

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:

Ashwini Kumar Upadhyay

...Petitioner

Verses

1. Union of India
Through Home Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110001
2. Union of India
Through Law Secretary,
Ministry of Law and Justice,
ShashtriBhawan, New Delhi-110001
3. Government of Andhra Pradesh
Through Chief Secretary
A.P Secretariat Office, Velagapudi - 522503
4. Government of Arunachal Pradesh
Through Chief Secretary
Civil Secretariat, Itanagar - 791111
5. Government of Assam
Through Chief Secretary
Assam Sachivalaya, Dispur- 781006,
6. Government of Bihar
Through Chief Secretary
Main Secretariat, Patna - 800015
7. Government of Chhattisgarh
Through Chief Secretary
Mahanadi Bhawan, MantralayaNaya Raipur - 492002
8. Government of Goa Secretariat
Through Chief Secretary
Porvrom, Bardez, Goa - 403521
9. Government of Gujarat
Through Chief Secretary
Sachivalaya, Gandhinagar - 382010
10. Government of Haryana
Through Chief Secretary
Haryana Civil Secretariat, Sector-1, Chandigarh- 160019
11. Government of Himachal Pradesh
Through Chief Secretary
H.P. Secretariat, Shimla - 171002
12. Government of Jammu & Kashmir
Through Chief Secretary
Civil Secretariat, Jammu - 180001

13. Government of Jharkhand
Through Chief Secretary
Project Building, Dhurwa, Ranchi- 834004
14. Government of Karnataka
Through Chief Secretary
VidhanaSoudha, Bengaluru - 560 001
15. Government of Kerala
Through Chief Secretary
Secretariat, Thiruvananthapuram – 695001
16. Government of Madhya Pradesh
Through Chief Secretary
Mantralaya, VallabhBhavan Bhopal – 462004
17. Government of Maharashtra
Through Chief Secretary
Main Building, Mantralaya, Mumbai – 400032
18. Government of Manipur
Through Chief Secretary
South Block, Old Secretariat, Imphal-795001
19. Government of Meghalaya
Through Chief Secretary
Rilang Building, Meghalaya Secretariat, Shillong – 793001
20. Government of Mizoram
Through Chief Secretary
New Secretariat Complex, Aizawl – 796001
21. Government of Nagaland
Through Chief Secretary
Civil Secretariat, Kohima- 797004
22. Government of Odisha
Through Chief Secretary
Odisha Secretariat, Bhubaneswar – 751001
23. Government of Punjab
Through Chief Secretary
Secretariat, Chandigarh – 160001
24. Government of Rajasthan
Through Chief Secretary
Secretariat, Jaipur – 302005
25. Government of Sikkim
Through Chief Secretary
New Secretariat, Gangtok – 737101
26. Government of Tamil Nadu
Through Chief Secretary
Secretariat, Chennai – 600009
27. Government of Telangana
Through Chief Secretary
Burgula Rama Krishna Rao Bhavan, Adarsh Nagar, Hyderabad-500063
28. Government of Tripura
Through Chief Secretary
New Secretariat Complex Secretariat, Agartala-799010

29. Government of Uttar Pradesh
Through Chief Secretary
LalbahadurSastriBhawan, Secretariat, Lucknow – 226001
30. Government of Uttarakhand
Through Chief Secretary
Subhash Road, Uttarakhand Secretariat, Dehradun – 248001
31. Government of West Bengal
Through Chief Secretary
Nabanna, Sarat Chatterjee Road, MandirtalaShibpur, Howrah – 711102
32. Union Territory Andaman & Nicobar
Through Chief Secretary
Andaman & Nicobar AdministrationSecretariat, Port Blair – 744101
33. Union Territory of Delhi
Through Chief Secretary
Delhi Secretariat, IP Estate, New Delhi – 110002
34. Union Territory of Puducherry
Through Chief Secretary
Main Building, Chief Secretariat, Puducherry – 605001.
35. Law Commission of India
Through the Chairman/Secretary
4th Floor, LoknayakBhawan,
Khan Market, New Delhi-110003
-Respondents

PIL UNDER ARTICLE 32 SEEKING DIRECTION TO CENTRE-STATES TO CONSTITUTE EXPERT COMMITTEES TO EXAMINE THE BEST PRACTICES OF THE COUNTRIES RANKED AMONG TOP 20 IN THE RULE OF LAW INDEX AND ACCORDINGLY TAKE APPROPRIATE STEPS TO IMPROVE INTERNATIONAL RANKING OF INDIA

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 of the Constitution seeking a writ, order or direction or a writ in the nature of mandamus to the Centre and States, to constitute expert committees to examine the best practices of the countries ranked among top 20 in Rule of Law Index- 2020[Annexure P-1, pg. 15-65]and accordingly take steps to improve the pathetic ranking of India.
2. Petitioner has not filed any other similar petition either in this Hon'ble Court or in any other Court, seeking same and/or similar directions, as prayed.

3. Petitioner name: Ashwini Kumar Upadhyay.

Petitioner is

Advocate, practices in this Hon'ble Court and also a social-political activist, contributing his best to the development of socially-economically downtrodden people. This Hon'ble Court has issued notice on petitioner PILs relating to election reform, police reform, judicial reform, gender justice and gender equality.

4. The cause of action accrued on 11.03.2020 and subsequent dates, when World Justice Project announced the Rule of Law Index 2020 and India ranked 69th. India has never been ranked even among top 50 in the Rule of Index but successive governments did nothing to improve international ranking of India.
5. Injury caused to public is large because India ranked 69 in Rule of Law Index. It confirms poor performance across eight factors: constraints on government powers, absence of corruption, open government, fundamental rights, public order and security, regulatory enforcement, civil justice and criminal justice. Poor Rule of Law has devastating effects on right to life and liberty & severely affects social economic justice, fraternity, dignity of individual, unity and national integration & also offends rights guaranteed under Articles 14 and 21.
6. Petitioner has no personal interest, individual gain, private motive or oblique reasons in filing this PIL. It is not guided for gain of any other individual person, institution or body. There is no motive other than the public interest.
7. There is no civil, criminal or revenue litigation, involving petitioner, which has or could have legal nexus, with the issue involved in this writ petition.

8. There is no requirement to move concerned authority for the relief sought in this PIL. There is no other remedy available except filing the PIL.
9. Centre and State governments promise to provide good governance, which depends upon eight factors. **(i)** Participation means that all groups, particularly those most vulnerable, have direct or representative access to the systems of government. This manifests a strong civil society and citizens with freedom of association and expression. **(ii)** The Rule of Law is exemplified by impartial legal systems that protect the human rights and civil liberties of citizens, particularly downtrodden people. This is indicated by an independent judicial branch & modern police force free from corruption. **(iii)** Transparency means that citizens understand and have access to the means and manner in which decisions are made, especially if they are affected by such decisions. The information must be provided in an understandable and accessible format. **(iv)** Responsiveness means that institutions respond to their stakeholders within a reasonable time frame. **(v)** Consensus Oriented is demonstrated by an agenda that seeks to mediate between the many different needs, perspectives, and expectations of a diverse citizenry. Decisions need to be made in a manner that reflects a deep understanding of the historical, cultural, and social context of the community. **(vi)** Equity & Inclusiveness depends on ensuring that all the members of a community feel included and empowered to improve or maintain their well-being, especially those individuals and groups that are vulnerable. **(vii)** Effectiveness and Efficiency is developed through the sustainable use of resources to meet the needs of a society. Sustainability refers to both ensuring social investments carry through and natural resources are maintained for future generations.

(viii) Accountability refers to institutions being ultimately accountable to the people and one another. This includes government agencies, civil society, and the private sector all being accountable to one another as well.

10. We claim to be governed by the Constitution and rule of law is integral part of Article 14 but our pathetic ranking in rule of law index says something else. India ranked 66th in 2011, 67th in 2012, 66th in 2013, 68th in 2014, 59th in 2015, 66th in 2016, 66th in 2017, 66th in 2018, 68th in 2019 and 69th in 2020 in the Rule of Law Index. We never ranked even among top 50 countries but neither our Legislators raised this issue in parliament nor successive governments took apt steps to improve India's pathetic international ranking in the rule of law index. Therefore, petitioner is filing this PIL under Article 32 seeking writ, order or direction or a writ in the nature of mandamus to Centre & States to constitute expert committees comprising one renowned jurist, people representative, economist, educationist, public servant, social activist and journalist, to suggest steps to improve India's pathetic international ranking in the Rule of Law Index and accordingly take appropriate steps in time bound manner.

11. According to United Nations, Good Governance is measured by eight factors: **(i)** Participation **(ii)** Rule of Law **(iii)** Transparency **(iv)** Responsiveness **(v)** Consensus Oriented **(vi)** Equity & Inclusiveness **(vii)** Effectiveness & Efficiency and **(viii)** Accountability. The World Justice Project Rule of Law Index is the world's leading source of original & independent data on the Rule of Law. Covering 128 countries and jurisdictions, Index relies on more than 130,000 household surveys and 4000 legal practitioner and expert surveys to measure how the rule of law is experienced and

perceived worldwide. Featuring primary data, the rule of law Index measures countries' rule of law performance across: **(i)** Constraints on Government Powers **(ii)** Absence of Corruption **(iii)** Open Government **(iv)** Fundamental Rights **(v)** Public Order and Security **(vi)** Regulatory Enforcement **(vii)** Civil Justice and **(viii)** Criminal Justice.

12. Effective rule of law reduces corruption, combats poverty and diseases, and protects people from injustices - large and small. Rule of law is the foundation for communities of justice, opportunity & peace—underpinning development, accountable government, and respect for fundamental rights. Traditionally, the Rule of Law has been viewed as the domain of lawyers and judges. But everyday issues of safety, rights, justice, and governance affect us all and now everyone is a stakeholder in the rule of law. Despite its profound importance for fair and functioning society, successive governments did nothing to improve India's international ranking in the Rule of Law index.

13. Rule of Law Index captures adherence to the rule of law as defined by universal principles through a comprehensive and multi-dimensional set of outcome indicators, each of which reflects a particular aspect of the concept. Theoretical framework linking these outcome indicators draws upon two main principles pertaining to the relationship between the State and the governed. The first principle measures whether the law imposes limits on the exercise of power by the State and its agents, as well as individuals and private entities. This is measured in factors one, two, three, and four of the Index. The second principle measures whether the state limits the actions of members of society and fulfills its basic duties toward its population so that the public interest is served, people are protected from violence, and all

members of society have access to dispute settlement and grievance mechanisms. This is measured in factors five, six, seven, and eight of the Index. The Rule of Law Index recognizes that a system of law that fails to respect core human rights guaranteed under international law viz. social economic political justice and social economic equality, is at best called 'Rule by Law' and does not deserve to be called a 'Rule of Law' system.

14. The rule of law affects all of us in our everyday lives. Although we may not be aware of it but the rule of law is profoundly important, and not just for lawyers or judges but every sector of society is a stakeholder in the rule of law. For examples: Imagine an investor seeking to commit resources abroad. She would probably think twice before investing in a country where corruption is rampant, property rights are ill-defined, and contracts are difficult to enforce. Uneven enforcement of regulations, corruption, insecure property rights, and ineffective means to settle disputes undermine legitimate business and deter both domestic & foreign investment. Consider the bridges, roads, or runways, we traverse daily or the offices and buildings in which we live, work, and play. What would happen if building codes governing design and safety were not enforced or government officials and contractors used low-quality materials in order to pocket the surplus? Weak regulatory enforcement and corruption decrease the security of physical infrastructure and waste scarce resources, which are essential to a thriving economy. Similarly, consider the implications of pollution, wildlife poaching, and deforestation for public health and the environment. What would happen if company were pouring harmful chemicals into a river in a highly populated area and the environmental inspector ignored these actions in exchange for a

bribe? Adherence to the rule of law is essential to holding governments, businesses, civil society organizations, and communities accountable for protecting public health and the environment.

15. The Four Universal Principles of the Rule of Law are: **(i)** Accountability - the government as well as private actors should be accountable under the law. **(ii)** Just Laws- the laws must be clear, publicized, stable, applied evenly; protect fundamental rights, including security of persons and contract, property, and human rights. **(iii)** Open Government- the processes by which the laws are enacted, administered, and enforced must be accessible, fair, and efficient. **(iv)** Accessible Impartial Dispute Resolution- Justice must be delivered timely by competent, ethical, and independent representatives and neutrals who are accessible, have adequate resources, and reflect the makeup of communities they serve. The above stated four universal principles are further developed in 8 factors: **(i)** Constraints on Government Powers **(ii)** Absence of Corruption **(iii)** Open Government **(iv)** Fundamental Rights **(v)** Order and Security **(vi)** Regulatory Enforcement, **(vii)** Civil Justice and **(viii)** Criminal Justice.

16. The framework of Rule of Law Index further disaggregated into 44 sub-factors: **(1)** Constraints on Government Powers - **1.1** Government powers are effectively limited by the legislature **1.2** Government powers are effectively limited by the judiciary **1.3** Government powers are effectively limited by independent review **1.4** Government officials are sanctioned for misconduct **1.5** Government powers are subject to non-governmental checks **1.6** Transition of the power is subject to the law. **(2)** Absence of Corruption - **2.1** Government officials in the executive branch do not use public office for private gain **2.2**

Government officials in the judicial branch do not use public office for private gain **2.3** Government officials in police and military do not use public office for private gain **2.4** Government officials in the legislative branch do not use public office for the private gain. **(3)** Open Government - **3.1** Publicized laws and government data **3.2** Right to information **3.3** Civic participation **3.4** Complaint registration mechanisms **(4)** Fundamental Rights - **4.1** Equal treatment and absence of discrimination **4.2** The right to life and security of the person is effectively guaranteed **4.3** Due process of law and rights of the accused **4.4** Freedom of opinion and expression is effectively guaranteed **4.5** Freedom of belief and religion is effectively guaranteed **4.6** Freedom from arbitrary interference with privacy is effectively guaranteed **4.7** Freedom of assembly and association is effectively guaranteed **4.8** Fundamental labor rights are effectively guaranteed **(5)** Order and Security - **5.1** Crime is effectively controlled **5.2** Civil conflict is effectively limited **5.3** People do not resort to violence to redress personal grievances **(6)** Regulatory Enforcement- **6.1** Government regulations are effectively enforced **6.2** Government regulations are enforced without improper influence **6.3** Administrative proceedings are conducted without unreasonable delay **6.4** Due process is respected in administrative proceedings **6.5** The government does not expropriate without lawful process and adequate compensation **(7)** Civil Justice - **7.1** People can access and afford civil justice **7.2** Civil justice is free of discrimination **7.3** Civil justice is free of corruption **7.4** Civil justice is free of improper government influence **7.5** Civil justice is not subject to unreasonable delay **7.6** Civil justice is effectively enforced **7.7** Alternative dispute resolution mechanisms are accessible, impartial, fair and effective **(8)** Criminal Justice-

8.1 Criminal investigation system is effective **8.2** Criminal adjudication system is timely and effective **8.3** Correctional system is effective in reducing criminal behavior **8.4** Criminal justice system is impartial **8.5** Criminal justice system is free of corruption **8.6** Criminal justice system is free of improper government influence **8.7** Due process of law and rights of accused.

17. Recently on 22.2.2020, the Hon'ble Chief Justice of India Justice SA Bobdesaid: *"The rule of law is the most fundamental feature of modern constitutions and its success depends on how judiciaries across the world respond to emerging challenges"*. The CJI, while speaking at the International Judges' Conference on the subject of 'Judiciary and the Changing World' at the Supreme Court, also stressed on the need for citizens to perform their legal duties. *"Probably the most fundamental feature of most modern constitutions is the idea of the rule of law,"* he said, adding, *"Undoubtedly, the success of the rule of law in our countries depends on how the judiciaries respond to such challenges and how they emerge."* Referring constitutional provisions, the CJI said-*"it was often implicit in law that legal rights have correlatives of legal duties. A feature often neglected is chapter on fundamental duties imposing on every citizen the duties to abide by constitution, the whole of it and respect its ideals and institution."* He said that over 50 countries have specific provisions on fundamental duties in their constitutions. Quoting Gandhiji, CJI said the exercise of rights depends on one's sense of duty: *"real rights are a result of performance of duty"*.

18. Hon'ble Justice Rohinton Nariman in his dissent in Sabrimala Review Case says The expression 'rule of law' can be traced back to the great Greek philosopher Aristotle, who lived 2,400 years ago. In his book on the 'Rule of

Law' by Brian Tamanaha, Aristotle is reported to have said: *"It is better for the law to rule than one of the citizens...so that even the guardians of law are obeying the laws."* Formal definitions of the rule of law aim at measuring a legal system's conformity to a set of precise standards including an impartial and independent judiciary, subjecting every person to the ordinary law and providing for judicial review of executive and legislative action. And as Justice Nariman notes that the rule of Law was first established against absolutist monarchs. In the Magna Carta, which was signed by the King John of England in 1215, it was stated thus: *"No free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land."* The efficient delivery of justice reinforces people's confidence in the rule of law. As per rule of law Index, various aspects affect the Civil Justice regime and include factors such as timely resolution, accessibility, affordability, non-discriminatory, and independence of judicial systems. Our legal system is known for being prone to delays, and it is no wonder India ranks 97th on the Civil Justice ranking below Malaysia, Senegal, Kazakhstan. And while the logjam of cases is an inevitable concomitant of increased awareness, economic growth and prosperity part of the reason is that, as per last available data from 2015, we had only 18 Judges per million, which perhaps explains why it takes 4 years to seek enforcement of a contract in India. A lot has changed with the new commercial courts legislation, but we still have miles to go. Our criminal justice system is even worse, Hon'ble Justice D.Y. Chandrachud rightly observed that long delays in the disposal of

cases, especially criminal cases, have a serious impact on the rule of law, as well as inhibiting access to justice, which form part of the fundamental right guaranteed under Article 21 of the Constitution of India.

19. The steps to enhance India's ranking in Rule of law Index, is to seek effective implementation of: (i) *National Litigation Policy* (ii) *reduce intra-government litigation* (iii) *expedite appointment of judges* (iv) *implement National Mission for Justice Delivery* (v) *overhaul court infrastructure to eliminate delays and dispose of pending cases* and (vi) *move to embrace alternative dispute resolution mechanisms like arbitration and mediation.* For India to do better, what is required is better performance at State-level, as States are responsible for many factors that are taken into account while arriving at the results.
20. Hon'ble Justice Nariman in his dissent says "*after all, in India's tryst with destiny, we have chosen to be wedded to the rule of law as laid down by the Constitution. Let every person remember that the "holy book" is Constitution of India, and it is with this book in hand that the citizens of India march together as a nation, so that they may move forward in all spheres of human endeavour to achieve great goals set out by this "Magna Carta" or Great Charter of India.*"
21. On 25.11.1949, Dr. Ambedkar said: "*I feel, however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. Working of Constitution does not depend wholly upon the nature of Constitution. It can provide only the organs of State such as Legislature, Executive and Judiciary. Factors on which working of those organs of State depend are the people and the political parties they will setup as their instruments to carry out their wishes and their politics.*"

PRAYER

Keeping in view the India's pathetic ranking in the Rule of Law Index - 2020, it is respectfully prayed that the Hon'ble Court may be pleased to issue a writ, order or direction or a writ in the nature of mandamus to Centre & States to:

- a) constitute expert committees, comprising at least one renowned jurist, people representative, public servant, economist, educationist, social activist and journalist, to suggest steps to improve India's pathetic international ranking in Rule of Law Index and accordingly take apposite steps in time bound manner;
- b) in alternative, direct the Law Commission of India to examine the best practices of the countries, ranked among top 20 in the Rule of Law Index - 2020, and accordingly suggest steps to improve the International Ranking of India;
- c) pass such other order(s) as this Hon'ble Court may deem fit and proper to improve India's pathetic International Ranking in the Rule of Law Index.

New Delhi
16.03.2020

Advocate for petitioner
(Ashwani Kumar Dubey)

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 & others

...Respondents

AFFIDAVIT

I, Ashwini Kumar Upadhyay

at present at New

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 and understood contents of accompanying synopsis and list of dates pages (B - I) writ petition paras (1 - 21) pages (1 - 13) and total pages (1 - 68) 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 this Hon'ble Court or in any other Court seeking same or similar directions as prayed.
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 16th day of March 2020 at New Delhi.

(Ashwini Kumar Upadhyay)

DEPONENT

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO OF 2020

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VERSES

UNION OF INDIA & OTHERS

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PAPER BOOK

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(ADVOCATE FOR PETITIONER: ASHWANI KUMAR DUBEY)

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PERFORMA FOR FIRST LISTING

Section:PIL

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

- Central Act: Constitution of India
- Section: Articles 14 and 21 of the Constitution
- Central Rule: N/A
- Rule No: N/A
- State Act: N/A
- Section: N/A

- State Rule: N/A
 - Rule No: N/A
 - Impugned Interim Order: N/A
 - Impugned Final Order / Decree: N/A
 - High Court: N/A
 - Name of Judges: N/A
 - Tribunal / Authority Name : N/A
-

1. Nature of Matter: Civil
2. (a) Petitioner / Appellant : Ashwini Kumar Upadhyay
(b) Email ID: ,
(c) Phone No: ,
3. (a) Respondent: Union of India and others
(b) Email ID: N/A
(c) Phone No: N/A
4. (a) Main Category: o8 PIL Matters
(b) Sub Category: o812, Others
5. Not to be listed before: N/A
- 6(a). Similar disposed of mater: No Similar Matter
- 6(b). Similar pending matter: No similar matter pending
7. Criminal Matters: N/A
(a) Whether accused / convicted has surrendered: N/A
(b) FIR / Complaint No: N/A
(c) Police Station: N/A
(d) Sentence Awarded: N/A

(e) Period of Sentence Undergone including period of detention/custody under gone: N/A

8. Land Acquisition Matters:

(a) Date of Section 4 Notification: N/A

(b) Date of Section 6 Notification: N/A

(c) Date of Section 17 Notification

9. Tax Matters: State the Tax Effect: N/A

10. Special Category: N/A

11. Vehicle No in case of motor accident claim matters): N/A

Date: 16.03.2020

ADVOCATE FOR PETITIONER

(ASHWANI KUMAR DUBEY)

Advocate-on-Record

SYNOPSIS

We claim to be governed by the Constitution and rule of law is integral part of Article 14 but our pathetic ranking in 'Rule of Law' Index says something else. India ranked 66th in 2011, 67th in 2012, 66th in 2013, 68th in 2014, 59th in 2015, 66th in 2016, 66th in 2017, 66th in 2018, 68th in 2019 and 69th in 2020 in the Rule of Law Index. We never ranked even among top 50 countries but neither our Legislators raised this issue in parliament nor successive governments took apt steps to improve India's pathetic international ranking. Therefore,

petitioner is filing this PIL under Article 32 seeking writ order or direction to Centre & States to constitute expert committees comprising renowned jurist, public servant, people representative, economist, educationist, social activist and journalist, to suggest steps to improve India's pathetic international ranking in Rule of Law Index and accordingly take appropriate steps in time bound manner.

According to United Nations, good governance is measured by 8 factors: **(i)** Participation **(ii)** Rule of Law **(iii)** Transparency **(iv)** Responsiveness **(v)** Consensus Oriented **(vi)** Equity & Inclusiveness **(vii)** Effectiveness & Efficiency and **(viii)** Accountability. The World Justice Project Rule of Law Index is the world's leading source of original and independent data on the Rule of Law. Covering 128 countries and jurisdictions, Index relies on more than 130,000 household surveys and 4000 legal practitioner and expert surveys to measure how the rule of law is experienced and perceived worldwide. Featuring primary data, the rule of law Index measures countries' rule of law performance across: **(i)** Constraints on Government Powers **(ii)** Absence of Corruption **(iii)** Open Government **(iv)** Fundamental Rights **(v)** Public Order and Security **(vi)** Regulatory Enforcement **(vii)** Civil Justice and **(viii)** Criminal Justice.

Effective rule of law reduces corruption, combats poverty and diseases, and protects people from injustices - large and small. Rule of law is the foundation for communities of justice, opportunity & peace—underpinning development, accountable government, and respect for fundamental rights. Traditionally, the Rule of Law has been viewed as the domain of lawyers and judges. But everyday issues of safety, rights, justice, and governance affect us

all and now everyone is a stakeholder in the rule of law. Despite its profound importance for fair and functioning society, successive governments did nothing to improve India's international ranking in the Rule of Law index.

The Index captures adherence to the rule of law as defined by universal principles through a comprehensive and multi-dimensional set of outcome indicators, each of which reflects a particular aspect of the concept. Theoretical framework linking these outcome indicators draws upon two main principles pertaining to the relationship between the State and the governed. The first principle measures whether the law imposes limits on the exercise of power by the State and its agents, as well as individuals and private entities. This is measured in factors one, two, three, and four of the Index. The second principle measures whether the state limits the actions of members of society and fulfills its basic duties toward its population so that the public interest is served, people are protected from violence, and all members of society have access to dispute settlement and grievance mechanisms. This is measured in factors five, six, seven, and eight of the Index. The Rule of Law Index recognizes that a system of law that fails to respect core human rights guaranteed under international law viz. social economic political justice and social economic equality, is at best called 'Rule by Law' and does not deserve to be called a 'Rule of Law' system.

Rule of law affects all of us in our everyday lives. Although we may not be aware of it but the rule of law is profoundly important, and not just for lawyers or judges but every sector of society is a stakeholder in the rule of law. For examples: Imagine an investor seeking to commit resources abroad. She would probably think twice before investing in country where corruption

is rampant, property rights are ill-defined, and contracts are difficult to enforce. Uneven enforcement of regulations, corruption, insecure property rights, and ineffective means to settle disputes undermine legitimate business and deter both domestic & foreign investment. Consider the bridges, roads, or runways, we traverse daily or the offices and buildings in which we live, work, and play. What would happen if building codes governing design and safety were not enforced or government officials and contractors used low-quality materials in order to pocket the surplus? Weak regulatory enforcement and corruption decrease the security of physical infrastructure and waste scarce resources, which are essential to a thriving economy. Similarly, consider the implications of pollution, wildlife poaching, and deforestation for public health and the environment. What would happen if company were pouring harmful chemicals into a river in a highly populated area and the environmental inspector ignored these actions in exchange for a bribe? Adherence to the rule of law is essential to holding governments, businesses, civil society organizations, and communities accountable for protecting public health and the environment.

The Universal Principles of the Rule of Law are: **(i)** Accountability - the government as well as private actors should be accountable under the law. **(ii)** Just Laws- the laws must be clear, publicized, stable, applied evenly; protect fundamental rights, including security of persons and contract, property, and human rights. **(iii)** Open Government- the processes by which the laws are enacted, administered, and enforced must be accessible, fair, and efficient. **(iv)** Accessible Impartial Dispute Resolution- Justice must be delivered timely by competent, ethical, and independent representatives and

neutrals who are accessible, have adequate resources, and reflect the makeup of communities they serve. The above stated four universal principles are further developed in 8 factors: **(i)** Constraints on Government Powers **(ii)** Absence of Corruption **(iii)** Open Government **(iv)** Fundamental Rights **(v)** Order and Security **(vi)** Regulatory Enforcement, **(vii)** Civil Justice and **(viii)** Criminal Justice.

The Framework of Rule of Law Index disaggregated into 44 sub-factors: **(1)** Constraints on Government Powers - **1.1** Government powers are effectively limited by the legislature **1.2** Government powers are effectively limited by the judiciary **1.3** Government powers are effectively limited by independent review **1.4** Government officials are sanctioned for misconduct **1.5** Government powers are subject to non-governmental checks **1.6** Transition of the power is subject to the law. **(2)** Absence of Corruption - **2.1** Government officials in the executive branch do not use public office for private gain **2.2** Government officials in the judicial branch do not use public office for private gain **2.3** Government officials in police and military do not use public office for private gain **2.4** Government officials in the legislative branch do not use public office for the private gain. **(3)** Open Government - **3.1** Publicized laws and government data **3.2** Right to information **3.3** Civic participation **3.4** Complaint registration mechanisms **(4)** Fundamental Rights - **4.1** Equal treatment and absence of discrimination **4.2** The right to life and security of the person is effectively guaranteed **4.3** Due process of law and rights of the accused **4.4** Freedom of opinion and expression is effectively guaranteed **4.5** Freedom of belief and religion is effectively guaranteed **4.6** Freedom from arbitrary interference with privacy is effectively guaranteed **4.7** Freedom of

assembly and association is effectively guaranteed **4.8** Fundamental labor rights are effectively guaranteed **(5)** Order and Security - **5.1** Crime is effectively controlled **5.2** Civil conflict is effectively limited **5.3** People do not resort to violence to redress personal grievances **(6)** Regulatory Enforcement- **6.1** Government regulations are effectively enforced **6.2** Government regulations are enforced without improper influence **6.3** Administrative proceedings are conducted without unreasonable delay **6.4** Due process is respected in administrative proceedings **6.5** The government does not expropriate without lawful process and adequate compensation **(7)** Civil Justice - **7.1** People can access and afford civil justice **7.2** Civil justice is free of discrimination **7.3** Civil justice is free of corruption **7.4** Civil justice is free of improper government influence **7.5** Civil justice is not subject to unreasonable delay **7.6** Civil justice is effectively enforced **7.7** Alternative dispute resolution mechanisms are accessible, impartial, fair and effective **(8)** Criminal Justice - **8.1** Criminal investigation system is effective **8.2** Criminal adjudication system is timely and effective **8.3** Correctional system is effective in reducing criminal behavior **8.4** Criminal justice system is impartial **8.5** Criminal justice system is free of corruption **8.6** Criminal justice system is free of improper government influence **8.7** Due process of law and rights of accused.

On 22.2.2020, the Hon'ble Chief Justice of India Justice SA Bobdesaid: "The rule of law is the most fundamental feature of modern constitutions and its success depends on how judiciaries across the world respond to emerging challenges". The CJI, while speaking at the International Judges' Conference on the subject of 'Judiciary and the Changing World' at the Supreme Court, also stressed on the need for citizens to perform their legal

duties. *“Probably the most fundamental feature of most modern constitutions is the idea of the rule of law,”* he said, adding, *“Undoubtedly, the success of the rule of law in our countries depends on how the judiciaries respond to such challenges and how they emerge.”* Referring constitutional provisions, the CJI said-*“it was often implicit in law that legal rights have correlatives of legal duties. A feature often neglected is chapter on fundamental duties imposing on every citizen the duties to abide by constitution, the whole of it and respect its ideals and institution.”* He said that over 50 countries have specific provisions on fundamental duties in their constitutions. Quoting Gandhiji, CJI said the exercise of rights depends on one’s sense of duty: *“real rights are a result of performance of duty”*.

Hon’ble Justice Nariman in his dissent in Sabrimala Review Case says: The expression ‘rule of law’ can be traced back to the great Greek philosopher Aristotle, who lived 2,400 years ago. In his book on the ‘Rule of Law’ by Brian Tamanaha, Aristotle is reported to have said: *“It is better for the law to rule than one of the citizens...so that even the guardians of law are obeying the laws.”* Formal definitions of the rule of law aim at measuring a legal system’s conformity to a set of precise standards including an impartial and independent judiciary, subjecting every person to the ordinary law and providing for judicial review of executive and legislative action. And as Justice Nariman notes that the rule of Law was first established against absolutist monarchs. In the Magna Carta, which was signed by the King John of England in 1215, it was stated thus: *“No free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or*

send others to do so, except by the lawful judgment of his equals or by the law of the land.” The efficient delivery of justice reinforces people’s confidence in the rule of law. As per rule of law Index, various aspects affect the Civil Justice regime and include factors such as timely resolution, accessibility, affordability, non-discriminatory, and independence of judicial systems. Our legal system is known for being prone to delays, and it is no wonder India ranks 97th on the Civil Justice ranking below Malaysia, Senegal, Kazakhstan. And while the logjam of cases is an inevitable concomitant of increased awareness, economic growth and prosperity part of the reason is that, as per last available data from 2015, we had only 18 Judges per million, which perhaps explains why it takes 4 years to seek enforcement of a contract in India. A lot has changed with the new commercial courts legislation, but we still have miles to go. Our criminal justice system is even worse, Hon’ble Justice D.Y. Chandrachud rightly observed that long delays in the disposal of cases, especially criminal cases, have a serious impact on the rule of law, as well as inhibiting access to justice, which form part of the fundamental right guaranteed under Article 21 of the Constitution.

The steps to boost India’s ranking in Rule of law Index, is to seek effective implementation of: (i) *National Litigation Policy* (ii) *reduce intra-government litigation* (iii) *expedite appointment of judges* (iv) *implement National Mission for Justice Delivery* (v) *overhaul court infrastructure to eliminate delays and dispose of pending cases* and (vi) *move to embrace alternative dispute resolution mechanisms like arbitration and mediation.* For India to do better, what is required is better performance at State-level, as

States are responsible for many factors that are taken into account while arriving at the results.

Hon'ble Justice Nariman in his dissent says *"after all, in India's tryst with destiny, we have chosen to be wedded to the rule of law as laid down by the Constitution. Let every person remember that the "holy book" is Constitution of India, and it is with this book in hand that the citizens of India march together as a nation, so that they may move forward in all spheres of human endeavour to achieve great goals set out by this "Magna Carta" or Great Charter of India."*

On 25.11.1949, Dr. Ambedkar said: *"I feel, however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. Working of Constitution does not depend wholly upon the nature of Constitution. It can provide only the organs of State such as Legislature, Executive and Judiciary. Factors on which working of those organs of State depend are the people and the political parties they will setup as their instruments to carry out their wishes and their politics."*

LIST OF DATES

2011:	India ranked 66 th in the Rule of Law Index 2011
2012:	India ranked 67 th in the Rule of Law Index 2012
2013:	India ranked 66 th in the Rule of Law Index 2013
2014:	India ranked 68 th in the Rule of Law Index 2014
2015:	India ranked 59 th in the Rule of Law Index 2015
2016:	India ranked 66 th in the Rule of Law Index 2016
2017:	India ranked 66 th in the Rule of Law Index 2017
2018:	India ranked 66 th in the Rule of Law Index 2018

2019: India ranked 68th in the Rule of Law Index 2019

11.03.2020: India ranked 69th in the Rule of Law Index 2020

16.03.2020: Good governance is impossible without maintaining Rule of Law. But, respondents are not taking steps to improve the international ranking of India in Rule of Law Index. Hence this PIL.