

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL WRIT JURISDICTION

WRIT PETITION

(Under Article 32 of the Constitution of India)

WRIT PETITION (C) NO. OF 2019

IN THE MATTER OF:

RAMEEZ JABBAR & ORS. ... PETITIONERS

VERSUS

UNION OF INDIA & ORS. ... RESPONDENTS

PAPER BOOK

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PROFORMA FOR FIRST LISTING

SECTION: **PIL (W)**

The case pertains to (Please tick/check the correct box):

- Central Act : The Code of Criminal Procedure, 1973
- Section : 24, 25 & 25A
- Central Rule : N/A
- Rule No(s) : N/A
- State Act : N/A
- Section : N/A
- State Rule : Kerala Government Law Officers Appointment and Conditions of Service and Conduct of Cases Rules, 1978
- Rule No(s) : 4, 8, 14, 15, 53 and 69
- Impugned Interim Order : (Date) N/A
- Impugned Final Order/Decree : (Date) N/A
- High Court : N/A
- Name of Judges : N/A
- Tribunal/Authority : (Name) N/A

- 1. Nature of Matter : CIVIL CRIMINAL
- 2.(a) Petitioner/Appellant No.1 : Rameez Jabbar
- (b) e-mail ID : N/A
- (c) Mobile Phone Number : N/A
- 3.(a) Respondent No.1 : Union of India
- (b) e-mail ID : N/A
- (c) Mobile Phone Number : N/A
- 4.(a) Main category classification : 08
- (b) Sub-classification : 0812
- 5. Not to be listed before : N/A
- 6. Similar disposed of matter with citation, if any, & case details : N/A
- Similar pending matters with case details : Yes; W.P. (C) No.923/ 2014

7. **CRIMINAL MATTERS** : N/A
- (a) Whether accused/convict has surrendered? : Yes No
- (b) FIR No. : N/A
- (c) Police Station : N/A
- (d) Sentence Undergone : N/A
8. **LAND ACQUISITION MATTERS** : N/A
- (a) Date of Section 4 Notification : N/A
- (b) Date of Section 6 Notification : N/A
- (c) Date of Section 17 Notification : N/A
9. **TAX MATTERS** : N/A
10. **SPECIAL CATEGORY** : N/A
(First Petitioner/ Appellant only)
- Senior Citizen > 65 Years
- SC/ST
- Woman/Child
- Disabled
- Legal Aid Case
- In Custody
11. Vehicle number (in case of Motor Accident Claim matters) : N/A
12. Decided cases with citation : N/A

Date: 04.11.2019

SUVIDUTT M.S.

AOR for Petitioner (s)/ Appellant (s)

AOR Code: **2401**

Email: suvidutt@yahoo.com

Mob: 9999778751

SYNOPSIS

1. The instant Writ Petition is being filed under Article 32 of the Constitution of India, 1950 (hereinafter referred to as "the Constitution") against violation of the Petitioners fundamental rights under Articles 14, 16, 19 (1) (g) and 21, in order to strengthen the prosecution machinery across the country and especially in the State of Kerala in pursuance of the provisions as contained in Sections 24(6), 24(9) and Section 25A of Code of Criminal Procedure, 1973 (the Cr PC).
2. This Petition seeks to declare Rules 4, 8, 14, 15, 53 and 69 of Kerala Government Law Officers Appointment and Conditions of Service and Conduct of Cases Rules, 1978 as unconstitutional because they are repugnant under Article 254 of the Constitution to the letter and spirit of Section 25A of Cr PC. In addition to that, above said rules are against Article 309 of the Constitution.
3. This Petition seeks to issue a Writ of Mandamus or any other suitable writ directing the State of Kerala to include the posts of Deputy Director of Prosecution, Public Prosecutors (PP) and Additional Public Prosecutors (Addl.PP) in the pre-existing cadre of prosecution officers to effectuate the legislative intent of Section 25A read with Section 24 CrPC, 1973 and to modify 2018 Special Rules passed by Government of Kerala vide Government Order bearing G.O.(P) No.6/2018/Home accordingly.

4. This Petition seeks to declare Sections 24 (4), 24 (5) and Proviso to Section 24 (6) of CrPC as arbitrary and redundant in the context of State of Kerala.
5. This Petition also seeks to establish setting up of a National Commission headed by a retired Judge of the Hon'ble Supreme Court to look into the functioning, pay and service conditions of Prosecuting Officers and other aspects of the Directorate of Prosecutions across the country and recommend curative measures.
6. Apart from that, this Writ Petition seeks to establish National and Regional/ State level Prosecution Academy for the training of the prosecuting officers so as to improve the quality of work of prosecuting officers in the country with a Director from the regular cadre.
7. Hence, this Writ Petition.

CHRONOLOGY OF EVENTS

DATES	PARTICULARS
26.09.1958	The 14 th Law Commission Report was released dated 26.09.1958.
17.09.1968	Under Article 309 of the Constitution, the Kerala Public Services Act, 1968 was enacted.
24.09.1969	The 41 st Law Commission Report was released dated 24.09.1969.
26.04.1975	In Kerala, the Directorate of Public Prosecution was established in the year 1975 as per G.O. (MS) No.53/ 1975 HOME

- dated 26.04.1975.
- 25.01.1978 Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978 was enacted through G.O. (P) 11/78/Law dated 25.01.1978.
- 20.11.1991 As per the G.O. (MS) No.165/ 1991 HOME, Directorate of Public Prosecution was redesignated to that of Director General of Prosecution with effect from 25.01.1991.
- 02.07.1996 As per the G.O. (MS) No.120/1996 HOME dated 02.07.1996, Kerala government modified the powers and functions of the Director General of Prosecution.
- 13.10.2000 The Directorate of Prosecution was established in Kerala in the year 2000 as per the G.O. (MS) No.224/2000/Home under the Home Department, Government of Kerala dated 13.10.2000. The said Directorate of Prosecution in Kerala is functioning under the Department of Home, Government of Kerala.
- 15.03.2002 Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978 was amended vide G.O. (MS) No.70/2002 dated 15.03.2002.

- March, 2003 Committee on Reforms of Criminal Justice System chaired by Justice V.S. Maliamath submitted its report in March, 2003.
- 31.07.2006 The 197th Law Commission Report consisting of the recommendations to the states with reference to solutions in order to do away with the arbitrary appointments of Public Prosecutors and Additional Public Prosecutors (APP) was released in July, 2006.
- 10.07.2008 The Law Secretary, Government of Kerala had written a letter to the Ministry of Home Affairs, Government of India dated 10.07.2008.
- December, 2014 International guidelines set by the United Nations Office on Drugs and Crime (UNDOC) pertaining to the Status and Role of Prosecutors, providing the various service conditions that the prosecuting officers should be afforded with.
- 24.02.2018 The Government of Kerala vide its order bearing G.O. (P) No.6/2018/Home dated 24.02.2018, in exercise of its power conferred by Section 2 (1) of the Kerala Public Services Act, 1968 made some Special Rules for all prosecuting officers in the directorate.

09.10.2019 The Petitioner No.1 herein resigned from the Kerala Assistant Public Prosecutors Association (KAPPA) dated 09.10.2019 and currently holds the post of Assistant Public Prosecutor Grade - II.

04.11.2019 Hence, this Writ Petition.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL WRIT JURISDICTION

WRIT PETITION

(Under Article 32 of the Constitution of India)

WRIT PETITION (C) NO. _____ OF 2019

IN THE MATTER OF:

1. Rameez Jabbar,
Aged 35 years,
S/o C.S. Abdul Jabbar,
Assistant Public Prosecution Grade – II,
Kattappana, Idukki (Dist.),
Kerala – 685508 ... Petitioner No.1
2. Dileepkumar M.P.,
Assistant Public Prosecutor Grade – II,
Judicial First-Class Magistrate Court No.III,
New Court Complex, Thrissur,
Kerala – 680003 ... Petitioner No.2
3. Suresh Chandran R.,
Assistant Public Prosecutor Grade – II,
Judicial First-Class Magistrate Court No.II,
New Court Complex, Thrissur,
Kerala – 680003 ... Petitioner No.3

VERSUS

1. Union of India

Through its Secretary,
Ministry of Home Affairs,
New Delhi – 110001

.... Respondent No.1

2. State of Kerala

Represented by the Additional Chief
Secretary, Home Department,
Secretariat,
Thiruvananthapuram – 695568
Kerala

.... Respondent No.2

(All are contesting Respondents)

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF
THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONERS ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The instant Writ Petition is being filed under Article 32 of the Constitution of India, 1950 (hereinafter referred to as "the Constitution") against violation of the Petitioners fundamental rights under Articles 14, 16 and 21, so in order to strengthen the prosecution machinery in the State in pursuance of the provisions as contained in 24(6), 24(9) and Sections 25A of Code of Criminal Procedure, 1973.

2. This Petition seeks to declare Rules 4, 8, 14, 15, 53 and 69 of Kerala Government Law Officers Appointment and Conditions of Service and Conduct of Cases Rules, 1978 as unconstitutional because they are repugnant under Article 254 of the Constitution to the letter and spirit of Section 25A of Cr PC. In addition to that, above said Rules are against Article 309 of the Constitution.
3. This Petition seeks to declare Sections 24 (4), 24 (5) and Proviso of Section 24 (6) of Cr PC as redundant and arbitrary in the context of State of Kerala and the action of the said State Government in continuing the appointment through the above-mentioned provisions instead as under 24 (6) is rendered unconstitutional.
4. The Petitioner No.1 herein is an Assistant Public Prosecutor (APP) Grade – II, presently serving in the Court of Judicial First Class Magistrate's Court (JFMC) – I, Kattappana, Idukki, Kerala. He after clearing the competitive exam conducted by the Kerala Public Service Commission (KPSC) joined as APP Grade-II on 24th November, 2014 and thereafter took membership in Kerala Assistant Public Prosecution Association (KAPPA) in year 2015. He resigned from the said Association this year as the Association failed to address the concerns respecting the just demands raised by him to better the conditions of the class of APPs across Kerala State.
5. The Petitioner No.2 herein is an Assistant Public Prosecutor Grade – II, presently serving in the Court of Judicial First Class Magistrate Court No.III, Thrissur, Kerala. He has also cleared the competitive exam conducted by the Kerala Public

Service Commission (KPSC) and joined as APP Grade-II. It is also important to mention that he belongs to the differently abled category and accordingly his concerns were also not addressed by any of the authorities.

6. The Petitioner No.3 herein is an Assistant Public Prosecutor Grade - II, presently serving in the Court of Judicial First Class Magistrate Court No.II, Thrissur, Kerala. He has also cleared the competitive exam conducted by the Kerala Public Service Commission (KPSC) and joined as APP Grade-II.
7. The Respondent No.1 herein is the Ministry of Home Affairs, Union of India as Cr PC is a Central Act. The Respondent No.2 herein is the State of Kerala as the grievances associated with the APPs across Kerala mentioned in the present Writ Petition in general, and the non-implementation of the provisions under Section 25A of Cr PC in its true letter and spirit in particular are to be addressed by the said respondent.
8. The Petitioners herein have not filed any similar Writ Petition either before this Hon'ble Court or before any other High Court for the reliefs sought in this Writ Petition. The Petitioners herein have not approached any authority before approaching this Hon'ble Court for the reliefs sought in this Writ Petition.
9. At the very outset, it is essential to understand how the Prosecution System is set up in Kerala. The Directorate of Prosecution was established in the year 2000 as per the G.O(Ms) No.224/2000/Home dated 13.10.2000 under the Home Department, Government of Kerala. Directorate of

Prosecution, Kerala is functioning under the Department of Home, Government of Kerala. The key purpose of the Directorate is to streamline the conducting of prosecution works for and on behalf of the State Government before the Magistrate Courts and to monitor the performance of the prosecution work in various Magistrate courts in a particular state. The administrative and supervisory control of the DDPs & APPs are vested upon the Directorate. The Director General of Prosecution is the head of the Directorate of Prosecution and ably assisted by the Director of Prosecution (Admin.). The Director General of Prosecution delivers legal opinions in important cases and is the State Public Prosecutor and Attorney of Kerala Lok Ayukta. There are 15 of Deputy Directors of Prosecution and 138 Assistant Public Prosecutors presently working under the supervisory control of the Director General of Prosecution and Director of Prosecution (Admn). DOP(Admn), DDPs & APPs are regular and permanent employees who are governed by the Kerala Service Rules, whereas, the appointment of Directorate General of Prosecution (DGP) is by the State Government on tenure basis for a continuous period of 3 years. DDPs are the district level officers and each district have APPs and they are attached to the JFCM Courts. There is an intermediary category of Public Prosecutors and Additional Public Prosecutors as mentioned in sub-section (3) of Section 24 CrPC. This class of Public Prosecutors/ Additional Public Prosecutors are not under administrative control of the Director of Prosecution or the Director General of Prosecution

while at the same time not being subject to any of the rules of classification, control and appeal governing the employees of the State Government like the other classes of the Prosecuting officers like the APP Grade - II, APP Grade - I, APP Senior Grade, Deputy Director of Prosecution and Director of Prosecution (Administration). These Public Prosecutors and Additional Public Prosecutors form a separate class without any reasonable nexus between the other classes in order to achieve the objective.

10. It is therefore stated that even if there is a Directorate of Prosecution in Kerala, the Director of Prosecution has no control over the persons appointed under the 1978 Rules as they are under the administrative control of Law Secretary in the State of Kerala. From this it can be understood that there is no uniformity in the selection, appointment and administrative control over the Public Prosecutors appointed under Cr PC which is against the mandate of Section 25A of Cr PC. It is also worth mentioning that the Director General of Prosecution (DGP) is appointed by and under the administrative control of Home Secretary, Govt of Kerala. Meanwhile, there is a post of Addl. DGP under DGP. Interestingly, that appointment is done by Law Department, Govt of Kerala. The Public Prosecutors and Addl. Public Prosecutors in the Sessions Court to the High Court, are appointed as per Kerala Government Law Officers Appointment Rules, 1978 by the Law Department of the Kerala government which is against the intention of Section 25A of CrPC.

11. It is submitted that Prosecutors are the essential agents of the administration of justice, and as such should respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system. Prosecutors also play a key role in protecting society from a culture of impunity and function as gatekeepers to the judiciary. As essential agents of the administration of criminal justice, the prosecutor's role is one of great responsibility. Few other positions in society are invested with the authority and responsibility to decide on issues fundamental to the administration of justice.
12. Further, it is humbly submitted that Prosecutorial independence refers to individuals as well as institutions. On the one hand, prosecutorial independence is an individual state of mind that enables an individual prosecutor to make decisions rationally and impartially on the basis of the law and the evidence, without external pressure or influence and without fear of interference. On the other hand, prosecutorial independence should also underpin the institutional and operational arrangements that the State must establish to enable prosecutors to exercise their responsibilities properly and impartially. This means that protecting the prosecution of a case from political influence or other interference must be assured by the authority and independence of the prosecution service to which the prosecutor belongs and must be guaranteed by government. However, in view of the risks of politicization of the prosecution service, it is

important to provide transparency in the appointment process. Clear criteria for appointment to office should be established. Vacancies should be advertised and suitable candidates invited to apply. There should be input into the selection process from suitably qualified persons with suitable expertise and of high reputation. It is important that the method of selection of the prosecuting officers should be such as to gain the confidence of the public and the respect of the judiciary and the legal profession. Therefore professional, non-political expertise should be involved in the selection process. Although, the current practice adopted by the State of Kerala in appointment of Public Prosecutors and Additional Public Prosecutors is based on recommendation procedure which in turn is easily influenced by political considerations.

13. In order to comprehend the cardinal role and functions of the Prosecuting Officers, it is pertinent to understand the jurisprudence laid down via the judgments of this Hon'ble Court in various cases. In *Vineet Narrain v. Union of India* i.e. Jain Hawala case, [1998 (1) SCC 226], the relationship between the investigation, prosecution and the executive received the Supreme Court's attention. Here, the bureaucrat-politician-criminal nexus had used all means necessary to thwart the investigation and prosecution. The corruption cases were handled by the Central Bureau of Investigation (CBI). The Court monitored the progress of these cases and passed detailed directions on the functioning of various agencies involved; and even warned the minister

in charge to avoid interfering with the investigation and prosecution. In this way, the Prosecutors have nexus with the executive under the Indian criminal justice system. In order to bring facts before the court, the Prosecutors are required to examine the witnesses. The process of examination of the witnesses by the Prosecutors is Chief Examination of the witnesses. Further, in *Hitendra Vishnu Thakur v. State of Maharashtra*, [(1994) 4 SCC 602A], this Hon'ble Court held that "Public Prosecutor is an important officer of the State Government who is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. Also, In the case of *Subhash Chandra v. The State*, [A.I.R. 1980 SC 423], this Hon'ble Court has emphasized the independence of the office of Public Prosecutor. It was observed that "any authority that coerces or orders or pressurizes a functionary like the Public Prosecutor in the exclusive province of his discretionary power, violates the rule of law, and any Public Prosecutor who ends before such command betrays the authority of his office".

14. Another aspect pertinent to understand the scope and role of the prosecution is the approach adopted by advanced jurisdictions and organizations worldwide. So, in pursuance to it, The Guidelines on the Role of Prosecutors (hereafter referred to as "the Guidelines" and also known as the "Havana Guidelines") were adopted by the Eighth United Nations Congress on the Prevention of Crime and the

Treatment of Offenders. Their purpose is described as follows:

"The Guidelines which have been formulated to assist Member States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings, should be respected and taken into account by Governments within the framework of their national legislation and practice, and should be brought to the attention of prosecutors, as well as other persons, such as judges, lawyers, members of the executive and the legislature and the public in general".

The present Guidelines have been formulated principally with public prosecutors in mind, but they apply equally, as appropriate, to prosecutors appointed on an *ad hoc* basis. In 2008, through Commission on Crime Prevention and Criminal Justice resolution 17/2, the IAP Standards were recognized by the United Nations as being complementary to the Guidelines on the Role of Prosecutors, and Member States were invited to encourage their prosecution services to take the IAP Standards, together with the Guidelines and the addendum to the IAP Standards into consideration when reviewing or developing rules for prosecutorial conduct in their own countries. Finally, under Article 11 of the United Nations Convention against Corruption, which recognizes the crucial role of the judiciary and the prosecution in combating corruption, States parties may take measures to strengthen integrity and to prevent opportunities for corruption, which

may include rules of conduct, to the same effect as rules established for the judiciary, to be applied within the prosecution service in those States parties where the prosecution service does not form part of the judiciary but enjoys similar independence.

15. It is also noteworthy that as per the norms and guidelines set by the International Association of Prosecutors (IAP) adopted by numerous countries and by the United Nations Office on Drugs and Crime and International Association of Prosecutors States shall ensure that prosecutors are able to perform their functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability. IAP Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors are as follows:

"2. Independence:

2.1 The use of prosecutorial discretion, when permitted in a particular jurisdiction, should be exercised independently and be free from political interference.

2.2 If non-prosecutorial authorities have the right to give general or specific instructions to prosecutors, such instructions should be: transparent; consistent with lawful authority; subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence.

2.3 Any right of non-prosecutorial authorities to direct the institution of proceedings or to stop legally

instituted proceedings should be exercised in similar fashion.”

16. It is essential that prosecutors have sufficient independence and autonomy to take their decisions regardless of any outside pressure, in particular from the executive power of the State. When such pressures are exerted, the prosecutor will not be able to protect the interests of justice, he will not be able to respect the rule of law or human rights, and will be powerless to deal effectively with cases of corruption or abuse of State power. According to the International Association of Prosecutors, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, the Independence of prosecutorial decision-making is recognized as being necessary as prosecutors play an important role and functions in relation to the executive branch. An independent prosecution service helps ensure that the Government and the administration are held to account for their actions. In order to fulfill this role and ensure the completely free and unfettered exercise of its independent prosecutorial judgement, the prosecution service cannot be party to inappropriate connections with other branches of government, as that can lead to the prosecution service being subject to inappropriate influences from those other branches. Prosecutorial independence thus serves as the guarantee of impartiality, which in turn leads to a transparent and robust prosecution service with strong ethics and integrity based on the rule of law. This independence must also be maintained in the face of

inappropriate pressure that may arise from the media and individuals or interest groups in the community or even the public as a whole. When described in this manner, prosecutorial independence can be viewed as a fundamental component of the administration of justice. Both the Guidelines and the IAP Standards also emphasize that prosecutorial decisions regarding criminal cases should be made free of outside influences, particularly, but not exclusively, political influence, in situations and legal systems where prosecutors may exercise discretion over the decision to prosecute. In order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, prosecutors should be protected against arbitrary action by governments. In general, they should be entitled to recruitment and promotion based on objective factors, and in particular professional qualifications, ability, integrity, performance and experience, and decided upon in accordance with fair and impartial procedures. Whereas, this prosecutorial independence cannot be expected to be achieved when the officers are appointed on political consideration which puts them under undue influence and such system should be done away with.

17. This independence of the prosecution officers is essential for the criminal justice system to function at its best for the reasons mentioned above and that independence can emanate only from a free and fair selection process. A hierarchical system provides strong advantages for

organizational control and management and is better able to deliver a much sought-after consistency of approach within a prosecution service. Selection criteria for prosecutors embody safeguards against appointments based on political or other similar considerations. The selection of prosecutors is an important function and should be governed by fair and impartial procedures for recruitment, promotion and transfer. The selection process varies from State to State, but the nature of the selection process does not matter as much as how it is conducted. What is important in selection is that prosecutors are properly screened to obtain candidates who possess the requisite integrity, and legal ability to prosecute and that the selection process itself is conducted in a fair, impartial and transparent manner. Some methods of selection are a national competitive examination, programmes aimed at young law graduates, a multifaceted interview process, and examination and appointment by the government. Prosecution services should ensure that their screening process does not exclude any person due to prejudice against any group and should ensure that steps, including legislative protections, are enacted to prohibit any inequality in employment opportunities in the prosecution service. Rigorous attention to the Guidelines and the IAP Standards regarding recruiting and promotion practices also has the benefit of ensuring that corruption in the form of favouritism in recruitment or promotion does not find its way into a prosecution service, with consequent negative impact on operational effectiveness and subsequent loss of public

confidence. Steps should be taken to prevent political considerations from being a factor in the appointment of career prosecutors. So, it is in this context that the prosecuting officers belonging to the class of Public Prosecutors/ Addl. Public Prosecutors need to be selected and from amongst the class of existing prosecuting officers in the Directorate.

18. Another aspect of immediate concern here is the training of the Prosecuting Officers as the states shall ensure that prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law. Prosecutors have great responsibility, and much is expected of them by society. The courts expect prosecutors to demonstrate a high level of legal acumen and well-defined ethics; society in general expects prosecutors to be sensitive to the needs of that society, particularly victims of crime; investigators expect and need sound and proper legal advice or supervision in increasingly complex investigations; and the accused expects that the evidence will be carefully considered and the law correctly applied and that where discretion can be used, it is used fairly and impartially. None of the competencies mentioned above are easily obtained, but none of them can be ignored by a prosecution service that is committed to excellence. Training in these skills is a lifelong endeavor requiring commitment

from management to provide the training and the duty of prosecutors to avail themselves of it and, in many instances, provide it. The increasing complexity of crime has required that new skills be developed in the prosecution services, with specialized legal and forensic knowledge being an important component of a prosecution service's training regime. Training should commence in the induction phase and continue through the prosecutor's career, enabling the prosecutor to take on more complex cases and allowing for career advancement. Training of this type should also be viewed as an investment by the prosecution service, and appropriate funds should be allocated to provide training to staff. Advanced training could be provided to prosecutors in subjects such as transnational crime, organized crime, cybercrime, money-laundering, international cooperation in criminal matters, forensic evidence such as DNA analysis and dealing with vulnerable victims and witnesses. The effectiveness of a prosecution service does not just require knowledge of criminal law and forensic issues. As an organization, a prosecution service is responsible for creating and maintaining an ethos of professionalism, integrity and fairness that is the foundation of all that is done by the office. Moreover, The Committee on Reforms of Criminal Justice system or the Malimath Committee Report as it is known provided:

"8.14.4 So far as Assistant Public Prosecutors who appear before the Courts of Magistrates are concerned, they should be given intensive training,

both theoretical and practical to improve their professional skills as prosecutors. Those already in service should be given periodical in-service training to update their knowledge.”

Therefore, it is essential to understand the importance and effect of proper training to the prosecuting officers before and in duration of the service period in the Indian context, thus justifying the need for National/ Regional prosecution academy.

19. Promotion of prosecutors, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures. In order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, prosecutors should be protected against arbitrary action by governments. In general, they should be entitled to recruitment and promotion based on objective factors, and in particular professional qualifications, ability, integrity, performance and experience, and decided upon in accordance with fair and impartial procedures and inability to do so would generally lead to ineffective workplace coherency, discontentment and through this, could lead to the ineffective working of the criminal justice system. Whereas in this case, the promotion of the Assistant Public Prosecutor to the post of Public Prosecutors and Additional Public Prosecutors is not based on objective factors but on

other extraneous considerations, the act which is arbitrary and mala fide.

20. FACTUAL MATRIX OF THE CASE IS AS FOLLOWS:

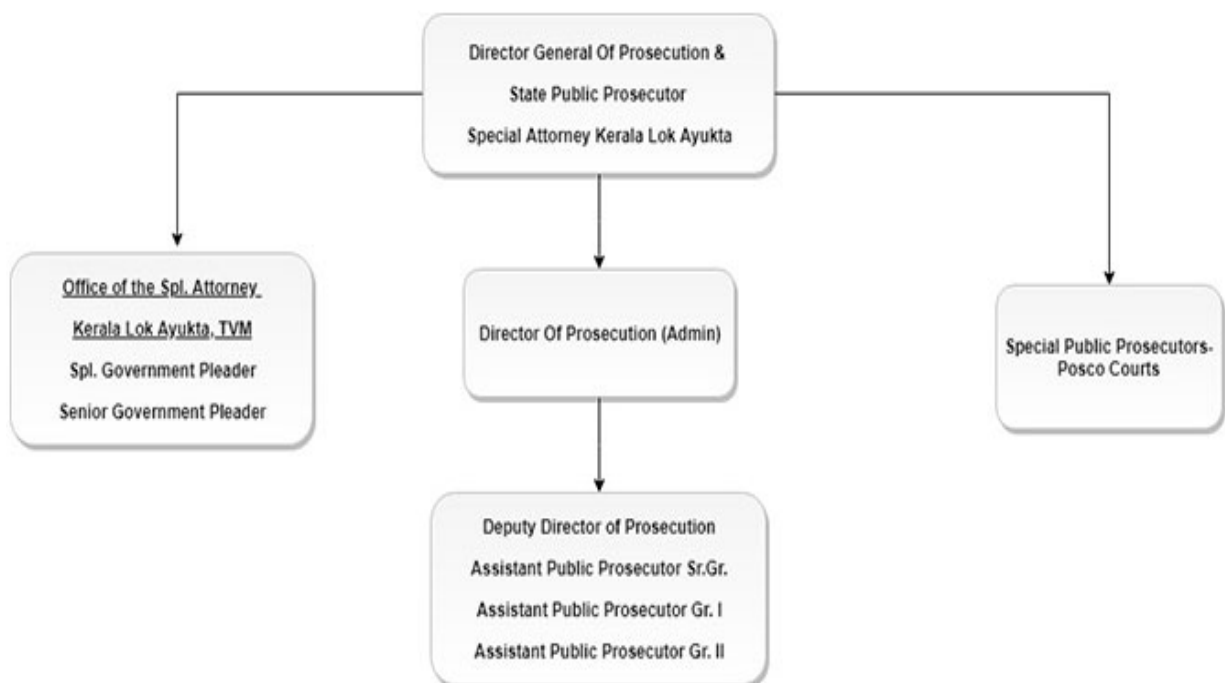
- i. The 14th Law Commission Report was released dated 26.09.1958 that suggested the recommendation pertaining to the establishment of the Directorate of Prosecution across India and its functioning. True copy of the relevant pages of the 14th Law Commission Report dated 26.09.1958 has been produced herein and marked as **ANNEXURE - P 1 (Pages 62 –74)**.
- ii. Under Article 309 of the Constitution, the Kerala Public Services Act, 1968 was enacted.
- iii. The 41st Law Commission Report was released dated 24.09.1969 which also contained several recommendations relating to the functioning of the Directorate of Prosecution across India. True copy of the relevant pages of the 41st Law Commission Report was released dated 24.09.1969 has been produced herein and marked as **ANNEXURE - P 2 (Pages 75 – 81)**.
- iv. In Kerala, the Directorate of Public Prosecution was established in the year 1975 as per G.O. (MS) No.53/1975 HOME dated 26.04.1975.
- v. Subsequently, in exercise of the powers conferred by Section 2 (1) of the Kerala Public Service Act, 1968, the Government of Kerala enacted the Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978 through a Government

Order bearing G.O. (P) 11/78/Law dated 25.01.1978. A true copy of the said Rules has been produced herein and marked as **ANNEXURE - P 3 (Pages 82 –144)**.

- vi. As per the G.O. (MS) No.165/ 1991 HOME, Directorate of Public Prosecution was re-designated to that of Director General of Prosecution with effect from 25.01.1991.
- vii. Later, as per the G.O. (MS) No.120/1996 HOME dated 02.07.1996, Kerala government modified the powers and functions of the Director General of Prosecution.
- viii. Finally, the Directorate of Prosecution was established in Kerala in the year 2000 as per the G.O. (MS) No.224/2000/Home under the Home Department, Government of Kerala dated 13.10.2000. The said Directorate of Prosecution in Kerala is functioning under the Department of Home, Government of Kerala. A true copy of the said Government Order has been produced herein and marked as **ANNEXURE - P 4 (Page 145)**.
- ix. Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978 was amended vide G.O. (MS) No.70/2002 dated 15.03.2002. A true copy of the said Government Order has been produced herein and marked as **ANNEXURE - P 5 (Pages 146 – 147)**.
- x. Committee on Reforms of Criminal Justice System chaired by Justice V.S. Maliamath submitted its report in March, 2003 which included several suggestions to revamp the prosecution machinery in India. True copy of the said Committee on Reforms of Criminal Justice

System dated March, 2003 has been produced herein and marked as **ANNEXURE - P 6 (Pages 148 – 158)**.

xi. That in the State of Kerala, there is a Directorate of Prosecution which is headed by the Director General of Prosecution and assisted by the Director of Prosecution (Admin.). Further there are 15 of Deputy Directors of Prosecution and 138 Assistant Public Prosecutors consisting of the posts of APP Sr. Grade, APP Grade - I, APP Grade - II. Although the various posts of Public Prosecutor/Additional Public Prosecutors which are filled by recommendation owing to political and other extraneous considerations, lie completely outside the control of the Directorate of Prosecution. A graphical representation of the above-mentioned structure as obtained from the website of Department of Prosecution, Ministry of Home Affairs has been provided below:



xii. That the Section 24 of the Cr PC provides for different categories of Public Prosecutors. The Assistant Public Prosecutors are appointed by the state government in terms of Section 25 Cr PC. As per sub-section (4) of Section 24 of the Cr PC, the District Magistrate prepares a panel of names of persons fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the respective Districts, in consultation with the Sessions Judge. Sub-section (5) of Section 24 provides that the State Government shall not appoint a person as Public Prosecutor Additional Public Prosecutor for a District unless his name appears in the panel of names prepared by the District Magistrate under Sub-section 4. Sub-section 6 of Section 24 Cr PC is relevant to the instant case and as such provides that –

"(6)Notwithstanding anything contained in sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre: Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4)."

xiii. That by exercising the powers conferred by Sub-section (1) of Section 2 of the Kerala Public Services Act, 1968, the Government of Kerala issued the Special Rules hereinafter referred to as the Special Rules, for the posts of Deputy Director of Prosecution and Senior Assistant Public Prosecutor, Assistant Public Prosecutor Grade - I and Assistant Public Prosecutor Grade - II. According to the Special Rules the service consists of three categories of Prosecuting Officers viz.

Category - 1 Deputy Director of Prosecution and Senior Assistant Prosecutor;

Category - 2 Assistant Public Prosecutor Grade - I; and

Category - 3 Assistant Public Prosecutor Grade - II.

As per Rule 3 of the Special Rules, the method of appointment Category - 3 (APP Grade-II) is by direct recruitment. The post of APP Grade-I is to be filled up by promotion from the category of APP Grade-II. The post of Deputy Director of Prosecution and Senior Assistant Public Prosecutor is to be filled by promotion from the category of APP Grade-I. Later, by executive orders, two more categories have been included in the service viz. APP (Senior Grade), which is above the category of APP Grade-I and Director of Prosecution (Administration) which is the promotion post of the category of Deputy Director of Prosecution and Senior Assistant Public Prosecutor. There is only one post of Director of Prosecution (Administration) for the entire state. In this context, it is important to mention that the entry cadre

in the prosecution service i.e APP Grade-II has already been brought within the purview of KPSC for selection.

xiv. The Central Government, by Act 25 of 2005 inserted a new Section in the Cr PC, i.e. Section 25A. Section 25A which has been brought into effect from the year 2006, provides that the State Government may establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit. Section 25A provides as under:

(1) The State Government may establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit.

(2) A person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, only if he has been in practice as an advocate for not less than ten years and such appointment shall be made with the concurrence of the Chief Justice of the High Court.

(3) The Head of the Directorate of Prosecution shall be the Director of Prosecution, who shall function under the administrative control of the Head of the Home Department in the State.

(4) Every Deputy Director of Prosecution shall be subordinate to the Director of Prosecution.

(5) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed

by the State Government under Sub-Section (1), or as the case may be, Sub-Section (8), of section 24 to conduct cases in the High Court shall be subordinate to the Director of Prosecution.

(6) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under Sub-Section (3), or as the case may be, Sub-Section (8), of section 24 to conduct cases in District Courts and every Assistant Public Prosecutor appointed under Sub-Section (1) of section 25 shall be subordinate to the Deputy Director of Prosecution.

(7) The powers and functions of the Director of Prosecution and the Deputy Directors of Prosecution and the areas for which each of the Deputy Directors of Prosecution have been appointed shall be such as the State Government may, by notification, specify.

(8) The provisions of this section shall not apply to the Advocate General for the State while performing the functions of a Public Prosecutor.

xv. In the State of Kerala, a proper hierarchical order of prosecuting officers still hasn't been created despite the enactment of Sections 24 and 25A Cr PC to give effect to the legislative mandate contained in the said provisions. In its place there is a regular cadre of Prosecutors starting with APP Grade - II and ending with the Director of Prosecution. Although, in the said chain of command

between the posts of Director of Prosecution (Administration) and the post of Deputy Director of Prosecution and the Senior APP Grade, there is an intermediary category of Public Prosecutors (PP) and Additional Public Prosecutors (Addl. PP) as mentioned in sub-section (3) of Section 24 Cr PC. This class of Public Prosecutors/ Additional Public Prosecutors are not under administrative control of the Director of Prosecution or the Director General of Prosecution while at the same time not being subject to any of the rules of classification, control and appeal governing the employees of the State Government like the other classes of the Prosecuting officers like the APP Grade - II, APP Grade - I, APP Senior Grade, Deputy Director of Prosecution and Director of Prosecution (Administration). These Public Prosecutors and Additional Public Prosecutors form a separate class without any reasonable nexus between the other classes in order to achieve the objective. This goes severely against the intention of the legislature as mandated in the Section 24, 25 and 25A. The intention of the Legislature needs to be understood in order to correctly arrive at the constitutionally valid conclusion here, according to which the category of APP appointed in the terms of Section 25 Cr PC is eligible and entitled to be appointed and elevated to the positions of Public Prosecutor and Additional Public Prosecutor. The Legislature also intended for the State Governments to create a regular

cadre of prosecuting officers as per Section 24 (6) read with explanations (a) and (b) thereunder. A combined reading of the sub-sections (6), (7) and (9) of Section 24 and Section 25A of the Cr PC and the said Special Rules, will make it clear that the Special Rule is virtually unworkable unless a regular cadre of Prosecuting Officers inclusive of Public Prosecutors/ Additional Public Prosecutors is created. Now Kerala is then amongst the very few states that has not incorporated suitable provisions for creating a permanent cadre of Prosecution officers by making the posts of Public Prosecutors and Additional Public Prosecutors as the promotion categories of the posts of APP's, in satisfaction of the legislative mandate of Section 24(6) and the provision for creating a Directorate of Prosecution as envisaged in Section 25A of the CrPC.

xvi. That the State Government is not filling the posts of Public Prosecutor and Additional Public Prosecutor for every District by promoting persons belonging to the categories of APP Grade -II, APP Grade - I, APP (Senior Grade) and Deputy Director of Prosecution and Senior Assistant Public Prosecutor and instead being filled by the State Government on contractual basis on political and other extraneous considerations, with great prejudice and detriment to public interest. As a result, the APP's can conduct criminal prosecution only up to the Chief Judicial Magistrate's Court level and cannot conduct cases in the Sessions Court. Whereas, the Public

Prosecutors and the Additional Public Prosecutors appointed by the State Government in terms of Section 24(3) of the Cr PC, represent the State in the Sessions Court. As a consequence to this, the APP's who are practicing at the CJM Court level almost always throughout their lives and are subject to permanent stagnation of their professional growth which results in the loss of morale, drive and motivation in the officers of the said cadre which in turn affects their efficiency to excel in their professional lives. The more serious consequence of this practice or system of appointment of the Public Prosecutors and Additional Public Prosecutors for the district is that, the appointees being holders of tenure posts on extraneous considerations and the criminal justice system of the state suffers substantially in the absence of continuity and cohesion in the service which is made possible because of the lack of effective supervision, regulation, control and discipline owing to the reason stated above.

xvii. Frustrated by the existing condition of the prosecution system with reference to the arbitrarily made appointments of Public Prosecutors and Additional Public Prosecutors, the 197th Law Commission was tasked with coming up with solutions to this effect and the solution which has been accepted and implemented by several states but not by few states including Kerala. The recommendations of the said Law Commission were as below:

- a) *Making of appointment of Public Prosecutors/ Additional Public Prosecutors only from amongst persons constituting regular Cadre of Prosecuting Officers – in terms of s. 24(6) of the Code of Criminal Procedure, 1908 (sic 1973), as originally legislated by Parliament- may need to be legislatively restored to override various State Amendments. Further, a time limit may need to be prescribed by law to require creation of such cadres in a definite timeframe, while simultaneously incorporating a 'sunset clause' in s. 24(4) of the Cr.P.C.*
- b) *Requirement of consultation with Sessions Judge u/s. 24(4) may need be resorted to override State Amendment(s).*
- c) *Other institutional mechanism(s) and safeguard(s) in terms of eligibility requirement, assessment of past performance, adequate tenure, etc. could be considered to reduce the scope for arbitrariness in appointments."*

A true copy of relevant pages of the above-mentioned law commission report has been produced herein and marked as **ANNEXURE - P 7 (Pages 159 – 197)**.

xviii. Following the Law Commission Report, the Central Government called for the opinion of the State governments on implementing the regulations of the Law Commission Report. Almost all the states favored the opinion of the Law Commission and established a regular cadre of prosecuting officers from which alone

the appointment to the posts of PP/APP for the district is made. The State Government of Kerala, on the other hand was against the said recommendations as it would curtail that power of the State Government of appointing the prosecution officers which is also evident from the letter sent to the government of India dated 10.07.2008. A true copy of the said letter dated 10.07.2008 has been produced herein and marked as **ANNEXURE - P 8 (Page 198)**.

- xix. Post the judgment of this Hon'ble Court in the case of *K.J. John, Assistant Public Prosecutor Grade - I, Palai vs. State of Kerala and others*, [(1990) 4 SCC 191] wherein it denied the prayer as to issuing suitable directions to the State Government to fill the posts of Public Prosecutors and Additional Public Prosecutors only from amongst the existing class of Prosecuting Officers present in the State Service, the new Section 25A was brought into force vide the 2006 amendment which if read in a collective reading to understand the legislative intent, provides for the establishment of a Directorate of Prosecution.
- xx. Meanwhile, in December, 2014, certain international guidelines were set by the United Nations Office on Drugs and Crime (UNDOC) pertaining to the Status and Role of Prosecutors, providing the various service conditions that the prosecuting officers should be afforded with. India being a signatory, the same has a persuasive value. A true copy of the said report by

UNDOC has been produced herein and marked as **ANNEXURE - P 9 (Pages 199 – 258).**

xxi. The Government of Kerala vide its order bearing G.O. (P) No.6/2018/Home dated 24.02.2018, in exercise of its power conferred by Section 2 (1) of the Kerala Public Services Act, 1968 made some Special Rules for all prosecuting officers in the directorate but did not incorporate Public Prosecutors and Additional Public Prosecutors which amounts to malice in law. A true copy of the said Government Order is produced herein and marked as **ANNEXURE - P 10 (Pages 259 – 264).**

xxii. That the Petitioners herein who are serving at the posts of Assistant Public Prosecutor Grade - II are also aggrieved with the quality of service conditions made available to them in their professional capacity, provisions like lack of any mode of transportation made available to them or reimbursements to that effect, even when they have to travel outside their local vicinities for work related purposes, access to clean restrooms, any sort of security is also never made available to them as the APPs also face a considerable amount of threat to their life and wellbeing which their post and position brings with it.

xxiii. It is also pertinent to mention here that the Petitioner No.1 herein who is also an Assistant Public Prosecutor Grade - II has been a member of the Kerala Assistant Public Prosecutors Association (KPPA) and after making various representations to said association about the

difficulties faced by him in the professional capacity and being shut down from the proceedings, chose to resign from the association vide a Resignation Letter dated 09.10.2019 and now has approached this court in his own capacity as an Assistant Public Prosecutor Grade - II. A true copy of the said resignation letter has been produced herein and marked as **ANNEXURE - P 11 (Page 265)**.

xxiv. Being aggrieved, the Petitioners herein prefers this present Writ Petition.

21. That in the circumstances mentioned herein above, this Writ Petition is being preferred by the Petitioners herein *inter alia* on the following grounds:

GROUND

A. Because of the passive and negligent behavior of the Kerala State government in not filling the posts of Public Prosecutors/ Additional Public Prosecutors by promotion of persons appointed as Assistant Public Prosecutor (APP) mentioned in Section 25 Cr PC by stating rationale like lack of competency or ability to prosecute cases of serious nature is extremely arbitrary as it doesn't take into account the fundamental principles of Criminal Justice System and as all the major acts of criminal nature are consistent in all criminal courts. It also is in disregard of the fact that a proper cadre-based system would inherently be more strong, efficient, effective, independent and harmonious in its functioning. In some states Regular Cadre is implemented

and others not. Despite the fact that State of Kerala admittedly has a Directorate of Prosecution as provided by 25A but not in tune with the provisions of Section 25A to the effect that the positions of Public Prosecutors and Additional Public Prosecutors are to be filled by promotion of Assistant Public Prosecutors in the existing cadre by virtue of sections 24 (6) and 25 and such action of the government is arbitrary, mala fide and violative of the Petitioners Fundamental Right guaranteed under Article 14 & 16 of the Constitution. Such action of the government in appointing outside counsels for the aforesaid positions instead of appointing from amongst the prosecuting officers in the regular cadre is contrary to the central legislation, CrPC and not in good faith which also cannot be justified with proper reasoning and hence is a 'malice in law'.

B. Because under Article 16 of the Constitution there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. This provision applies only in respect of employments or offices which are held under the state. i.e., the person holding office as subordinate to the state. The clause accordingly, does not prevent the state from laying down the requisite qualifications for recruitment for government services, and it is open to the authority to lay down such other conditions of appointment as would be conducive to the maintenance of proper discipline among the servants. Thus, the guarantee in clause (1) will cover the (a) initial appointments, (b) Promotions, (c) Termination of

employment, (d) Matters relating to the salary, periodical increments, leave, gratuity, pension, Age of superannuation etc. Principle of equal pay for equal work is also covered in Article 16 (1). It is also pertinent to mention here that in the case of *Govind Dattatray Kelkar v. Chief Controller of Imports & Exports*, [(1967) 2 SCR 29], this Hon'ble Court held as follows:

"12. Under Article 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the said two sources, and the said difference have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification."

Hence, on a bare perusal of the constitutional provisions and the judgment cited above, it is clear that the non-promotion of the Assistant Public Prosecutors to the post of Public Prosecutors and Additional Public Prosecutors is bad in law, arbitrary and is violative of the Petitioners fundamental right guaranteed under Article 16 of the Indian Constitution.

C. Because evolution in the form of reforms in the Criminal Justice System have been made or recommended by high level committees over the years since independence through reports like the 14th & 41st Law commission Reports which recommended and highlighted the importance of the independence of the Prosecution agency from the investigation agency and the need for a Director of Prosecution to supervise the officers in the Criminal Justice System. Further, the 197th Law Commission was formed to deal with and recommend measures to be taken to further the cause of an independent Criminal Justice system and it is also worth noting that one of the recommendations of this report was:

"Making of appointment of Public Prosecutors/ Additional Public Prosecutors only from amongst persons constituting regular Cadre of Prosecuting Officers – in terms of s. 24(6) of the Code of Criminal Procedure, 1908 (sic 1973), as originally legislated by Parliament- may need to be legislatively restored to override various State Amendments. Further, a time limit may need to be prescribed by law to require creation of such cadres in a definite

timeframe, while simultaneously incorporating a 'sunset clause' in s. 24(4) of the Cr.P.C."

D. It is pertinent to note that in the case of *NHRC v. State of Gujarat*, [(2009) 6 SCC 767], this Hon'ble Court observed that:

"29. The Law Commission in 1958 had recommended that a Director of Prosecutions be set up having its own cadre, though this recommendation was not included in the Code then. Again in 1996 the Law Commission in its 154th Report identified as Independent Prosecuting Agency as one of the several areas within the Code which required redesigning and restructuring. The Law Commission supported most of the proposed amendments to the Code as contained in the proposed Code of Criminal Procedure Amendment Bill, 1994. Recommendations related to the structure of a Directorate of Prosecutions at the State-level, to be adopted by a State Government in the event it decided to set up a cadre of Prosecutors. The Law Commission further recommended that the structure of State-level Directorates of Prosecution be given statutory status through an amendment to the Code. Despite the absence of such a requirement and inadequacy of the provisions in the Code a number of States mainly, Delhi, Andhra Pradesh, Bihar, Goa, Himachal Pradesh, Karnataka, Kerala, Madhya

Pradesh, Orissa, Tamil Nadu and Uttaranchal, established a Directorate of Prosecution.”

However, the Directorate of Prosecution established in the State of Kerala doesn't tally with that of Section 25A of CrPC.

- E. Because the Public Prosecutors/ Additional Public Prosecutors hold their posts at the pleasure of the executive and political influencers that appoint them are susceptible to manipulation and corruption.
- F. Because the advocates appointed as Public Prosecutors and Additional Public Prosecutors are not subject to any disciplinary actions. Whereas Prosecuting officers of a regular cadre are employees of the government and not office bearers, hence subject to service rules of the State and are under constant observation and evaluation. Emphasizing the relevance of taking departmental actions against lapses of law officers, this Hon'ble Court in the case of *State of Gujarat vs. Kishanbhai & Ors.*, [(2014) 5 SCC 108], held as follows:

"21. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore, essential that every State should put in place a procedural mechanism, which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered

essential to direct the Home Department of every State, to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A standing committee of senior officers of the police and prosecution departments, should be vested with aforesaid responsibility. The consideration at the hands of the above committee, should be utilized for crystalizing mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course- content drawn from the above consideration. The same should also constitute course-content of refresher training programmes, for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials, should be vested in the same committee of senior officers referred to above. Judgments like the one in hand (depicting more than 10 glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course content will be reviewed by the above committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of Courts, and on the basis of experiences gained by the standing committee while examining failures, in unsuccessful

prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence, when they are made liable to suffer departmental action, for their lapses."

In view of this, it is submitted that when the tenure of the Public Prosecutors or Additional Public Prosecutors are temporary in nature, a departmental action cannot be taken against such errant officers and thereby, defeating the purpose and object of the above said judgment of this Hon'ble Court. As a corollary, departmental inquiries are taken only against errant APPs from the regular cadre which is arbitrary and unreasonable. In order to maintain the standard of prosecution, such mechanism has to be in place but can only be achieved when prosecuting officers are appointed from the regular cadre.

G. Because the prosecuting officers appointed in terms of Section 25 Cr PC are made to undergo a comprehensive training period along with periodical training on regular intervals to keep with the advancements in the specific fields of law. Whereas on the other hand, no such training or periodical training is imparted to the appointed prosecutors under Section 24. Hence, strengthening the argument that the APP's inducted after a competitive exam and with

specialized training are better equipped to deal with the case load of the existing prosecutors appointed under section 24 of Cr PC.

- H. Because Article 254 of the Indian Constitution which states the 'doctrine of repugnancy' suggests that it involves solving questions of repugnancy between the Central and the State law. According to Article 254 (1), if any provision of a state law is repugnant to a provision in a law made by the Parliament, which the Parliament is competent to enact, or with any existing law regarding any matter in the Concurrent List, then the Parliamentary law would prevail over the State law. It will be of no importance whether the Parliamentary law was enacted before or after the State law. To the extent of repugnancy, the State law will be void. It is due to this Article that the power of the Parliament to legislate upon matters contained in List III i.e., the Concurrent List is supreme. This Article gives an overriding effect to any statute which the Parliament is competent to enact and which has been enacted by it. The Service Rules issued by the Kerala government vide Government Order of 1978 and 2002 cannot override the Statutory Provision contained in Section 25-A of CrPC. In the words of the Hon'ble Supreme Court in *Veenakumari Tandon Vs. Neelam Bhalla*, [2007 (12) SCC 764], "It is now a well-settled principle of law that a legislative Act shall prevail over the subordinate legislation".
- I. Further, it is submitted that as soon as Section 25-A of CrPC comes into force, the provisions of Rules 1978 and 2002, which were in vogue prior to the same, would automatically

become inoperative. While comparing the 1978 Rule and Section 25A of Cr PC, the only difference that could be made out is that under Section 25A while appointing Deputy Director of Prosecution, the Hon'ble Chief Justice has to be consulted and rest all qualifications remain same. Therefore, it is appropriate that the appointment of Director of Prosecution and Deputy Directors of Prosecution are to be made strictly in accordance with the qualifications prescribed in Section 25-A of Cr PC and with the concurrence of the Hon'ble Chief Justice of the High Court. If there is a State law prior or after amendment made by the Parliament and the same is against the Central Law, then that State Law is void to that extent. The Hon'ble Supreme Court has held the same in plethora of cases like that of *the State of J.K. vs. MS Faraaq*, [AIR 1972 1738], *Karunanidhi vs. UOI*, [AIR 1979 1898], *Raten Arya vs. State of Tamil Nadu*, [1986 (3) SCC 385] etc. Therefore, all Government Orders in Kerala referred earlier are against the intention of Section 25A and therefore, is void and unconstitutional. Because in order to fully enact Section 25A read with Section 24 and 25 as was intended by the legislature, this outlying class of Prosecuting Officers of Public Prosecutors and Addl. Public Prosecutors needs to be done away with, so as to effectuate a proper Cadre of Prosecuting officers without endangering the effectiveness of the criminal justice system of the state and public interest.

J. Because Sub-Section (6) of Section 24 Cr PC which is relevant for our purpose viz., appointment of Public

Prosecutors for every district and one or more Additional Public Prosecutors for the district, requires that the State Government shall appoint a Public Prosecutor for every district and also confers discretionary power to appoint one or more Additional Public Prosecutors for the district. The Public Prosecutor or the Additional Public Prosecutor can be appointed for one or more districts. Sub-Section (4) of Section 24 directs that the District Magistrate shall, in consultation with the Sessions Judge, prepare a panel names of persons who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district. Such a panel has to be prepared in consultation with the Sessions Judge. Sub-section (5) prohibits appointment of any person as Public Prosecutor or Additional Public Prosecutor unless his name appears in the panel prepared by the District Magistrate under sub-Section (4). Sub-Section (6) provides that notwithstanding anything contained in sub-Section (5), if in any State there is a regular cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or Additional Public Prosecutor only from among the persons constituting such cadre (emphasis added). If no suitable person in the said cadre is available, the State Government is free to appoint any eligible person as Public Prosecutor or Additional Public Prosecutor from the panel of names prepared by the District Magistrate under sub-Section (4). The eligibility criteria of the persons to be considered for the appointment to the post of Public Prosecutor or Additional Public Prosecutor under sub-

Sections (1), (2), (3) and (6) is prescribed in sub-Section (7). The candidate must be in practice as an advocate for not less than seven years and sub-Section (9) provides that for purposes of sub-Sections (7) and (8), the period during which a person has been in practice as a pleader, or has rendered service as a Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate. Thus, the requirements for appointment as a Public Prosecutor under sub-Section (6) read with sub-Section (7) of Section 24 are:

- (i) the candidate must belong to a regular cadre of Prosecuting Officers, and
- (ii) the candidate must have been in practice as an advocate for not less than seven years.

The second requirement for appointment to the post of Public Prosecutor, viz. the candidate must have been in practice as an advocate for not less than seven years. From a perusal of the Rules framed by the State Government periodically and most recently vide its order No. G.O. (P) No.6/2018/Home, it is clear that for a person to be appointed as Assistant Public Prosecutor Grade II he must be a member of the Bar and must have had not less than three years active practice in criminal court. It would be appropriate to refer to sub-Section (9) of Section 24 CrPC here. This Sub-Section provides *inter alia* that service as Public Prosecutor or Additional Public Prosecutor or Assistant Public Prosecutor or Police Prosecuting Officers, by whatever name called, shall

be deemed to be the period during which such person has been in practice as an advocate. It thus becomes clear that the requirement of being in practice as an advocate for not less than 7 years will be fulfilled by virtue of the declaratory provision of Sub-section (9). Thus, it cannot be said that Assistant Public Prosecutors (APP) have no experience of conducting trial of criminal cases, though, it is true, they may not have experience of conducting prosecution before the Court of Session. This, however, is not a requirement of Section 24 Cr PC. It appears that the Parliament regarded experience of a specified period as Assistant Public Prosecutor Grade-I sufficient for appointment as a Public Prosecutor. Therefore, there is effectively no bar to the appointment of an Additional Public Prosecutor to the post of Public Prosecutor and Additional Public Prosecutors and hence, by virtue of clause (6) of Section 24, the appointment of Public Prosecutors and Additional Public Prosecutors ought to be made only from the existing Prosecuting Officers in the regular cadre, therefore rendering the proviso to sub-section (6) as redundant and arbitrary in the context of State of Kerala and discriminatory against the Prosecution officers forming the regular cadre and thus violative of Article 14.

K. Because criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of the Constitution is contained in Item No.2 of List 3 (Concurrent List) of the 7th Schedule of the Constitution. Consequently, it is within the legislative competence of the State Legislatures to bring in amendments to the various provisions in the

CrPC. In order to avoid the dilution of the provision in Section 24 by State Governments with a view to retaining the power of appointment of Public Prosecutors and Additional Public Prosecutors the district level with the respective State Governments which are often made in order to further political objectives. With a view to curb such appointments and brings the selection and role of Public Prosecutors and Additional Public Prosecutors under the ambit of a single chain of command in the form of a Directorate of Prosecution, it is imperative that suitable directions be given to the State government. Hence, any appointment procedure laid down in any legislation cannot give arbitrary discretion to State Governments. There must be proper checks in the matter of appointment of Public Prosecutors/ Addl. Public Prosecutor in the Sessions Court so that they can be efficient in their functioning, objective and independent of the Police and the Executive. Any scheme of appointments without proper checks will be violative of Article 14 of the Constitution of India.

L. Rules 7 and 8 of the Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978 and also the Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases (Amendment) Rules, 2002 prescribe the manner of appointment, duties and responsibilities of Government Law Officers appointed by the Government to conduct Government cases in any court or tribunal in the State and include District Government Pleaders and Public

Prosecutors. The District Collector shall, while preparing the panel bear in mind the following: -

- i) a person included in the panel shall have at least seven years practice as an advocate:
- ii) the panel shall be prepared in consultation with the District and Sessions Judge and only those persons who, having regard to their qualifications, experience, integrity, reliability, reputation and character and antecedents, are in the opinion of the District Collector, fit to be appointed, shall be included therein.

Even if we sustain that the 1978 and 2002 Rules as executive instructions or guidelines issued by the State for convenient implementation of the provisions of Section 24 of the Cr PC in the matter of appointment of Public Prosecutors and assume that they are merely of such nature without any statutory backing, it suggests that, if there be conflict between the express provisions of law made by the Parliament and executive instructions or guidelines, then the latter have to yield. The amendment made in 2002 by the 2002 Rules makes the matter worse. Rule 8 (2) (a) requires the District Collector to prepare a list of advocates keeping in mind their qualifications, experience, integrity, reliability, reputation and character and antecedents and send it to the concerned District and Sessions Judge for consultation. The District and Session Judge has a limited role to play of returning the list with his remarks within ten clear days from the date of receipt. The panel of names is thereafter prepared by the District Collector by excluding all persons

whose names were specifically disapproved by the District and Sessions Judge on specific grounds. Sub-Rule (2)(c) of Rule 8 as amended provides that in preparing the panel the District Collector shall not include the name of any advocate whose name was not included in the list prepared by him under Clause (a). In other words, even if the District and Sessions Judge is satisfied about the overall suitability with regard to qualifications, experience, integrity, reliability, reputation and character of an advocate to be recommended for appointment as Public Prosecutor, his name will not be included in the panel merely because the District Collector had not included it in the list sent to the District Judge. In this view, this provision is an objectionable provision directly contrary to the provisions of Section 24 (4) of the Code as interpreted by the Supreme Court. As this Hon'ble Court pointed out, the effective consultation contemplated under sub-Section (4) of Section 24 of the Cr PC requires the meeting of minds of both the functionaries at the time of preparation of panel. This meeting of mind is not achieved if the District Collector forwards a list which is closed and gives the option to the District Judge only of adversely commenting upon the list without the option of adding to the names in the list. Hence to that extent, the 2002 Rules are also contrary to the provisions of Section 24 of the Cr PC as interpreted by the Supreme Court and must be held to be bad and more so when the District Collector who is tasked with coming up with the names of the prospective appointees, is an officer under the Revenue Department and

as such cannot be expected to know the intricacies of Criminal Justice system. It is therefore, evident from the above that while the service rules are repugnant to provisions of Section 25A of Cr PC which is a central legislation and thus is invalid.

M. The service rules in effect as of now in the State of Kerala with reference to the appointment of Public Prosecutors and Additional Public Prosecutors namely, Rules 4, 8, 14, 15, 53 and 69 are also repugnant to Section 24 (4), (5) and (6) of CrPC. It should also be noted that in the case of *E.A. Thankappan vs State of Kerala*, [2011 SCC OnLine Ker 3775], while challenging the appointment of DGP, the Kerala government has stated that there was no Directorate of Prosecution as visualized under 25A of Cr PC. Government of Kerala has produced series of documents such as G.O. (MS) No.53/1975, G.O. (MS) No.165/1991, G.O. (MS) No.120/1996, and G.O. (MS) No.224/ 2000 to this effect. The contention of the Kerala State government is that the Directorate constituted 30 years back under Government Orders continues to function in the same manner. It is pertinent to note here that the Directorate of Prosecution which is there in state of Kerala is neither the same nor equivalent to the Directorate of Prosecution as visualized under Section 25A of Cr PC. In the very same judgment the Hon'ble HC of Kerala held that "*It may be desirable to have a Directorate in the State in terms of Section 25A of Cr PC*".

N. The Cr PC 1973 deals with subjects coming under serial No.2 of the Concurrent List (Article 246). The Central as well as

the State governments has the power to amend the provisions in the CrPC. Article 366 (10) defines Existing Law. Article 372 defines Law in force. Section 3 (29) of General Clauses Act, 1817 defines Indian Law. Article 13 of the Constitution defines 'Law', which includes Government Order which is species of delegated legislation thus is to be characterized state law and in the instant case, the impugned provisions in the 1978 Government Order is hence repugnant to central legislations. Therefore, since the Government of Kerala itself contends that it has a Directorate of Prosecution, then only the Prosecuting officers forming a part of the 'regular cadre' can be promoted to the posts of Public Prosecutors and Additional Public Prosecutors by virtue of sub-section (6) of 24 and 25A, thus rendering the sub-sections (4) and (5) redundant in the context of State of Kerala and the action of the state government to continue appointing prosecuting officers under sub-section (4) and (5) is unconstitutional to this effect and violative of Article 14 of the Indian Constitution.

O. Because in order to understand the legislative intention in Section 25A of Cr PC which provides for the establishment of the Directorate of Prosecution, the word "may" as contained in the said Section points towards the discretionary power of the State in enforcing a particular legislation in the concerned state. In this context it is essential to peruse the judgment of this Hon'ble Court in the case of *K. Anbazhagan v. State of Karnataka*, [(2015) 6 SCC 158], wherein it was held that the state government is under an obligation to

establish a Directorate of Prosecution as envisaged in 25A of CrPC and the judgment reads as follows:

"28. The aforesaid provisions have to be appreciated in a schematic context. All the provisions reproduced herein are to be read and understood as one singular scheme. They cannot be read bereft of their text and context. If they are read as parts of different schemes, there is bound to be anomaly. Such an interpretation is to be avoided, and the careful reading of the Criminal Procedure Code, in reality, avoids the same. The class or status of the Public Prosecutor is controlled by Sections 24 and 25-A CrPC ... In this context Section 25-A of the Code renders immense assistance. The State Government is under an obligation to establish a Directorate of Prosecution. Section 25-A clearly stipulates that Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor who are appointed by the State Government under sub-section (1) or under sub-section (8) of Section 24 to conduct cases in the High Court, shall be subordinate to the Director of Prosecution. Sub-section (6) postulates that the three categories named therein appointed by the State Government to conduct cases in the district courts shall be subordinate to the Deputy Director of Prosecution. Thus, the scheme makes a perceptible demarcation and compartmentalisation for the

Public Prosecutor in the High Court and the district courts."

It is also pertinent to mention here that this Hon'ble Court in the case of *Sarla Goel v. Kishan Chand*, [(2009) 7 SCC 658], took the view that where the word 'may' shall be read as 'shall' would depend upon the intention of the legislature and it is not to be taken that once the word 'may' is used, it *per se* would be directory. In other words, it is not merely the use of a particular expression that would render a provision directory or mandatory. It would have to be interpreted in light of the settled principles, and while ensuring that intent of the Rule is not frustrated. Therefore, it is submitted here that State of Kerala has an obligation to revamp the already existing Directorate of Prosecution to the one as is laid down in Section 25A of Cr PC.

P. Rules 4, 8, 14, 15, 53 and 69 of Kerala Government Law Officers Appointment and Conditions of Service and Conduct of Cases Rules, 1978 are against Article 309 of the Constitution. Article 309 of the Constitution deals only with civil posts which are permanent in nature. On the basis of Article 309 of Constitution, Kerala Public Service Act, 1968 was enacted. Thereafter, under Section 2 (1) of the Kerala Public Service Act, 1968, the Kerala Government Law Officers Appointment and Conditions of Service and Conduct of Cases Rules, 1978 was enacted for the purpose of Ad-Hoc appointment of Government Law Officers. The said 1978 Rules was amended in the year 2002. It is submitted here that such Ad-hoc appointments made under the 1978 and

2002 Rules are against the purport of Article 309. Further, it is submitted that in the case of *Omanakuttan Nair vs. State of Kerala*, [(2002) SCC OnLine Ker 124], the Hon'ble High Court of Kerala held that:

"17. In the result, we are of the view that the 1978 Rules and 2002 Rules, in so far as they deviate from the procedure prescribed for appointment of Public Prosecutors under Section 24 of CrPC as interpreted by the Hon'ble Supreme Court in Harpal Singh Chauhan vs. State of U.P., [(1993) 2 SCC 552] are bad. To that extent, therefore, they are declared to be invalid and unenforceable."

The above judgment through several SLPs when challenged in this Hon'ble Court in *State of Kerala vs. Omanakuttan Nair*, [C.A.No.s 6931-6935/ 2003], the same were dismissed. Despite that, the appointment of Public Prosecutors are made in Kerala under the 1978 & 2002 Rules which is totally unconstitutional.

Q. Because when government action runs counter to good faith, not supported by reasons and law, it is described as mala fide. In the instant case, the Special Rules of 2018 passed by the government of Kerala is mala fide as it deliberately excluded Public Prosecutors and Additional Public Prosecutors from the posts which are to be filled by promotions from APPs as per Section 25A of Cr PC.

R. Because the 'United Nations Convention against Corruption' to which India is a signatory and party to and as such bound

to abide by the provisions contained therein. Article 11 of the said Convention provides detailed information on the implementation of prosecutorial integrity. Article 11 reads as under:

“Article 11. Measures relating to the judiciary and prosecution services.

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.”

S. Because in order to bring about a uniformity in pay and service conditions amongst public prosecutors who are appointed from the Magistrate Court to the Hon’ble High Court performing similar nature of work as per Cr PC. As there is huge variation in the payment scale from state to state, it is apparently a violation of Article 14 of the Constitution.

- T. Because in order to enhance the efficiency of the prosecution machinery, to keep pace with the dynamic laws, precedents and procedures of the criminal justice system, it is imperative to establish a Prosecution Academy on a national level and also in at state level as well. The said Prosecution Academy at state level have to be headed by the Director of Prosecution from the regular cadre.
- U. Because the service conditions under which the prosecuting officers of the APP Grade perform their enormous duties are appalling in nature due to lack of transportation, basic necessities like washrooms, security which in turn endangers their lives and does not meet basic workplace requirements.
- V. The Petitioner herein states that he has no other alternative, equally efficacious remedy except by means of the present petition.
- W. The Petitioner herein submits that this Hon'ble Court has the requisite jurisdiction to entertain the present Writ Petition and adjudicate upon the issues arising herein.
- X. The Petitioner herein has not filed any other Writ Petition before this Hon'ble Court or any other Court dealing with the subject matter of this petition.
- Y. Any other ground that may be raised with the permission of this Hon'ble Court.

22. **PRAYER**

It is therefore most respectfully prayed that this Hon'ble Court may be pleased:

- a) To issue a Writ of Mandamus or any other suitable writ directing the State of Kerala to include the posts of

- Deputy Director of Prosecution, Public Prosecutors (PP) and Additional Public Prosecutors (Addl.PP) in the pre-existing cadre of prosecuting officers to effectuate the legislative intent of Section 25A read with Section 24 CrPC, 1973 and to modify 2018 Special Rules accordingly;
- b) To issue an appropriate Writ declaring Section 24 (4), 24 (5) and the Proviso of Section 24 (6) of Cr PC as arbitrary and redundant in the context of State of Kerala;
 - c) To issue an appropriate Writ declaring Rules 4, 8, 14, 15, 53 and 69 of Kerala Government Law Officers Appointment and Conditions of Service and Conduct of Cases Rules, 1978 as unconstitutional as they are repugnant under Article 254 of the Constitution to the letter and spirit of Section 25A of Cr PC;
 - d) To pass an order setting up a National Commission headed by a retired Judge of the Hon'ble Supreme Court to look into the functioning, pay and service conditions of Prosecuting Officers and other aspects of the Directorate of Prosecutions across the country and recommend curative measures;
 - e) To pass an order to establish National and Regional/ State level Prosecution Academy for training of the prosecuting officers so as to improve the quality of work of prosecution officers in the country with a Director from the regular cadre;
 - f) To pass such other Order (s) in favor of the Petitioners herein, as this Hon'ble Court may deem fit and proper in the interest of Justice.

AND FOR THIS ACT OF KINDNESS PETITIONERS, AS IN DUTY
BOUND, SHALL EVER PRAY.

DRAWN & FILED BY

SUVIDUTT M.S.

ADVOCATE FOR THE PETITIONERS

Drawn on: 01.11.2019

Filed on: 04.11.2019

New Delhi

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. OF 2019

IN THE MATTER OF: -

RAMEEZ JABBAR & ORS. ... PETITIONERS

VERSUS

UNION OF INDIA & ORS. ... RESPONDENTS

AFFIDAVIT

I, Rameez Jabbar, aged 35 years, S/o P.S. Abdul Jabbar, residing at Chittadiyil House, Kooraly P.O., Kottayam District, Kerala, presently at New Delhi, do hereby on solemn affirmation state as under:-

1. I am the Petitioner No.1 in the abovementioned matter and am well acquainted with facts and circumstances of the case and as such competent to swear this affidavit on behalf of me and other Petitioners as well;
2. That the facts stated in the accompanying Writ Petition from Page No. 1 to 55, are true and correct to my knowledge and the statements in List of dates from Page No. B to F and facts furnished along with the W.P. and I.A.s are true to my knowledge and belief;
3. That the Annexures from P-1 to P-11 filed in the W.P. are true copies of their respective originals.

DEPONENT

VERIFICATION

Verified at New Delhi on this 2nd day of November, 2019 that the contents of the paragraphs of my above affidavit are true and correct to my knowledge and belief, no part of it is false nor has any material fact been concealed therefrom.

DEPONENT

APPENDIX

CODE OF CRIMINAL PROCEDURE, 1973

SECTION 24

24. Public Prosecutors.

(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

(2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district or local area.

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district: Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the

district unless his name appears in the panel of names prepared by the District Magistrate under sub- section (4).

(6) Notwithstanding anything contained in sub- section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre: Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub- section (4).

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub- section (1) or sub- section (2) or sub- section (3) or sub- section (6), only if he has been in practice as an advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.

(9) For the purposes of sub- section (7) and sub- section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name

called, shall be deemed to be the period during which such person has been in practice as an advocate.]

SECTION 25

25. Assistant Public Prosecutors.

(1) The State Government shall appoint in every district one or more Assistant public Prosecutors for conducting prosecutions in the Courts of Magistrates.

1A. The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.

(2) Save as otherwise provided in Sub-Section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor.

(3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case: Provided that a police officer shall not be so appointed—

1. if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or
2. if he is below the rank of Inspector.

SECTION 25A

25A. Directorate of Prosecution.

(1) The State Government may establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit.

(2) A person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, only if he has been in practice as an advocate for not less than ten years and such appointment shall be made with the concurrence of the Chief Justice of the High Court.

(3) The Head of the Directorate of Prosecution shall be the Director of Prosecution, who shall function under the administrative control of the Head of the Home Department in the State.

(4) Every Deputy Director of Prosecution shall be subordinate to the Director of Prosecution.

(5) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under Sub-Section (1), or as the case may be, Sub-Section (8), of section 24 to conduct cases in the High Court shall be subordinate to the Director of Prosecution.

(6) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under Sub-Section (3), or as the case may be, Sub-Section (8), of section 24 to conduct cases in District Courts and every Assistant Public Prosecutor appointed under Sub-Section (1) of section 25 shall be subordinate to the Deputy Director of Prosecution.

(7) The powers and functions of the Director of Prosecution and the Deputy Directors of Prosecution and the areas for which each of the Deputy Directors of Prosecution have been appointed shall be such as the State Government may, by notification, specify.

(8) The provisions of this section shall not apply to the Advocate General for the State while performing the functions of a Public Prosecutor.