble Court is the only hope.

- 27.** This is a matter of serious concern to both – the democracy and rule of law, because presently 43% MPs have criminal cases against them. This is causing irreversible harm to both – the noble profession and public interest. The Oath of Affirmation, which a Legislator makes under Third Schedule of the Constitution, obliges him to faithfully discharge the duty upon which he is entering. Needless to say that a convicted and imprisoned Legislator cannot faithfully discharge his duty, which requires fulltime involvement. This would amount to a violation of the Constitutional Oath to which this Hon’ble Court ought not to be a mute spectator. Convicted Legislators should be disqualified for life, as similar to restrictions imposed upon District Magistrates, District Judges and Police Officers. Legislators should comport higher standard of ethics and morality rather than lower one. Therefore, this Hon’ble Court may declare that Section 8(3) of the RPA, 1951, is void and unconstitutional for being arbitrary, unreasonable and violative of Article 14 of the Constitution.
- 28.** There is good reason why this Hon’ble Court may take steps to control the problem of criminalization. A host of reports including ECI’s *Proposed Electoral Reforms* (2004), Law Commission’s 170th and 244th Reports (1999 and 2014), NCRWC’s Proposals (2002), Second ARC (2009) and Vohra Committee Report (1993) have drawn attention to the severity of the problem and have suggested electoral reforms to stem the tide of criminals flowing into our polity.

29. The Hon'ble Supreme Court has in a series of decisions over the last two decades taken steps to address the problem including by: (i) recommending the setting up a high level committee to consider Vohra Committee Report in *Dinesh Trivedi v. Union of India*, (1994) 4 SCC 306; (ii) directing the Election Commission of India to ensure that candidates file affidavits along with their nomination papers setting out the criminal cases pending against them in *Union of India v. Assn. for Democratic Reforms*, (2002) 5 SCC 294; (iii) holding that the disqualification under S. 8 would apply even where sentences run consecutively beyond two years in *K.Prabhakaran v. P.Jayarajan*, (2005) 1 SCC 754; (iv) striking down Section 8(4), which permitted sitting MP's and MLA's to continue in office if they have filed an appeal within a period of three months after conviction in *Lily Thomas v. Union of India*, (2013) 7 SCC 653; and (iv) recently, in WP(C)699/2016 directing the States to set up Special Courts to complete the trial of cases against MP's and MLA's within one year.
30. Especially in the context of ethnic divisions - caste and religious cleavages, criminals are able to get votes based on their caste or religious affiliation, their money power, their perceived willingness to "bend," if not break, the law to favour their constituents and also because of coercion/intimidation including of their rivals. The consequences of permitting criminals to contest and become legislators are extremely serious for our democracy and secularism: (i) during electoral process itself, not only do they deploy "enormous amounts of illegal money" to interfere with the outcome but also intimidate voters and rival candidates. (ii) Thereafter, in a weak rule-of-law context, once they gain entry to the governance as legislators, they interfere with, and influence, the functioning of government machinery in favour of themselves and members of

their organization by corrupting government officers or by using their contacts with Ministers to make threats of transfer and initiation of disciplinary proceedings. Some even become Ministers, which worsens the situation. (iii) Legislators with criminal antecedents also attempt to subvert the administration of justice and attempt by hook or crook to prevent cases against themselves from being concluded and, where possible, to obtain acquittals. Long delays in disposal of cases against sitting MP's and MLA's and low conviction rates is testimony to their influence.

31. Empirical evidence supports the view that current law permits criminals to become legislators. This interferes with the purity and integrity of the electoral process and pollutes the clear stream of the democratic process. The rule of law, as envisaged under Article 14 of the Constitution of India, is negated in its letter and spirit, if different yardsticks are made applicable qua two classes of public servants, for bringing in accountability in their conduct. It is a frontal assault to rule of law, when law itself is used as a tool by criminal elements to perpetuate their grip on the political system. The effect of Section 8(3) of the Representation of the People Act, 1951 is to shield the criminal law-maker from disqualification, which otherwise is penalised against all public servants, by ensuring their removal, dismissal or compulsory retirement, to shield the State from their noxious clutches. Therefore, through an unreasonable artifice, Section 8(3) perpetuates a malady which amounts to a subversion of democracy, which is part of the basic structure; furthermore, the provision of Section 8(3) is antithetical to the rule of law which is at the core of Article 14.
32. What is alarming is that the percentage of candidates with criminal antecedents and their chances of winning have actually increased steadily over the years. In

fact, empirical analysis shows that, where the charges against a candidate are serious, it slightly increases the statistical probability of his winning the election. Criminals who earlier used to help politicians win elections in the hope of getting favours appear to have cut out the “middle man” in favour of entering politics themselves. Political parties in turn have become steadily more reliant on criminals as candidates not only because they “self-finance” their own elections in an era where election contests have become phenomenally expensive but also because candidates with criminal antecedents are more likely to win than “clean” candidates. Political parties are competing with each other in a race to the bottom because they cannot afford to leave their competitors free to recruit criminals. Despite the above data, Executive has taken steps to tackle the menace of criminalization.

33. This Hon’ble Court should allow the instant writ petition because functions performed by legislators are vital to democracy and there is no reason why they should be held to lower standards than Judges or IAS officers. Candidates for judgeship or for the IAS would not be considered at all if there were criminal cases pending against them, let alone if charges had been framed in respect of serious offences or they had been convicted even for 2 days.
34. The importance of insights from the social sciences in constitutional decision-making should not be minimized. Without innovations such as the Brandeis brief, that relied as much on data and analysis from the social sciences as legal arguments, many path-breaking decisions by the U.S. Supreme Court that led to a fundamental reorientation of constitutional law in the United States, would not have been possible. The landmark decision in *Brown v. Board of Education*, 347 U.S. 483 (1954) on affirmative action was based on similar data and

analysis from the social sciences. When nearly half (43%) of MP's in Lok Sabha cutting across all political /parties have criminal cases pending against them, it is not surprising that a Parliamentary Standing Committee in 2007 itself simply rejected the recommendation of the Law Commission in its 170th Report and the ECI's "*Proposal for Electoral Reforms*" to amend the RPA to impose an electoral disqualification on persons against whom charges have been framed for serious offences punishable by sentences of 5 years or more. Therefore, this Hon'ble Court may take cognizance of the reports and the statistical facts available through studies in social sciences for establishing the foundational facts necessitating the instant petition.

35. The jurisdiction under Article 32 of the Constitution of India is very wide, and this Hon'ble Court has ample powers to mould necessary relief in appropriate circumstances. In *Association for Democratic Reforms*, the Hon'ble Supreme Court directed ECI to call for information on affidavit from each candidate, *inter alia*, listing the offences with which he is charged, assets of himself and his family by issuing necessary orders in exercise of power under Article 324. The Court held that: "**48.** *Finally, in our view this Court would have ample power to direct the Commission to fill the void, in the absence of suitable legislation covering the field and the voters are required to be well informed and educated about contesting candidates so that they can elect a proper candidate by their own assessment. It is the duty of the executive to fill the vacuum by executive orders because its field is coterminous with that of the legislature, and where there is inaction by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations to provide a solution till such time the legislature acts to perform its role by enacting proper legislation to cover the*

field. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. Therefore, if the candidate is directed to declare his/her spouse's and dependants' assets –immovable, movable and valuable articles – it would have its own effect....”

- 36.** In *S. Subramaniam Balaji v. State of T.N.*, (2013) 9 SCC 659, the Hon'ble Supreme Court directed the ECI to frame guidelines governing the contents of election manifesto to be included in the MCC. The Hon'ble Court held that:
- “87. Therefore, considering that there is no enactment that directly governs the contents of the election manifesto, we hereby direct the Election Commission to frame guidelines for the same in consultation with all the recognised political parties as when it had acted while framing guidelines for general conduct of the candidates, meetings, processions, polling day, party in power, etc. We are mindful of the fact that generally political parties release their election manifesto before the announcement of election date, in that scenario, strictly speaking, the Election Commission will not have the authority to regulate any act which is done before the announcement of the date. Nevertheless, an exception can be made in this regard as the purpose of the election manifesto is directly associated with the election process.”*
- 37.** In *PUCL*, (2013) 10 SCC 1, the Hon'ble Supreme Court directed the ECI to give voters the option to choose “none of the above” in every election and held:
- “53.... Thus in a vibrant democracy, the voter must be given an opportunity to choose none of the above (NOTA) button, which will indeed compel the political parties to nominate a sound candidate. This situation palpably tells us the dire need of negative voting. 63.... In view of our conclusion, we direct the Election Commission to provide necessary provision in the ballot papers/EVMs and*

another button called “None of the Above” (NOTA) may be provided in EVMs so that the voters, who come to the polling booth and decide not to vote for any of the candidates in the fray, are able to exercise their right not to vote while maintaining their right of secrecy. Inasmuch as the Election Commission itself is in favour of the provision for NOTA in EVMs, we direct the Election Commission to implement the same either in a phased manner or at a time with the assistance of the Government of India....”

- 38.** In *P.V. Narasimha Rao [(1998) 4 SCC 626 at para 162]*, the Hon’ble Supreme Court held: *“In a democratic form of government, it is the Member of Parliament or a State legislature who represents the people of his constituency in the highest law-making bodies at the Centre and the State respectively. Not only is he the representative of the people in the process of making the laws that will regulate their society, he is their representative in deciding how the funds of the Centre and the States shall be spent and in exercising control over the executive. It is difficult to conceive of a duty more public than this or of a duty in which the State, the public and the community at large would have greater interest.”*
- 39.** The Constitution also has some provisions to make MP’s accountable. Article 102 states that an MP can be disqualified if he holds an “Office of Profit” under the Government. He can also be disqualified if he quits his party or defects to another party after being elected as an MP under the 10th Schedule to the Constitution. Under Article 101, if an MP is absent from the meetings for more than 60 days without permission, his seat may be declared vacant. Under Article 104, if an MP sits or votes in Parliament without taking oath, he shall be liable to pay a fine of up to Rs 500 per day. But, there is no provision either in the Constitution or in Rules of Procedure to measure the performance of MPs.

- 40.** The present petition is situated in the context of its anxiety for proper functioning of our democratic constitution. As a democratic constitutional republic, its functioning is fundamentally premised on the electoral process and its elected representatives. The elected legislators crucially determine the future of the polity and they function in multifarious ways to shape the fate of its teeming millions. The Legislator plays a crucially important role in the development of the State. He can fulfill his developmental role under the Member of Parliament Local Area Development Scheme (MPLADS). Under the scheme, every MP is allocated Rs 5 crore per year for initiating developmental works in his constituency. The scheme is administered by the Ministry of Statistics and Programme Implementation (MoSPI), which lays down guidelines on the works and activities permitted under MPLADS. The funds under MPLADS are channeled through the respective implementing agencies in the district. Local bodies such as Panchayats and municipalities also have an important role in bringing development at the grassroots. Part IXA of the Constitution has a provision under which Legislator of State may provide for representation of MP at intermediate and District level Panchayats (Panchayat Samiti and Zila Parishad). Similarly, under Part IXA of the Constitution, State legislator may provide for representation of MPs in municipal bodies within the constituency. MPs may be nominated to District Planning Committees (DPCs) which are responsible for preparing development plans for district.
- 41.** MPs have to monitor centrally sponsored schemes in their respective constituencies. The National Rural Drinking Water Programme (NRDWP) mandates setting up of District Water and Sanitation Mission (DWSM) of which MPs and MLAs from the area would be members. The DWSM is among other

things, responsible for formulation, management monitoring of projects on drinking water security, scrutiny and approval of the schemes submitted by Block Panchayat/Gram Panchayat and coordination of matters relating to water and sanitation between different departments. Similarly, under the National Rural Health Mission (NRHM), MPs are expected to be member of District Level Vigilance and Monitoring Committees (DVMC) to review the progress in implementation of the scheme. MPs could also work towards catalyzing schemes of the State and Central in their constituencies.

- 42.** This is possible by proactive engagement with public officials at the Central and State levels, greater interaction with constituents to understand their needs and concerns, and greater information – both qualitative and quantitative – about their constituencies. As elected representatives, they have legitimate political authority to engage directly with the private/corporate sector for industrial development of their constituencies. MPLAD Scheme provides funds for implementing development works in their constituencies. Permissible items under the scheme are: (i) Purchase of tricycles, motorized/battery operated wheelchair, artificial limbs, etc. for physically challenged individuals. The items purchased will be given to the beneficiaries at a public function. Applications for such assistance shall be examined and approved by Committee under District Chief Medical Officer to ensure proper eligibility. (ii) Health Purchase of ambulances/hearse vans. DM/CMO is responsible for ownership and management of ambulances. Purchase of ambulances to transport injured animals in Wildlife sanctuaries and National Parks. The Wildlife Sanctuary /National Park concerned would be responsible for ownership and management of the ambulances. (iii) Purchase of computers, computer

software along with training for government and government aided institutions. Mobile Library for educational institutions of Centre, State, U.T/Local bodies and furniture up to Rs 50 lakh for primary/secondary school. Purchase of books for schools/colleges/public library and vehicles including school buses/vans within a limit of Rs 22 lakh/year. Nominated MPs can recommend works anywhere in the Country.

- 43.** The primary function of an MLA is law-making. The Constitution states that MLA can exercise his powers on the State List and Concurrent List. The State List contains subjects of importance to the individual State alone, such as trade, commerce, development, irrigation and agriculture, while Concurrent List contains items of importance to both the Union and State Government such as succession, marriage, education, adoption, forests and so on. Although ideally only the MLAs can legislate on the State List, the Parliament can legislate on subjects in the State List while Emergency has been imposed. On the matters that are included in the Concurrent List, the laws made by the Parliament are prioritized over the laws made by the Legislative Assembly if the President does not give his assent to laws made by the Legislative Assembly. Although MLAs are the highest law-making organs of the State and the profession is honorable and noble but there is no restriction to practice other professions like the ban on Members of the Executive and judiciary. There is no provision of minimum number of hours that an MLA must spend in Assembly and his constituency.
- 44.** A Money Bill can only originate if MLAs give consent. The States having bicameral legislator, both the Legislative Council and Vidhan Parishad can pass the Bill or suggest changes within 14 days of its receipt. MLAs authorize grants and tax-raising proposals. MLAs control the activities and actions taken by the

Council of Ministers and government is answerable to the Legislative Assembly for all its decisions. Vote of no-confidence can be passed only by the MLAs and if passed by a majority, forces the government to resign. Question Hour, Cut Motion, Adjournment Motion can be exercised by MLA in order to restrict executive. MLAs comprise Electoral College that elects the President. MLAs elect Members of the Rajya Sabha and Speaker of Assembly. In States with bicameral legislator, one-third members of the Legislative Council are elected by MLAs.

45. Profession of Legislator is noble and needs fulltime attention and dedication. Therefore, Legislators should comport higher standard of ethics and morality rather than lower one. Legislators take constitutional oath under schedule 3 hence they should be disqualified for life, as similar to restrictions imposed upon the Doctors, Engineers, Professors, Army and Police Officers, District Magistrates, District Judges and Judges of the High Court and Supreme Court. Therefore, this Hon'ble Court may declare that Section 8(3) RPA 1951, is arbitrary, irrational and violative of Article 14 of the Constitution of India.
46. The instant petition raises a vital issue pertaining to interpretation of the Constitution particularly Articles 105(3), 194(3) in the light of solemn oath provided under Third Schedule of the Constitution in context of fixing duties and enforcing accountability of the elected legislators representing the people of India namely MPs & MLAs. Matter is relating to Constitutional Morality, Institution Integrity & Affirmative Equality and needs detailed deliberation.
47. At concluding session of Constituent Assembly debate, its Chairman Hon'ble Dr. Rajendra Prasad said: *"We have prepared a democratic Constitution system. But, the successful working of democratic institution requires in those who have to work them, willingness to respect the viewpoint of others, capacity*

for compromise and accommodation. Many things, which cannot be written in a Constitution, are done by conventions. ...If the elected people are capable and men of character and integrity; they would be able to make best even of a defective Constitution. If they are lacking in these, Constitution cannot help Country. After all a Constitution like a machine is a lifeless thing. It requires life because of men who control it and operate it and India needs today nothing more than a set of honest men who will have the interest of the Country before them. There is fissiparous tendency arising out of various elements in our life. We have communal differences, caste differences, language differences, provincial differences, and so on and so forth. It requires men of strong character, men of vision, men who will not scarify the interest of country at large for the sake of smaller groups and areas and who rise above the prejudices, which are born of these differences. Today I feel that the work that confronts is even more difficult than the work, which we had when we were engaged in the struggle. We did not then have any conflicting claims to reconcile, no loaves and fishes to distribute, no powers to share. We have all these now and temptations are great. Would pray to God that we shall have the wisdom and strength to rise above them and serve Country which we have succeeded in liberating”.

- 48.** The Supreme Court has greatly dealt the constitutional morality doctrine in CA No. 2357 of 2017 *Government of NCT of Delhi v Union of India & others* thus:
- “**57** Constitutional morality in its strictest sense of the term implies strict and complete adherence to the constitutional principles as enshrined in various segments of the document. When a country is endowed with a Constitution, there is an accompanying promise which stipulates that every member of the country right from its citizens to the

high constitutional functionaries must idolize the constitutional fundamentals. This duty imposed by the Constitution stems from the fact that the Constitution is the indispensable foundational base that functions as the guiding force to protect and ensure that the democratic setup promised to citizenry remains unperturbed. The constitutional functionaries owe a greater degree of responsibility towards this eloquent instrument for it is from this document that they derive their power and authority and as a natural corollary, they must ensure that they cultivate and develop a spirit of constitutionalism where every action taken by them is governed by and is in strict conformity with the basic tenets of the Constitution.

58. In this context, observations made by Dr. B.R. Ambedkar are of great significance: “Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people are yet to learn it. Democracy in India is only a top-dressing on Indian soil, which is essentially undemocratic.” **59.** Constitutional morality is the fulcrum which acts as an essential check upon the high functionaries and citizens alike, as experience has shown that unbridled power without any checks and balances would result in a despotic and tyrannical situation which is antithetical to the very idea of democracy. The following passage from *Manoj Narula v. Union of India* can aptly be quoted to throw some light on the idea: “If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable

the government to control the governed; and in the next place oblige it to control itself. A dependence on people is, no doubt, primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.” **60.** In the said case, it has been further observed:

“Regard being had to the aforesaid concept, it would not be out of place to state that Institutional respectability and adoption of precautions for the sustenance of constitutional values would include reverence for the constitutional structure. It is always profitable to remember the famous line of Laurence H. Tribe that a Constitution is *“written in blood, rather than ink.”*

Constitution was adopted in an atmosphere of expectation and idealism. The members of the Constituent Assembly had led the constitutional project with a commitment to the future of a nascent nation. “India’s founding fathers and mothers”, Granville Austin observes, *“established in the Constitution both the nation’s ideals and institutions and processes for achieving them”*. These ideals were *“national unity, integrity and democratic and equitable society”* Constitution was designed *“to break shackles of traditional social hierarchies and to usher in a new era of freedom, equality and justice”* It was to be achieved through democratic spirit and constitutional democratic institutions.

49. Democracy is not limited to electing governments. It generates aspirations and inspires passions. Democracy is based on *“the recognition that there is no natural source of authority that can exercise power over individuals”*. When India attained independence, it faced a major dilemma. Democracy as an ideal had developed in the course of the nationalist struggle against colonial rule. Democratic political institutions were still to develop, at any rate fully: *“Democracy emerged in India out of a confrontation with a power imposed from*

outside rather than an engagement with the contradictions inherent in Indian society ... In the West, the democratic and industrial revolutions emerged together, reinforcing each other and slowly and steadily transforming the whole of society. The economic and social preconditions for the success of democracy grew along with, and sometimes in advance of, the political institutions of democracy. In India, the political argument for democracy was adopted by the leaders of the nationalist movement from their colonial rulers and adapted to their immediate objective which was freedom from colonial rule. The building of new political institutions took second place, and the creation of the economic and social conditions for the successful operation of those institutions, such as education, health care, and other social services, lagged well behind.”

50. In his address to the Constituent Assembly, Dr Ambedkar said: *“Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic”*.

To tackle these challenges, the Constitution envisaged the existence of responsible representative government. Provisions regarding administration of democracy were incorporated, in detail, into the Constitution by the members of the Constituent Assembly. Dr Ambedkar made an impassioned plea that the core values of Indian democracy, to be protected and sustained, ought to be guided by the presence of constitutional morality. While moving the Draft Constitution on November 4, 1948, Dr Ambedkar quoted Greek historian, Grote: *“By constitutional morality, Grote meant... a paramount reverence for the forms of the constitution, enforcing obedience to authority and acting under and within these forms, yet combined with the habit of open speech, of action subject only to definite legal control, and unrestrained censure of those very authorities as to all their public acts combined, too with a perfect confidence in the bosom of every*

citizen amidst the bitterness of party contest that the forms of constitution will not be less sacred in the eyes of his opponents than his own.” Dr Ambedkar made it clear that constitutional morality was to be cultivated and learned. Constitutional morality was not a “natural sentiment” and its diffusion could not be presumed. While highlighting that the diffusion of constitutional morality is indispensable for “the peaceful working of the democratic constitution”, Dr Ambedkar observed that the form of the Constitution had to be in harmony with the form of its administration: “One is that the form of administration must be appropriate to and in the same sense as the form of the Constitution. The other is that it is perfectly possible to pervert the Constitution, without changing its form by merely changing its form of administration and to make it inconsistent and opposed to the spirit of the Constitution.”

51. If the moral values of our Constitution were not upheld at every stage, the text of the Constitution may not be enough to protect its democratic values. In order to truly understand what constitutional morality reflects, it is necessary to answer “*what it is that the Constitution is trying to say*” and to identify “*the broadest possible range... to fix the meaning of the text*”. Bhargava’s work titled “*Politics and Ethics of the Indian Constitution*” focuses on necessity to identify the moral values of the Constitution: “*There is a pressing need to excavate the moral values embedded in the Constitution, to bring out their connections, and to identify the coherent or not-so-coherent ethical worldviews within it. It is not implausible to believe that these values are simply out there, holding their breath and waiting to be discovered. The Constitution is a socially constructed object, and therefore it does not possess the hard objectivity of natural objects. This*

element of the Constitution is the ground for contesting interpretations. It is high time we identified these interpretations and debated their moral adequacy.”

52. Constitutional morality does not mean only allegiance to substantive provisions and principles of the Constitution. It signifies a constitutional culture which each individual in a democracy must imbibe. Mr. Pratap Bhanu Mehta identifies certain features of constitutional morality— chief amongst them being liberal values— which governed the making of India’s Constitution and created expectations from polity: *“Constitution was made possible by a constitutional morality that was liberal at its core. Not liberal in the eviscerated ideological sense, but in the deeper virtues from which it sprang: an ability to combine individuality with mutual regard, intellectualism with a democratic sensibility, conviction with a sense of fallibility, deliberation with decision, ambition with a commitment to institutions, and hope for a future with due regard for the past and present.”* One of the essential features of constitutional morality, thus, is the ability and commitment to arrive at decisions on important issues consensually. Constitutional morality requires that *“despite all differences we are part of a common deliberative enterprise.”* Constitutional morality envisages partnership and coordination between various institutions created by the Constitution. Mehta underlined importance of constitutional partnerships by referring to the working of the Constituent Assembly: *“The ability to work with difference was augmented by another quality that is rarer still: the ability to acknowledge true value. This may be attributed to the sheer intellectualism of so many of the members. Their collective philosophical depth, historical knowledge, legal and forensic acumen and sheer command over language is enviable. It ensured that the grounds of discussion remained intellectual. Also remarkable*

was their ability to acknowledge greatness in others. It was this quality that allowed Nehru and Patel, despite deep differences in outlook and temperament, to acknowledge each other. Their statesmanship was to not let their differences produce a debilitating polarization, one that could have wrecked India. They combined loyalty and frankness.” Constitutional morality places responsibilities and duties on individuals who occupy constitutional institutions/offices. Frohnen and Carey formulate the concept: *“Constitutional moralities... can be understood as anticipated norms of behavior or even duties primarily on the part of individuals within our constitutional institutions. We use the term morality and refer to constitutional morality with regard to these norms or duties principally because of the purpose they serve; they can be viewed as imposing an obligation on individuals and institutions to ensure that the constitutional system operates in a coherent way, consistent with its basic principles and objectives.”* Another feature of constitutional morality is that it provides in a Constitution the basic rules which prevent institutions from turning tyrannical. It warns against the fallibility of individuals in a democracy, checks state power and the tyranny of the majority. Constitutional morality balances popular morality and acts as a threshold against an upsurge in mob rule: *“It is important not to forget that human beings are fallible, that they sometimes forget what is good for them in the long run, and that they yield to temptations which bring them pleasure now but pain later. It is not unknown for people to acquire the mentality of mob and act on the heat of the moment only to rue the consequences of the decision later. By providing a framework of law culled over from years of collective experience & wisdom, constitutions prevent people from succumbing to currently fashionable whims and fancies. Constitutions anticipate and try to*

redress excessively mercurial character of everyday politics. They make some dimensions of the political process beyond the challenge of ordinary politics.”

53. Constitutional morality won't be complete without understanding the uniquely revolutionary character of the Constitution. Granville Austin has referred to the Indian Constitution as a “social revolutionary” document, the provisions of which are aimed at furthering goals of social revolution. Austin described the main features of the Constitution: *“It was to be a modernizing force. Social revolution and democracy were to be the strands of seamless web most closely related. Democracy, representative government, liberty, equality before law, were revolutionary for society. Social-economic equitableness as expressed in the Directive Principles was equally revolutionary. So were the Constitution’s articles allowing abolishing untouchability, those allowing for compensatory discrimination in education and employment for disadvantaged citizens.”* Core of commitment to social revolution lies in the Fundamental Rights and Directives, which are “conscience of the Constitution” and connect India’s future present & past. Constitutional morality requires existence of sentiments and dedication for realizing transformation which Constitution seeks to attain.

54. Constitutional morality highlights the need to preserve the trust of the people in institutions of democracy. It encompasses not just the forms and procedures of the Constitution, but provides an *“enabling framework that allows a society the possibilities of self-renewal”*. It is the governing ideal of democracy which allows people to cooperate and coordinate to pursue constitutional aspirations that cannot be achieved single-handedly. Andre Beteille in *“Democracy and its Institutions”* (2012) speaks of the significance of constitutional morality: *“To be effective, constitutional laws have to rest on a substratum of constitutional*

morality... In absence of constitutional morality, the operation of a Constitution, no matter how carefully written, tends to become arbitrary, erratic, capricious. It is not possible in a democratic order to insulate completely the domain of law from that of politics. A Constitution such as ours is expected to provide guidance on what should be regulated by the impersonal rule of law and what may be settled by the competition for power among parties, among factions, and among political leaders. It is here that the significance of constitutional morality lies. Without some infusion of constitutional morality among legislators, judges, lawyers, ministers, civil servants, writers, and public intellectuals, the Constitution becomes a plaything of power brokers.”

55. On 25.11.1949, Dr Ambedkar discussed the role of people and democracy: *“I feel, however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of State such as the Legislature, Executive and Judiciary. The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics.”* He also invoked John Stuart Mill to caution the nascent Indian democracy of perils of personifying institutions or laying down liberty *“at the feet of even a great man, or to trust him with power which enables him to subvert their institutions”*. In Dr Ambedkar’s words: *“In India, Bhakti or what may be called path of devotion or hero-worship, plays a part in its politics unequalled in magnitude by the part it plays in the politics of any other country. Bhakti in*

religion may be a road to salvation of the soul. But in politics, Bhakti or hero-worship is a sure road to degradation and to eventual dictatorship.”

56. Institution building is thus a facet of constitutional morality. It envisages an institutional basis for political behaviour. It involves that the political parties and political process address issues affecting the public at large. Constitutional morality reduces the gap between representation and legitimacy. In Manoj Narula Case, Court held: *“The democratic values survive and become successful where the people at large and the persons-in-charge of the institution are strictly guided by the constitutional parameters without paving the path of deviancy and reflecting in action the primary concern to maintain institutional integrity and the requisite constitutional restraints”*. Constitutional morality requires filling in constitutional silences to enhance and complete spirit of the Constitution. A Constitution establishes a structure of government but how these structures work rests upon fulcrum of constitutional values. It purports to stop the past from tearing soul of nation apart by acting as guiding basis to settle constitutional disputes: *“Of necessity, constitutions are unfinished. What is explicit in the text rests on implicit understandings; what is stated rests on what is unstated.”* It provides a principled understanding for unfolding the work of governance. It is a compass to hold in troubled waters. It specifies norms for institutions to survive and an expectation of behaviour that will meet not just text but soul of Constitution. Our expectations may be well ahead of reality. But a sense of constitutional morality, drawn from values of that document, enables us to hold to account our institutions and those who preside over their destinies. Constitutional interpretation, therefore, must flow from constitutional morality. Significance attached by the founding fathers to ‘Right

to Equality' is evident not only from the fact that they employed both the expressions 'Equality before Law' and 'Equal protection of Laws' in Article 14 but proceeded further to state that the same rule in positive and affirmative terms in the Articles 15-18. Affirmative Equality postulated by Article 14 is as much a fundamental right as any other fundamental right. Article 14 enunciates a vital principle, which lies at the core of our republicanism and shines like a beacon towards goal of classless egalitarian socio-economic order, promised to build for ourselves when we made a tryst with destiny when we adopted our Constitution. If we have to choose between great principle of equality and feeble allegiance to it, we would prefer on the side of the former as against the later.

PRAYER

Keeping in view the above facts, considering the doctrine of Constitutional Morality, Affirmative Equality and Institutional Integrity and to uphold the Constitutional Oath taken by Legislators under Schedule 3 of the Constitution, it is respectfully prayed that this Hon'ble Court may be pleased to issue a writ, order or direction or a writ in the nature of mandamus to respondents to:

- a)** direct and declare that Section 8(3) of the Representation of the People Act, 1951, is void and unconstitutional for being arbitrary, unreasonable and violative of Article 14 of the Constitution of India;
- b)** in the alternative, direct and declare that words "*for not less than two years*" in Section 8(3) of the Representation of People Act, 1951, are arbitrary and contrary to Article 14 of the Constitution, hence void and inoperative;
- c)** pass such order(s) or direction(s) as this Hon'ble Court may deem fit and proper in facts and circumstance of the case and allow the cost to petitioner.

25.09.2019

(ASHWANI KUMAR DUBEY)

NEW DELHI

ADVOCATE FOR PETITIONER

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO OF 2019

(PIL UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Verses

Union of India & another

...Respondents

AFFIDAVIT

1. I am petitioner above named and well acquainted with facts and circumstances of case and as such competent to swear this affidavit.
2. I have read and understood the contents of synopsis (B-J), writ petition paras (1 - 56) pages (1 - 36) and total pages (1 - 49) which are true and correct to my knowledge and belief.
3. Annexure has not been filed with this writ petition.
4. I have not filed any other petition either in this Hon'ble Court or in others Court seeking same/similar directions prayed in the petition.
5. I have no personal interests, individual gain, private motive or oblique reasons in filing this. It is not guided for gain of any other individual person, institution or body. There is no motive other than the larger public interest.
6. There is no civil, criminal or revenue litigation, involving applicant, which has or could have legal nexus, with issue involved in this.
7. There is no requirement to move concerned government authority for relief sought in this application. There is no other remedy available except approaching this Hon'ble Court.
8. I have gone through the Article 32 and Supreme Court Rules and do hereby affirm that present application is in conformity thereof.
9. I have done whatsoever enquiry/investigation, which was in my power to do, to collect the data/material, which was available; and which was relevant for this Hon'ble Court to entertain application.
10. I have not concealed any data/material/information in this application; which may have enabled this Hon'ble Court to form an opinion, whether to entertain this or not and/or whether to grant any relief or not.
11. Averments made in this affidavit are true and correct to my personal knowledge and belief. No part of this is false or fabricated, nor has anything material been concealed there from.

(Ashwini Kumar Upadhyay)

DEPONENT

VERIFICATION

I, the Deponent do hereby verify that the contents of above affidavit are true and correct to my personal knowledge and belief. No part of this affidavit is false nor has anything material been concealed there from.

I solemnly affirm today i.e. 25th day of September 2019 at New Delhi.

(Ashwini Kumar Upadhyay)