

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO ... OF 2020
(PIL UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)
IN THE MATTER OF:

...Petitioner

Verses

- 1** Union of India
Through the Secretary
Ministry of Law & Justice,
Shastri Bhawan, New Delhi-110001
- 2** Election Commission of India
Through the Chief Election Commissioner,
Niravachan Sadan, New Delhi-110001

...Respondents

PIL TO PUBLISH CRIMINAL ANTECEDENT THROUGH LEADING NEWSPAPERS AND
NEWS CHANNELS AND RESTRICT RECOGNIZED POLITICAL PARTIES TO SETUP
CANDIDATES, AGAINST WHOM CHARGES HAVE BEEN FRAMED IN SERIOUS OFFENCES

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

- 1.** Petitioner is filing this PIL under Article 32 seeking writ, order or direction to ECI to publish criminal antecedents of candidates and restrict political parties to setup candidates against whom charges have been framed in serious cases.
- 2.** Petitioner hasn't filed any petition except WP(C)1319/2018 (**Annex P-1**,Pg.40) and WP(C) 1011/2019 (**Annex-3**, Pg.44) seeking similar directions.
- 3.**

4. Petitioner submitted Representation to the ECI on 22.01.2019 to restrict the recognized political parties to setup candidates, against whom charges have been framed in serious offences. Representation is **Annex P-2**, (Pg. 41-43)
5. The Facts constituting cause of action accrued on 10.01.2020 and subsequent days, when ECI declined to restrict recognized political parties to setup candidates with serious criminal cases. ECI Reply is **Annex P-4**. (Pg. 45-47)
6. The injury caused to public is large because even recognized political parties give ticket to dreaded criminals. Therefore, voters find it difficult to cast their vote freely and fairly, though, it is a fundamental right under Article 19.
7. Petitioner has no personal interest, individual gain, private motive or oblique reasons in filing this petition. It is not guided for gain of any other individual person, institution or body. It is only for de-criminalization of politics.
8. There is no civil, criminal or revenue litigation, involving petitioner, which has/could have legal nexus, with the issues involved in this petition.
9. This Hon'ble Court has issued many directions to the ECI to exercise its plenary powers under Article 324 with respect to "*superintendence, direction and control*" of the conduct of elections and redress violations of the rights of voters guaranteed under Article 19 and protect purity of electoral process.
10. There is many reasons, why this Hon'ble Court may take steps to control the problem of criminalization of politics. A host of reports including the ECI's *Proposed Electoral Reforms* (2004), Law Commission's 170th and 244th Reports (1999 and 2014), the NCRWC's Proposals (2002), the Second Administrative Reforms Commission (2009) and the Vohra Committee (1993) have drawn attention to the severity of the problem and have suggested electoral reforms to stem the tide of criminals flowing into our polity.

11. Taking note of the above reports, this Hon'ble Court has in a series of decisions over the last two decades, had taken steps to address the problem including by: (i) recommending the setting up a high level committee to consider Vohra Committee Report in *Dinesh Trivedi v. Union of India*, (1994) 4 SCC 306; (ii) directing the Election Commission of India to ensure that candidates file affidavits along with their nomination papers setting out the criminal cases pending against them in *Union of India v. Assn. for Democratic Reforms*, (2002) 5 SCC 294; (iii) holding that the disqualification under Section 8 of RPA would apply even where sentences run consecutively beyond two years in *K.Prabhakaran v. P.Jayarajan*, (2005) 1 SCC 754; (iv) striking down Section 8(4) of the RP Act which permitted sitting MP's and MLA's to continue in office if they have filed an appeal within a period of three months after conviction in *Lily Thomas v. Union of India*, (2013) 7 SCC 653; and (iv) recently, in WP(C)699/2016 directing the States to set up Special Courts to complete the trial of cases against sitting MP's and MLA's within one year.

12. Especially in the context of ethnic divisions such as caste and religious cleavages, criminals are able to get votes based on their caste or religious affiliation, their money power, their perceived willingness to "bend," if not break, the law to favour their constituents and also because of coercion and intimidation including of their rivals. Criminals, in turn, have no interest in standing as independents and stand as candidates of political parties. Criminals want to stand as candidates of political parties because parties are still connected to distinct leaders, families, ethnic groups and social bases. Aspiring candidates can tap into these networks to expand their appeal beyond their own narrow support bases. Second, in a country with high rates

of poverty and illiteracy, party symbols hold great weight; they serve as an important visual cue through which millions of voters connect to politics. As such, the historical legacy of parties matter a great deal in Indian democracy.

13. The consequences of permitting criminals to contest and become legislators are extremely serious for our democracy and secularism: (i) during electoral process itself, not only do they deploy “enormous amounts of illegal money” to interfere with the outcome but also intimidate voters and rival candidates. (ii) Thereafter, in our weak rule-of-law context, once they gain entry to the governance as legislators, they interfere with, and influence, the functioning of government machinery in favour of themselves and members of their organization by corrupting government officers and, where that does not work, by using their contacts with Ministers to make threats of transfer and initiation of disciplinary proceedings. Some even become Ministers, which makes the situation worse. (iii) Legislators with criminal antecedents also attempt to subvert the administration of justice and attempt by hook or crook to prevent cases against themselves from being concluded and, where possible, to obtain acquittals. Long delays in disposal of cases against sitting MP’s and MLA’s and low conviction rates is testimony to their influence.

14. The empirical evidence supports the view that the current legislative framework permits criminals to become legislator. It (a) interferes with the purity and integrity of the electoral process; (b) violates the right to choose freely the candidate of the voter’s choice and, therefore, the freedom of expression of the voter under Article 19(1)(a); (c) amounts to a subversion of democracy, which is part of the basic structure; and, finally, (d) is antithetical to the rule of law which is at core of Article 14 of the Constitution of India.

15. Criminalization of politics in India has only grown. National Election Watch and Association for Democratic Reforms (ADR) has analyzed the self-sworn affidavits of 539 out of 542 MPs of the present Lok Sabha. Elections in Vellore constituency had been cancelled and 3 MPs were not analyzed due to unavailability of their clear and complete affidavits on the ECI website at the time of making the report. Out of 539 MPs, 233 (43%) MPs have declared criminal cases against themselves. Out of 542 winners analyzed after 2014 General Election, 185 (34%) had declared criminal cases against themselves and out of 543 winners analyzed after 2009 Lok Sabha election, 162(30%) had declared criminal cases against themselves. There is an increase of 44% in the number of MPs with declared criminal cases since 2009.

16. Presently 159(29%) MPs have declared serious criminal cases including cases related to rape, murder, attempt to murder, kidnapping, crimes against women etc. Out of 542 winners analyzed after 2014 Lok Sabha elections, 112 (21%) had declared serious criminal cases against themselves. Out of 543 winners analyzed after 2009 Lok Sabha election, 76 (14%) had declared serious criminal cases against themselves. So, there is an increase of 109 % in the number of winners with declared serious criminal cases since 2009.

17. Mr. Kuriakose from Idukki Constituency has declared 204 criminal cases including cases related to culpable homicide, house trespass, robbery, criminal intimidation etc. Total 30 MPs of the present Loksabha, have declared cases of attempt to murder (Section 307), 19 MPs have declared cases related to crimes against women and out of these 19 MPs, 3 MPs have declared cases related to rape (IPC Section-376). Total 29 MPs have declared cases related to Hate Speech.

18. ADR Report indicates that the chances of winning for a candidate with declared criminal cases in the Lok Sabha 2019 is 15.5 % whereas for a candidate with clean background, it is 4.7 %. Total 116 (39%) out of 301 winners from BJP, 29 (57%) out of 51 winners from INC, 10 (43%) out of 23 winners from DMK, 9 (41%) out of 22 winners fielded by AITC and 13 (81%) out of 16 winners from JD(U) have declared criminal cases against themselves in their affidavits. Total 87 (29%) out of 301 winners from BJP, 19 (37%) out of 51 winners from INC, 6 (26%) out of 23 winners from DMK, 4 (18%) out of 22 winners fielded by AITC and 8 (50%) out of 16 winners from JD(U) have declared serious criminal cases against themselves in their affidavits.

19. Out of the 539 MPs analyzed, 475 (88%) are crorepatis. Out of 542 winners analyzed during Lok Sabha 2014 election, 443 (82%) winners were crorepatis. Out of 543 winners analyzed during Lok Sabha 2009 election, 315 (58%) winners were crorepatis. Total 265 (88%) out of 301 MPs of BJP, 43 (84%) out of 51 MPs of INC, 22 (96%) out of 23 MPs of DMK, 20 (91%) out of 22 MPs of AITC, 19 (86%) out of 22 MPs of YSRCP and 18 (100%) MPs of SS have declared assets worth more than Rs. 1 crore. The chance of winning for a crorepati candidate in the Lok Sabha 2019 is 21%, whereas chance of winning for a candidate with assets less than Rs. 1 crore is 1%. A total of 4 out of the 539 winners analyzed have not declared their PAN details. The average assets of 225 re-elected MPs fielded by various parties including independents in 2014 was Rs 17.07 Crores. The average asset of these 225 re-elected MPs in 2019 is Rs 21.94 Crores. The average asset growth for these 225 re-elected MPs, between the Lok Sabha elections of 2014 and 2019 is Rs 4.87 Crores. Average percentage growth in assets for the 225 re-elected MPs is 29%.

20. Presently, 128 (24%) MPs have declared their educational qualification to be between 5th pass and 12th pass, while 392 (73%) MPs have declared having an educational qualification of graduate and above. One MP has declared himself to be just literate and One MP is illiterate. 194 (36%) MPs have declared their age to be between 25 and 50 years while 343 (64%) MPs have declared their age to be between 51 and 80 years. Two MPs have declared they are more than 80 years old. Presently, there are 77 (14%) women MPs. Out of 542 winners analyzed in the Lok Sabha elections 2014, 62 (11%) winners were women. Out of 543 winners analyzed in the Lok Sabha elections 2009, 59 (11%) winners were women.

21. What is alarming is that the percentage of candidates with criminal antecedents and their chances of winning have actually increased steadily over the years. In fact, empirical analysis shows that, where the charges against a candidate are serious, it slightly increases the statistical probability of his winning the election. Criminals who earlier used to help politicians win elections in the hope of getting favours appear to have cut out the “middle man” in favour of entering politics themselves. Political parties in turn have become steadily more reliant on criminals as candidates not only because they “self-finance” their own elections in an era where election contests have become phenomenally expensive but also because candidates with criminal antecedents are more likely to win than “clean” candidates. Political parties are competing with each other in a race to the bottom because they cannot afford to leave their competitors free to recruit criminals. Despite the above data, neither Government of India nor ECI have taken apposite steps to tackle the menace of criminalization. Hence this Hon’ble Court is the only hope now.

22. Petitioner is filing this petition, seeking a writ/order/direction to the Election Commission to insert an additional condition- *“political party shall not setup candidate with criminal antecedents”* in Paragraph 6A *“Conditions for recognition as a State Party”*, Paragraph 6B *“Conditions for recognition as a National Party”* and Paragraph 6C *“Conditions for continued recognition as a National or State Party”* of the Election Symbols Order, 1968. The ECI should also introduce a definition in paragraph 2 of the Order as thus: *“candidate with criminal antecedents means a person against whom charges have been framed at least one year before the date of scrutiny of nominations for an offence with a maximum punishment of five years or more”*.

23. There would be no need even for enquiry by the Election Commission because candidates are required by Section 33A of the RPA,1951, read with Rule 4A of the Conduct of Election Rules, 1961 and Form 26, to file along with their nomination papers an affidavit containing detailed information relating to the framing of charges against them for offences punishable with imprisonment of 2 years or more. It includes the Sections under which they are charged, the Court that did so and the date on which charges were framed. It is necessary to state that the proposed directions does not constitute a disqualification in violation of the Articles 102 or 191 because the affected candidates can always stand for election as an Independent.

24. Any such direction by this Hon’ble Court to the ECI also would not breach the principle of separation of powers because there is a legislative vacuum insofar as the Parliament has not enacted any legislation in the field covered by the Election Symbols Order, 1968, which has been issued by the ECI in exercise of its plenary powers under Article 324 of the Constitution.

- 25.** Powers of the ECI under Article 324 operates in areas left unoccupied by legislation and is plenary in character. [*Kanhiya Lal Omar v. R.K. Trivedi, (1985) 4 SCC 628, Para 16*] The power of “superintendence, direction and control” of the conduct of elections, vested in the Election Commission, is executive in character. [*A.C. Jose v. Sivan Pillai, (1984) 2 SCC 656, p. 22*] The Symbols Order is traceable to the power of the Election Commission under Article 324. [*Kanhiya Lal Omar, para 16*] The power to amend, vary or rescind an order which is administrative in character under Section 21 of the General Clauses Act, specifically referred to in paragraph 2(2) of the Symbols Order, would permit the Election Commission to withdraw recognition of a political party. [*Janata Dal v. Election Commission, (1996) 1 SCC 235, para 6*]
- 26.** Accordingly, it is clear that the proposed direction to the ECI to amend the Symbols Order would operate in a field where there is a vacuum. In fact, proposed direction is vital because the functions performed by legislators are vital to democracy and there is no reason why they should be held to lower standards than Judges or IAS officers. Candidates for judgeship or for the IAS would not be considered at all if there were criminal cases pending against them, let alone if charges had been framed in respect of serious offences.
- 27.** Of course, the refusal to consider candidates for judgeship or the IAS may be on the touchstone of suitability and not eligibility but the proposed direction is not an eligibility condition for legislators but merely imposes a condition on parties. Moreover, in the context of “institutional integrity” of office of the CVC, this Hon’ble Court has held that the pendency of criminal cases may be considered a bar on appointment to important offices such as the CVC. [*Centre for PIL v. Union of India, (2011) 4 SCC 1*]

28. The effect of proposed direction would only be to impose an additional condition on a political party for obtaining and retaining the status of a “*recognized national party*” or “*state party*”, which would entitle it to a reserved symbol under the Symbols Order. The statutory right to register a political party would not be affected in any way. Moreover, under Section 13A of the Income Tax Act, political parties are exempt from paying income tax on contributions received by them. Therefore, preventing them from fielding candidates with criminal antecedents in election is a reasonable restriction, keeping in mind the concessions and privileges enjoyed by them.

29. From the standpoint of the candidate against whom charges have been framed for a serious offence, the settled legal position is that he has only a statutory right to contest elections. [*Krishnamoorthy, paras 59-60*] Further, even assuming that he is innocent, it would have indirect impact of possibly preventing him *for limited period of time until his trial is over* from obtaining a ticket from a recognized political party but such a measure would be in the larger public interest of ensuring that our polity remains free of criminal.

30. The proposed direction cannot result in a violation of Article 19(1)(c) to form association. A candidate with criminal antecedents can become/continue to be a member of the party. The condition that political party not give him a ticket as a condition for recognition as a State/National party to guarantee continued usage of reserved symbol does not impinge on freedom of association of candidate/party. Further, even assuming that it could be characterized as falling within the scope of Article 19(1)(c), proposed direction is a reasonable restriction that is narrowly tailored and can be justified on the ground of public order and morality in Article 19(4) of the Constitution.

31. The importance of insights from the social sciences in constitutional decision-making should not be minimized. Without innovations such as the Brandeis brief, that relied as much on data and analysis from the social sciences as legal arguments, many path-breaking decisions by the U.S. Supreme Court that led to a fundamental reorientation of constitutional law in the United States, would not have been possible. The landmark decision in *Brown v. Board of Education*, 347 U.S. 483 (1954) on affirmative action was based on similar data and analysis from the social sciences.

32. When nearly half (43%) of MP's in the Lok Sabha cutting across all political parties have criminal cases pending against them, it is not surprising that a Parliamentary Standing Committee in 2007 itself simply rejected the recommendation of the Law Commission in its 170th Report and the Election Commission's "*Proposal for Electoral Reforms*" to amend the RPA to impose an electoral disqualification on persons against whom charges have been framed for serious offences punishable by sentences of 5 years or more.

33. In this background, the decisions of this Hon'ble Court also support the compelling necessity for this Hon'ble Court to take immediate steps to deter candidates who have charges framed against them from contesting elections: **First:** In the context of upholding the denial of right to vote to those confined in jail, this Hon'ble Court in *Anukul Chandra Pradhan v. Union of India*, [(1997) 6 SCC 1], held "*...criminalization of politics is the bane of society and negation of democracy. It is subversive of free and fair elections, which is a basic feature of the Constitution. Thus, a provision made in the election law to promote the object of free and fair elections and facilitate maintenance of law and order, which are the essence of democracy, must, therefore, be so viewed*".

(244th Report of Law Commission records the eminent jurist Fali Nariman “articulated the need for enlarging the whole concept of disqualification and emphasized that the law needs to go ahead in order to promote purity and integrity of democratic process.”) **Second:** Criminals should not be allowed to become lawmakers. In *Association for Democratic Reforms*, this Court held: “ ... voters may not elect law-breakers as law-makers and some flowers of democracy may blossom.” [Also see *Prabhakaran*, para. 54)] **Third:** Candidates with criminal antecedents interfere with the purity of the electoral process through coercion and intimidation of voters and rival candidates, which is a violation of freedom of expression of voter under Article 19(1)(a). This Hon’ble Court in *Prabhakaran*, gave judicial recognition to the fact that “...persons with criminal background do pollute the process of election as they do not have many a hold barred and have no reservation from indulging in criminality to win success at an election.” In *PUCL [(2013) 10 SCC 1]*, Court recognized “...casting of vote is a facet of right of expression of an individual and the said right is provided under Article 19(1).”. **Fourth:** Permitting criminals to become legislator results in the breakdown of rule of law both in terms of government machinery as well as in terms of administration of justice. The Court in *Manoj Narula* held: “A democratic polity as understood in its quintessential purity, is conceptually abhorrent to corruption and especially corruption at high places and repulsive to the idea of criminalization of politics as it corrodes the legitimacy of the collective ethos, frustrates the hopes and aspirations of the citizens and has potentiality to obstruct, if not derail, the rule of law...”. Therefore, the Hon’ble Court must take steps to ban criminals from contesting and uphold the rule of law inherent in Article 14.

- 34.** In this background, this Hon'ble Court may direct the ECI to insert in Paragraph 6A "*Conditions for recognition as a State Party*" and Paragraph 6B "*Conditions for recognition as a National Party*" of the Election Symbols (Reservation and Allotment) Order, 1968, the additional condition as thus— "*No candidate with criminal antecedents shall be set up by the Political Party*". In consonance with the Law Commission recommendations (244th Report), a definition should also be introduced in paragraph 2 of the Order as thus: "*candidate with criminal antecedents*" means a person against whom charges have been framed at least one year before the date of scrutiny of nominations for an offence with a maximum punishment of five years or more.
- 35.** If the proposed direction is given, there would be no need even for an enquiry by the ECI because candidates are required by Section 33A of the RPA read with Rule 4A of the Conduct of Election Rules and Form 26 to file along with their nomination papers an affidavit containing detailed information relating to the framing of charges against them for offences punishable with imprisonment of more than 2 years. This would include the Sections under which they are charged, the court that did so and the date on which charges were framed. There are precedents for this Hon'ble Court to give directions to the ECI to preserve purity of elections and protect fundamental rights.
- 36.** In *Association for Democratic Reforms*, this Hon'ble Court directed ECI to call for information on affidavit from each candidate, *inter alia*, listing the offences with which he is charged, assets of himself and his family by issuing necessary orders in exercise of power under Article 324. The Court held that: "**48.** Finally, in our view this Court would have ample power to direct the Commission to fill the void, in the absence of suitable legislation covering the

field and the voters are required to be well informed and educated about contesting candidates so that they can elect a proper candidate by their own assessment. It is the duty of the executive to fill the vacuum by executive orders because its field is coterminous with that of the legislature, and where there is inaction by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations to provide a solution till such time the legislature acts to perform its role by enacting proper legislation to cover the field. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. Therefore, if the candidate is directed to declare his/her spouse's and dependants' assets –immovable, movable and valuable articles – it would have its own effect....”

- 37.** In *S. Subramaniam Balaji v. State of T.N.*, (2013) 9 SCC 659, this Hon'ble Court directed the ECI to frame guidelines governing the contents of election manifesto to be included in the MCC. The Hon'ble Court held that:
- “87. Therefore, considering that there is no enactment that directly governs the contents of the election manifesto, we hereby direct the Election Commission to frame guidelines for the same in consultation with all the recognised political parties as when it had acted while framing guidelines for general conduct of the candidates, meetings, processions, polling day, party in power, etc. We are mindful of the fact that generally political parties release their election manifesto before the announcement of election date, in that scenario, strictly speaking, the Election Commission will not have the authority to regulate any act which is done before the announcement of the date. Nevertheless, an exception can be made in this regard as the purpose of the election manifesto is directly associated with the election process.”*

38. In *PUCL*, (2013) 10 SCC 1, this Hon'ble Court directed the ECI to give voters the option to choose "none of the above" in every election and held: "53....Thus in a vibrant democracy, the voter must be given an opportunity to choose none of the above (NOTA) button, which will indeed compel the political parties to nominate a sound candidate. This situation palpably tells us the dire need of negative voting. 63.... In view of our conclusion, we direct the Election Commission to provide necessary provision in the ballot papers/EVMs and another button called "None of the Above" (NOTA) may be provided in EVMs so that the voters, who come to the polling booth and decide not to vote for any of the candidates in the fray, are able to exercise their right not to vote while maintaining their right of secrecy. Inasmuch as the Election Commission itself is in favour of the provision for NOTA in EVMs, we direct the Election Commission to implement the same either in a phased manner or at a time with the assistance of the Government of India...."

39. The proposed direction does not constitute a disqualification in violation of Articles 102(1)(e) or 191(1)(e) of the Constitution because the affected candidate can always stand for election as an independent. Any such direction by this Hon'ble Court also would not breach the principle of the separation of powers because there is a legislative vacuum insofar as Parliament has not enacted any legislation in the field covered by the Symbols Order, which has been issued by the Election Commission in exercise solely of its powers under Article 324. This follows because: (i) The power of the Election Commission under Article 324 of the Constitution operates in areas left unoccupied by legislation and is plenary in character. [*Kanhiya Lal Omar v. R.K. Trivedi*, (1985) 4 SCC 628 (para. 16).] The power of "superintendence,

direction and control” of the conduct of elections vested in the Election Commission is executive in character. [*A.C. Jose v. Sivan Pillai*, (1984) 2 SCC 656 (para. 22).] (ii) The Symbols Order is traceable to the power of the Election Commission under Article 324. [*Kanhiya Lal Omar* (para. 16).] (iii) The power to amend, vary or rescind an order which is administrative in character under Section 21 of the General Clauses Act, specifically referred to in paragraph 2(2) of the Symbols Order, would permit the Election Commission to withdraw recognition to a political party. [*Janata Dal v. Election Commission*, (1996) 1 SCC 235 (para. 6).] Accordingly, it is clear that the proposed direction to the ECI to amend the Symbols Order would operate in a field where there is a legislative vacuum. The proposed direction is vital because the functions performed by legislators are vital to democracy and there is no reason why they should be held to lower standards than Judges or Indian Administrative Service officers. Candidates for judgeship of the superior courts or for the Indian Administrative Service certainly would not be considered at all if there were criminal cases pending against them, let alone if charges had been framed in respect of serious offences.

40. Of course, the refusal to consider candidates for judgeship or the I.A.S. may be on the touchstone of suitability and not eligibility. It is worth noting, however, that the proposed direction is not an eligibility condition for legislators but rather merely imposes a condition on political parties. Moreover, in the context of “institutional integrity” of office of the Chief Vigilance Commissioner (CVC), this Hon’ble Court has held that the pendency of criminal cases may be considered a bar on appointment to important offices such as the CVC. [*Centre for PIL v. Union of India*, (2011) 4 SCC 1.]

41. There are very few constitutional offices as important as that of Legislators. In *P.V. Narasimha Rao case [(1998) 4 SCC 626 at para 162]*, a this Hon'ble Court while holding that MPs and MLAs are "public servant" for purposes of the Prevention of Corruption Act, 1988 held: "*In a democratic form of government, it is the Member of Parliament or a State legislature who represents the people of his constituency in the highest law-making bodies at the Centre and the State respectively. Not only is he the representative of the people in the process of making the laws that will regulate their society, he is their representative in deciding how the funds of the Centre and the States shall be spent and in exercising control over the executive. It is difficult to conceive of a duty more public than this or of a duty in which the State, the public and the community at large would have greater interest.*"

42. The effect of proposed direction would only be to impose an additional condition on a political party for obtaining and retaining the status of a "recognized national party" or "state party", which would entitle it to a reserved symbol under the Symbols Order. The statutory right to register a political party under Section 29A, RPA, would not be affected in any way. Moreover, under Section 13A of the Income Tax Act, 1961, political parties are exempt from paying income tax on contributions received by them. Therefore, imposing condition during elections preventing them from fielding candidates with criminal antecedents in an election is reasonable keeping in mind the concessions and privileges enjoyed by them.

43. From the standpoint of the candidate against whom charges have been framed for a serious offence, the settled legal position is that he has only a statutory right to contest elections and nothing more. (*Krishnamoorthy, paras*

59-60) Further, even assuming that he is innocent, it would have the indirect impact of possibly preventing him *for a limited period of time until his trial is over* from obtaining a ticket from a recognized political party that values its reserved symbol. Such a measure would be in the larger public interest of ensuring that our polity remains free of criminal elements. The test for determining whether such a direction would violate the fundamental rights should be whether this Hon'ble Court would uphold a law imposing a disqualification of similar nature considering presumption of constitutionality keeping in mind the larger public interest referred to above.

44. The proposed direction cannot result in a violation of the fundamental right guaranteed under Article 19(1)(c) of the Constitution to form an association. A candidate with criminal antecedents can become or continue to be a member of the political party. The condition that the political party not give him a ticket as a condition for recognition as a State or National party to guarantee continued usage of the reserved symbol does not impinge on the freedom of association of either the candidate or the political party. Further, even assuming that it could be characterized as falling within the scope of Article 19(1)(c), the proposed direction arguably is a reasonable restriction that is narrowly tailored and can be justified on the ground of public order and morality in Article 19(4) of the Constitution.

45. Such a law would also pass the rational classification test under Article 14 because the class of candidates who have serious criminal charges framed against them is clearly distinct from the class that does not and the classification has a rational nexus with the larger objective of stopping the criminalization of the political system.

46. The objections may be that (a) it would violate the presumption of innocence and that the class of affected persons would include persons against whom false or frivolous cases have been filed; and (b) this Hon'ble Court cannot do indirectly what it may not do directly. The contention based on presumption of innocence is without merit. The presumption of innocence is defined as "*the fundamental principle that a person may not be convicted of a crime unless the government proves guilt beyond a reasonable doubt, without any burden placed on the accused to prove innocence.*" [BLACK'S LAW DICTIONARY, 10th Ed. (2014), p. 1378.] In fact, the proposed direction does not operate in the field of criminal law at all insofar as it only imposes an additional condition on a political party that it may not set up a candidate with criminal antecedents and failure to abide by the condition will only impact its ability to retain its reserved symbol. In *Prabhakaran* the Court held: "*...contesting an election is a statutory right and qualifications and disqualifications for holding the office can be statutorily prescribed. A provision for disqualification cannot be termed a penal provision and certainly cannot be equated with a penal provision contained in a criminal law...*".

47. Proposed direction does not impinge upon presumption of innocence. **First**, the proposed direction does not have effect of convicting the candidate or subjecting him to imprisonment. **Second**, it does not impose a serious disability on the candidate to the extent that he can always stand as an independent. The alleged deprivation of having to make do without party financing is not empirically well founded. As noted above, persons with criminal antecedents are chosen by political parties in large part because they can pump large amounts of illegal funds into their elections. **Third**, the

proposed direction would operate even against an innocent candidate only for a short period of time until his trial is over. This situation is analogous to a case where the conviction of a candidate is overturned on appeal. Even in the latter case, this Hon'ble Court in *Prabhakaran*, held that judgment reversing the conviction would not have the effect of wiping out disqualification on date of scrutiny of nominations while conviction was still subsisting. Moreover, even in the field of criminal law, presumption of innocence is not absolute. Many under trial person spent years, even decades sometimes, in jail, often beyond the sentence that they would suffer if convicted.

48. Further, by raising the threshold to the stage where charges have been framed before the restriction will operate, chances are considerably reduced of false cases being maliciously foisted on a candidate or that there is no substance at all in the case against him: **First**, the police have investigated the charges against the candidate and found sufficient evidence to prosecute the accused and have filed final report u/s 173. **Second**, the Court has applied its mind to the police report u/s 173, taken cognizance on the basis after applying its mind to the final report and the materials therein and issued process to accused. **Third**, the Court has framed charges u/s 228 after hearing parties and considering all the evidence and the plea of the accused for discharge u/s 227. The standard of proof for framing charges u/s 228 is “... *there is ground for presuming that the accused has committed an offence ...*”. Of course, by this, the presumption of innocence is not nullified to the extent that burden continues to be on the prosecution until the end of trial and pronouncement of verdict. But, by stage of framing of charges, at least, the judge should have satisfied himself that there is a *prima facie* case against the accused.

49. The additional protection envisaged by the Law Commission in the 244th Report is that charges should have been framed at least one year before the scrutiny of nominations. During this period, the candidate could also apply to the High Court under Section 482 of the Code or under the Article 226 for quashing of the charges against him. The contention may be that the proposed direction would amount to doing indirectly what cannot be done directly is also without merit. The proposed direction neither adds an eligibility condition in violation of Articles 84 or 173 nor imposes a disqualification in violation of the provisions of Article 102(1)(e) or 191(1)(e). It would only deter political parties from giving tickets to criminals.

50. This Hon'ble Court in catena of decisions held that right to contest is a statutory right. *Jawed v. State of Haryana* (2003) 8 SCC 369; *NP Ponnuswami v. Returning Officer* 1952 SCR 218; *Jamuna Prasad Mukhariya v. Lacchi Ram* AIR 1954 SC 686; *Jyoti Basu v. Debi Ghosal* (1982) 1 SCC 691; *Kuldip Nayyar v. UOI* (2006) 7 SCC 1; *Krishnamurthy v. UOI* (2010) 7 SCC 202; *PUCL v. UOI* (2013) 10 SCC 1; *Krishnamoorthy v. Sivakumar & others* (2015) 3 SCC 467.

51. This Hon'ble Court held that Constituent Assembly debates through light on the intention of the framers: *TMA Pai Foundation* (2002) 8 SCC 481; *S.R.Chaudhari v. State of Punjab* (2001) 7 SCC 126; *A.K. Roy v. Union of India* (1982) 1 SCC 271; *Indra Sawhney v. UOI* (1992) Supp (3) SCC 217.

52. Prayers of the instant petition is different from WP(C)536/2011. The question referred to the Constitution Bench was "... whether disqualification of membership can be laid down by the Court beyond Article 102(1)(a) to (d) and the law made by Parliament under Article 102(1)(e)"? Petitioner's PIL WP(C) 800/2015] was tagged with WP(C) 536/2011.

53. A person against whom charges have been framed in serious offences, cannot become a Doctor, Engineer, Primary Teacher, Professor, Army Officer, Police Officer, Judicial Officer, District Magistrate, District Judge, Metropolitan Magistrate and Judge of the High Court and Supreme Court. But, he can contest election, become MLA, MP and even Minister, which is arbitrary, irrational and offends Article 14 of the Constitution. This is a matter of serious concern to both- democracy and rule of law, because many Legislators are prima facie involved in serious criminal cases. There is absolutely no doubt that an MP receives a salary and allowances from the Government and the same having been sanctified by the *Constitution* and the law. Article 106 of the Constitution of India provides that “*the members of either House of the Parliament shall be entitled to receive salaries and allowances as may from time to time be determined by the Parliament by law.*” The Law in pursuance thereof is “*The Salary, Allowances and Pension of Members of Parliament Act, 1954* along with other Rules made such as: (i) Travelling and Daily Allowances Rules, 1957 (ii) Housing and Telephone Facilities Rules, 1956 (iii) Medical Facilities Rules, 1959 (iv) Allowances for Journeys Abroad Rules, 1960 (v) Constituency Allowance Rules, 1986 (vi) Advance for the Purchase of Conveyance Rules, 1986 (vii) Office Expense Allowance Rules, 1988. On a regular basis, each of these rules are revised upwards, at the behest of the MPs themselves, drawing on the consolidated fund of India. There are similar such provisions in each of the States for the MLAs as well. There can be no quarrel with this however, as they are considered reasonable expenditures for the upkeep and maintenance of an individual duly elected or nominated to serve the nation in the high house of Parliament.

54. Legislators are public servants who take a Constitutional Oath [Forms III and VII of Third Schedule to the Constitution] to serve the people and towards this end, they should not have to worry about their criminal cases. From the oath, it is clear that Legislators are supposed to work fulltime for public cause. It is impossible for a person to look after the nation on one hand religiously and involved in serious criminal cases. Article 85 of the Constitution of India empowers the President of India to summon the Parliament at any time. In addition, the President follows the advice of the Council of Ministers. Therefore, effectively, the central government decides when Parliament is going to meet to oversee its functioning. The legislators have to be there in the Parliament on every working day as and all times whenever being called. In past years, there has been a decline in the number of sitting days of Parliament and percentage of attendance of MPs. Besides the above facts, the Oath of Affirmation, which a Legislator makes under Third Schedule of the Constitution, obliges him to faithfully discharge the duty upon which he is entering. Needless to say that a chargesheeted MP and MLA cannot faithfully discharge his duty as a legislator if he spends time in Courts. This would amount to a violation of the Constitutional Oath to which the Apex Court ought not to be a mute spectator.

55. The Parliament has many committees, whose members are nominated by the Chairperson. The Committees scrutinize policies, programmes and bills and propose amendments to the same. There are other Committees such as Public Accounts Committee and Committee on Public Undertakings, which scrutinize reports submitted by CAG. These Committees are regulated by the Rules of Procedure in each House. Rules of procedure in each House of the

Parliament have provisions for 'Question Hour' and 'Zero Hour' during which written and oral questions can be asked by MPs. These include questions specific to State or Constituency, which he represents or of national interest. Therefore, MPs must attend the parliament every working day and dedicate themselves fulltime for welfare of the people.

56. The Constitution also has some provisions to make MP's accountable. Article 102 states that a MP can be disqualified if he holds an "Office of Profit" under the Government. He can also be disqualified if he quits his party or defects to another party after being elected as an MP under the 10th Schedule to the Constitution. Under Article 101, if an MP is absent from the meetings for more than 60 days without permission, his seat may be declared vacant. Under Article 104, if an MP sits or votes in Parliament without taking oath, he shall be liable to pay a fine of up to Rs 500 per day. But, there is no provision either in the Constitution or Rules of Procedure to measure the performance of MPs.

57. The Legislator plays important role in development of his State. He can fulfill his developmental role under the Member of Parliament Local Area Development Scheme (MPLADS). Under the scheme, every MP is allocated Rs 5 crore per year for initiating developmental works in his constituency. The scheme is administered by the Ministry of Statistics and Programme Implementation (MoSPI), which lays down guidelines on the works and activities permitted under MPLADS. The funds under MPLADS are channeled through the respective implementing agencies in the district.

58. Local bodies such as Panchayats and municipalities also have an important role in bringing development at the grassroots. Part IXA of the Constitution has a provision under which Legislator of State may provide for

representation of MP at intermediate and District level Panchayats (Panchayat Samiti and Zila Parishad). Similarly, under Part IXA of the Constitution, State legislator may provide for representation of MPs in municipal bodies within the constituency. MPs may be nominated to District Planning Committees (DPCs) which are responsible for preparing development plans for district.

59. MPs have to monitor centrally sponsored schemes in their respective constituencies. The National Rural Drinking Water Programme (NRDWP) mandates setting up of District Water and Sanitation Mission (DWSM) of which MPs and MLAs from the area would be members. The DWSM is among other things, responsible for formulation, management monitoring of projects on drinking water security, scrutiny and approval of the schemes submitted by Block Panchayat/Gram Panchayat and coordination of matters relating to water and sanitation between different departments. Similarly, under the National Rural Health Mission (NRHM), MPs are expected to be member of District Level Vigilance and Monitoring Committees (DVMC) to review the progress in implementation of the scheme. The MPs could also work towards catalyzing schemes of the State and Central government in their constituencies. This is possible by proactive engagement with public officials at the Central and State levels, greater interaction with constituents to understand their needs and concerns, and greater information – both qualitative and quantitative – about their constituencies. As elected representatives, they have legitimate political authority to engage directly with private/corporate sector for industrial development of constituencies. The Bigger Question is: Can a DM, SDM, SP, Dy. SP and SHO take action against the sitting MLA and MP, who has power to get him transferred.

60. MPLAD Scheme provides funds for implementing development works in their constituencies. Permissible items under the scheme are: (i) Purchase of tricycles, motorized/battery operated wheelchair, artificial limbs, etc. for physically challenged individuals. The items purchased will be given to the beneficiaries at a public function. Applications for such assistance shall be examined and approved by Committee under District Chief Medical Officer to ensure proper eligibility.(ii) Health Purchase of ambulances/hearse vans.

61. DM/CMO is responsible for ownership and management of ambulances.

Purchase of ambulances to transport injured animals in Wildlife sanctuaries and National Parks. The Wildlife Sanctuary /National Park concerned would be responsible for ownership and management of the ambulances. (iii) Purchase of computers, computer software along with training for government and government aided institutions. Mobile Library for educational institutions of Centre, State, U.T/Local bodies and furniture up to Rs 50 lakh for primary/secondary school. Purchase of book for schools/colleges/public library and vehicles including school buses/vans with a limit of Rs 22 lakh/year. The Twelve Nominated MPs can recommend works anywhere in the Country.

62. The primary function of a MLA is law-making. The Constitution states that MLA can exercise his powers on the State List and Concurrent List. The State List contains subjects of importance to the individual State alone, such as trade, commerce, development, irrigation and agriculture, while Concurrent List contains items of importance to both the Union and State Government such as succession, marriage, education, adoption, forests and so on. Although ideally only the MLAs can legislate on the State List, the Parliament

can legislate on subjects in the State List while Emergency has been imposed. On the matters that are included in the Concurrent List, the laws made by the Parliament are prioritized over the laws made by the Legislative Assembly if the President does not give his assent to laws made by the Legislative Assembly. Although MLAs are the highest law-making organs of the State and the profession is honorable and noble but there is no restriction on criminals to contest election like the ban on public servant and judges.

63. A Money Bill can only originate if MLAs give consent. The States having bicameral legislator, both the Legislative Council and Vidhan Parishad can pass the Bill or suggest changes within 14 days of its receipt. MLAs authorize grants and tax-raising proposals. MLAs control the activities and actions taken by the Council of Ministers and government is answerable to the Legislative Assembly for all its decisions. Vote of no-confidence can be passed only by the MLAs and if passed by majority, force government to resign. Question Hour, Cut Motion, Adjournment Motion can be exercised by MLA in order to restrict executive. MLAs comprise Electoral College that elects the President. MLAs elect Members of the Rajya Sabha and Speaker of Assembly. In States with bicameral legislator, one-third of the members of the Legislative Council are elected by the MLAs. Profession of Legislator is noble therefore, Legislators should comport higher standard of ethics and morality rather than lower one. Legislator take constitutional oath under schedule 3 a person with serious criminal cases should be barred from contesting, as similar to restrictions imposed upon the Doctors, Engineers, Professors, Army and Police Officers, District Magistrates, District Judges and Judges of the High Court and Supreme Court.

- 64.** The instant petition raises an vital issue pertaining to interpretation of the Constitution particularly Articles 105(3), 194(3) in the light of solemn oath provided under Third Schedule of the Constitution in context of fixing duties and enforcing accountability of the elected legislators representing the people of India namely MPs & MLAs. Matter is relating to Constitutional Morality, Institution Integrity & Affirmative Equality and needs detailed deliberation.
- 65.** That in order to discharge their solemn legislative and other connected duties and responsibilities effectively and faithfully, Legislators are constitutionally obliged to relegate their business, vocation, profession or other activities of income generation to back burner if that activity becomes an impediment or comes into direct conflict with discharge of constitutional duties faithfully. Law making is serious business and no amount of personal wealth creation, entertainment and/or championship and medal tally can be compared with importance of solemn act of lawmaker in the Parliament, which certainly affects every aspect relating to the idea of a nation. It is pertinent to mention that retaining such persons as members of Parliament for whom duties as Parliamentarian is subject to fulfilment of their personal business, vocation or profession, practically amounts to conferment of mere “Title” on them which has been abolished by Article 18 of the Constitution of India.
- 66.** Legislator is not only a Law Maker but also a superior public servant. When a person against whom charges have been framed even in normal cases, cannot become a Doctor, Engineer, DM, SP or Judge, then allowing such person to become MLA, MP and Minister, who is supposed to discharge larger public and constitutional duties faithfully, is arbitrary irrational unreasonable and violative of Article 14 of the Constitution of India.

67. On 25.9.2019, five Judges Bench of this Hon'ble Court in WP(C)536/2011 held:

“116. Keeping the aforesaid in view, we think it appropriate to issue following directions which are in accord with decisions of this Court: (i) Each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein. (ii) It shall state, in bold letters, with regard to the criminal cases pending against the candidate. (iii) If a candidate is contesting an election on the ticket of a particular party, he/she is required to inform the party about the criminal cases pending against him/her. (iv) The concerned political party shall be obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents. (v) The candidate as well as the concerned political party shall issue a declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. When we say wide publicity, we mean that the same shall be done at least thrice after filing of the nomination papers.

118.A time has come that the Parliament must make law to ensure that persons facing serious criminal cases do not enter into the political stream. It is one thing to take cover under the presumption of innocence of the accused but it is equally imperative that persons who enter public life and participate in law making should be above any kind of serious criminal allegation. It is true that false cases are foisted on prospective candidates, but the same can be addressed by the Parliament through appropriate legislation. The nation eagerly waits for such legislation, for the society has a legitimate expectation to be governed by proper constitutional governance. The voters cry for systematic sustenance of constitutionalism. The country feels agonized when money and muscle power become the supreme power. Substantial efforts have to be undertaken to cleanse the polluted stream of politics by prohibiting people with criminal antecedents so that they do not even 100 conceive of the idea of entering into politics. They should be kept at bay. 119. We are sure, the law making wing of the democracy of this country will take it upon itself to cure the malignancy. We say so as such a malignancy is not incurable. It only depends upon the time and stage when one starts treating it; the sooner the better, before it becomes fatal to democracy....”

68. On 10.10.2018, the ECI issued direction to political parties and candidates for publication of criminal antecedents without amending the Election Symbol Order and Model Code of Conduct so the direction has no legal sanction. It had not published list of leading Newspapers & News Channels, so candidates published criminal antecedents in unpopular newspapers-news channels. ECI has not clarified the timing of publication, so candidates published criminal history in odd hours when people don't watch news channels. Political parties had neither published the details on website nor in newspapers and news channels during the Elections, but, ECI did nothing against them.

69. Therefore, this Hon'ble Court may be pleased to issue a writ, order or direction to the Election Commission of India to issue following directions:

- a)** All advertisements for the candidacy of an individual to the Election shall compulsorily and prominently carry details of- **(i)** Age and Educational Qualification of the Candidate; **(ii)** Criminal cases against him in which charges have been framed with description of every offence in Bold Letters; [viz. FIR under Section 302, IPC, for killing two children, FIR under Section 376, IPC, for raping one minor girl]; and, **(iii)** The combined value of fixed and movable assets of the candidate and his family members/blood relatives;
- b)** Every candidate shall publish the above details at least thrice in leading News Channels between 9am-9pm pm and thrice in widely circulated Newspapers within seven days of his nomination.[List of News Channels and Newspapers will be provided by the CEO, based on the latest TRP and Circulation].
- c)** The political party shall publish the aforesaid information on the Home Page of its Website within 24 Hours of the nomination and keep it till polling date. [Font shall be Bookman Old Style, Font Size - 14 and Line Spacing - 1.5].

- d) Political party shall publish the above details at least thrice in leading News Channels between 9am-9pm and thrice in widely circulated Newspapers within 7 days of his nomination. [List of News Channels and Newspapers will be provided by the CEO of the State, based on the latest TRP and Circulation].
- e) If the above guidelines are not adhered, the Returning Officer shall reject the nomination of the candidate and in any event, such non-disclosure would amount to undue influence and the election would be liable to be set aside.
- f) The above conditions shall be incorporated in Election Symbol Order, Model Code of Conduct and Instructions of the ECI for effective compliance.
- g) Any violation of the above directions would invite appropriate action by the ECI against concerned political party.

70. The Court may be pleased to direct the ECI to publish the above details constituency wise on its website and thrice through leading news channels between 9 am-9 pm and thrice in widely circulated news papers within seven days of nomination. Budget may be charged from consolidated fund of India.

71. It is respectfully submitted that the separation of power cannot prevent this Hon'ble Court from passing directions necessary to address the systemic problem of the growing criminalization of politics and the political system *without breaching the principle of separation of powers.*

72. It is necessary to state that many laws have been made in last 2 years but even a draft has not been prepared in spirit of the judgment dated 25.9.2018. Therefore, it is in the interest of justice that this Hon'ble Court may be pleased to issue such writ(s), order(s) or direction(s) as deem fit and proper to weed out corruption, casteism, communalism, linguism, regionalism and use of black money and secure free and fair election in spirit of the Article 324.

73. Tenth Schedule of Constitution vests great powers with political parties in as much as they can oust even an elected member, whether Member of Parliament or Legislature of State Assembly, from the Party, if he steps out of party line. As per Section 29C of the RPA, donations received by Political Parties are required to be reported to the ECI. This obligation cast on the political parties also points towards their public character. The ECI is an instrumentality of the State. By virtue of the powers conferred on it under the Article 324 and Section 29A of the RPA read with Rules 5 and 10 of the Conduct of Election Rules, 1961, and other powers vested in it, the ECI made and promulgated the Election Symbols (Reservation and Allotment) Order, 1968. Under this Order, ECI allots symbols to various Political Parties. Allotment of election symbols by the ECI to political parties is suggestive of the public character of the political parties. Moreover, the Political Parties get tax exemptions, which amounts to indirect financing of the political parties in terms of Section 2(h) of the RTI Act.

74. The Central and State Governments have allotted land/buildings/other accommodations in prime locations to recognized political parties all over the country either, free of cost, or on very concessional rates. This also amounts to indirect financing of recognized political parties. Doordarshan allots free airtime to recognized political parties during the elections. This is another instance of indirect financing of the Political Parties. As the recognized political parties are the life blood of the entire constitutional scheme in a democratic polity and as they are directly and indirectly financed by the Central and State Governments in various ways, as discussed hereinabove, they should be restricted to setup candidates, against whom charges have been framed in senior or cognizable offences.

75. Section 80 GGB of the Income Tax Act, which provides that contribution made by an individual, or Company to a political party is deductible from total income of the assessee. This provision is exclusively applicable to political parties and suggestive of indirect financing to political parties by the State. Political parties have a binding nexus with the populace. As a central institution of the Indian democracy, Political Parties embody the will of the people, carry all their expectations that democracy will be truly responsive to their needs and help and solve the most pressing problems that confront them in the daily lives.

76. In addition to exemption on income under Section 139 of the Income Tax Act, recognized political parties have been provided facilities for residential and official use by Directorate of Estates, Government of India, in New Delhi. They have been given offices/residential accommodations at prime locations in Delhi such as Akbar Road, Raisina Road, Chanakyapuri. The rentals charged are a fraction of the market rent. These facilities are not just provided to them at nominal rates but their maintenance, upgradation modernization, renovation, etc. are also done at State expense. Similar facilities are provided at various State Capitals. The ECI spends money for providing facilities to recognized political parties such as free electoral rolls and free broadcast facilities at Doordarshan and All India Radio, which results in loss of revenue in terms of air time. If closely monitored and totalled, the full amount of public funds spent on political parties, would possibly amount to thousands of crores. The Central Information Commission, various State Information Commissions and the High Courts had held that allotment of land/building on subsidized rates and exemption from various taxes including income tax amount to “indirect financing” in terms of Section 2(h)(d)(ii) of the RTI Act 2005.

77. Incorporation of the Articles 102(2) and 191(2) and 10th Schedule has given constitutional status to political parties. It is a fallacy to say that any individual can form a political party. A body or entity does not become a political party in the legal sense until the ECI under Section 29A registers it, and registration lends it the colour of public authority. The ECI under the Elections Symbols Order 1968 and Rules 5 and 10 of the Conduct of Election Rules 1961, grants symbols to the Political Parties for election purposes for the recognition of political parties and can suspend or withdraw recognition of the political parties on their failure to observe Model Code of Conduct or other lawful directions and instructions of the Election Commission. It is also indicative of the Public Character of the Political Parties. The Apex Court in *Common Cause vs. UOI* (AIR 1996 SC 3081) dealt with income/expenditure incurred by political parties and laid emphasis on transparency on election funding and empowered the ECI to take steps to promote transparency and accountability. The Law Commission in its 170th Report recommended to improve transparency in functioning of the political parties: *“On the parity of the above reasoning, it must be said that if democracy and accountability constitute the core of our constitutional system, the same concepts must also apply to and bind the Political Parties which are integral to parliamentary democracy. It is the Political Parties that form the Government, man the Parliament and run the governance of the country. It is therefore, necessary to introduce internal democracy financial transparency and accountability in the working of the Political Parties. A political party which does not respect democratic principles in its internal working cannot be expected to respect those principles in the governance of the country. It cannot be dictatorship internally and democratic in its functioning outside”*.

PRAYER

Keeping in view the menace of criminalization, this Hon'ble Court may be pleased to issue writ/order/direction to the Election Commission of India to:

- a) insert an additional condition: "*political party shall not setup candidate with criminal antecedents*" in Paragraph 6A "*Conditions for recognition as a State Party*", Paragraph 6B "*Conditions for recognition as a National Party*" and Paragraph 6C "*Conditions for continued recognition as a National or State Party*" of the Election Symbols (Reservation and Allotment) Order, 1968, by using the plenary power conferred under Article 324 of the Constitution;
- b) introduce a definition: "*candidate with criminal antecedents means a person against whom charges have been framed at least one year before the date of scrutiny of nominations for an offence with maximum punishment of 5 years or more*" in paragraph 2 of the Election Symbols (Reservation and Allotment) Order, 1968 by using the plenary power conferred under Article 324;
- c) take steps to ensure that every political party puts up complete details of the contesting candidates on the home page of its website, and publish criminal antecedents in three most watched news channels between 9 am to 9 pm and three most circulated newspapers, two days before the day of polling;
- d) take steps to ensure that every candidate publishes his criminal antecedents in three most watched news channels between 9 am to 9 pm and three most circulated newspapers, two days before the day of polling;
- e) issue such other writ, order or direction as this Hon'ble Court may deem fit & proper for decriminalization of politics and to ensure free and fair election.

27.01.2020

(Ashwani Kumar Dubey)

New Delhi

Advocate for the Petitioner

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO OF 2020

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Verses

Union of India & Another

...Respondents

Delhi, do hereby solemnly affirm and declare as under:

1. I am the sole petitioner above named and well acquainted with facts and circumstances of the case and as such competent to swear this affidavit.
2. I have read & understood contents of accompanying synopsis and list of dates pages (B-I) writ petition paras (1-77) pages (1-35) and total pages (1-50) which are true and correct to my knowledge and belief.
3. Annexures filed with petition are true copies of their respective originals.
4. I have not filed any other petition either in any Court seeking same or similar directions as prayed except WP(C) 1319/2018 and WP(C) 1011/2019.
5. I have no personal interests, individual gain, private motive or oblique reasons in filing this petition. It is not guided for gain of any other individual person, institution or body. The only motive is public interest.
6. There is no civil, criminal or revenue litigation, involving petitioner, which has or could have legal nexus, with issue involved in this petition.
7. There is no requirement to move concerned government authority for relief sought in this petition. There is no other remedy available except approaching this Hon'ble Court.
8. I have gone through the Article 32 and the Supreme Court Rules and do hereby affirm that the present petition is in conformity thereof.
9. I have done whatsoever enquiry/investigation, which was in my power to do, to collect the data or material, which was available; and which was relevant for this Hon'ble Court to entertain the present petition.
10. I've not concealed any data/material/information in this petition; which may have enabled this Hon'ble Court to form an opinion, whether to entertain this petition or not and/or whether to grant any relief or not.
11. The averments made in this affidavit are true and correct to my personal knowledge and belief. No part of this Affidavit is false or fabricated, nor has anything material been concealed there from.

(Ashwini Kumar Upadhyay)

DEPONENT

VERIFICATION

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

I hereby solemnly affirm and declare it today i.e. the 27th day of January 2020 at New Delhi.

(Ashwini Kumar Upadhyay)

DEPONENT