

IN THE SUPREME COURT OF INDIA
Writ Petition (Civil) No. 699 Of 2016
Ashwani Kumar Upadhyaya vs. Union of India and others

Submission by Vijay Hansaria, Senior Advocate, Amicus Curiae
in terms of orders dated 05.03.2020 and 31.08.2020

A. OVERVIEW OF CASES PENDING AGAINST MPS/ MLAS

1. That in the present case this Hon'ble court is, inter alia, considering the issue of speedy disposal of criminal cases against the elected representatives to the Parliament and the State legislatures including former MPs/ MLAs
2. This Hon'ble Court vide order dated 05.03.2020 directed the Registrar Generals of all High Courts to furnish information regarding cases pending against MPs/ MLAs. In terms of the said order, all the High Courts have sent the information in the prescribed format. The salient features of the reports are as under:-
 - a. There are total 4442 cases pending against MPs/ MLAs (sitting and former) in different courts including Special Courts for MPs and MLAs.
 - b. In 2556 cases sitting legislators are accused persons. The number of legislators involved are more than total number of cases since there are more than one accused in one case, and the same legislator is an accused in more than one case.

- c. There are 413 cases in respect of offences, which are punishable with imprisonment for life, out of which in 174 cases sitting MPs/ MLAs are accused.
- d. Other cases include offences under Prevention of Corruption Act 1988, Prevention of Money Laundering Act 2002, Arms Act 1959, Prevention of Damage to Public Property Act, 1984, defamation under section 500 IPC, cheating under section 420 IPC. Large number of cases are for violation of section 188 IPC for wilful disobedience/ obstruction of orders promulgated by public servant.
- e. Trial of 352 cases have been stayed by the High Court and this Hon'ble Court.
- f. Large number of cases are pending at appearance stage and even non bailable warrants (NBWs) issued by the courts have not been executed.
- g. In large number of cases even charges have not been framed including those punishable with imprisonment for life.
- h. There is one Special Court in the States of Andhra Pradesh, Karnataka, Madhya Pradesh, Tamil Nadu, Telangana and West Bengal where all cases are pending. The Special Courts have been constituted under the orders of this Hon'ble Court and case records have been transferred to the said Court irrespective of the place of occurrence of the offence.
- i. Special courts, wherever constituted, exercise jurisdiction over other cases as well in addition to try cases against MPs/MLAs.

3. State-wise analysis of cases is submitted as hereunder: -

Uttar Pradesh

- There are 1217 pending cases, out of which in 446 cases sitting legislators are accused.
- Trial in 85 cases has been held up due to stay granted by higher courts.
- One Special Court was constituted at Allahabad in terms of the directions issued in present case. Presently, the said Special Court is trying cases relating to incidents in adjoining 12 districts.
- Subsequently on 16.08.2029, 62 Special Courts have been constituted in different districts.
- 116 cases relate to offence punishable with life imprisonment. (35 cases against sitting legislators and 81 against former legislators). Status of some of these cases are as follows:-

Sl.No.	District	Incident period	Status
1	Allahabad	2006	Evidence
8	Allahabad	2014	Evidence
9	Allahabad	2007	Evidence
14	Allahabad	2009	Appearance
17	Allahabad	2016	Charge hearing
18	Allahabad	2000	Charge hearing
19	Allahabad	2007	Evidence
25	Allahabad	2015	Appearance
27	Allahabad	2015	Charge hearing
31	Allahabad	2015	Appearance
41	Allahabad	2003	Evidence

42	Allahabad	2007	Evidence
45	Allahabad	2001	Evidence
56	Allahabad	2003	Evidence
57, 58	Allahabad	2002	Evidence
64	Allahabad	1998	Evidence
2	Lucknow	2015	Charge hearing
4	Lucknow	1994	Charge hearing
8	Lucknow	1991	Appearance
9	Lucknow	1993	Appearance

Bihar

- There are 531 cases, out of which in 256 cases sitting legislators are accused.
- High Court has designated Additional District and Sessions Judge III and senior-most ACJM as Special courts in each district for trial of sessions and magisterial cases respectively. These special courts deal with other cases pending before them as well.
- 73 cases relate to offence punishable with life imprisonment. (30 cases against sitting legislators and 43 against former legislators). Status of some of these cases are as follows:-

Sl.No.	District	Incident period	Status
1	Bhojpur	1993	Evidence
	Bhojpur	2006	Appearance
1	Katihar	2012	Evidence
2	Katihar	2005	Evidence
4	Katihar	2005	Argument
1	Muzzafarpur	2016	Evidence
2	Purnia	1991	Argument

3	Purnia	2005	Argument
6	Purnia	2005	Appearance
1	Saran (Chapra)	2011	Rejoinder
4	Saran	2012	Hearing
	Sivan	2017	Evidence
	Sivan	2012	Discharge petition
	Sivan	2009	Evidence
	Sivan	2016	Charge
	Sivan	2011	Evidence
	Sivan	2012	Evidence
	Sivan	2017	Evidence
	Sivan	2016	Evidence
	Sivan	2007	record awaited from High Court
	Sivan	2009	Evidence
1	Vaishali (Hazipur)	1997	Evidence

Tamil Nadu

- There are 324 cases, out of which in 139 cases sitting legislators are accused.
- Proceedings in 92 cases have been stayed by the High Court (88 cases) and this Hon'ble Court (4 cases).
- Special Court under the orders of this Hon'ble Court has been constituted at Chennai at Sessions level wherein, 78 cases are pending. Other cases are pending before various jurisdictional court including 4 Fast Track courts and 1 Special CBI court.

Maharashtra

- There are total 330 pending cases, out of which in 222 sitting legislators are accused.

- 31 cases relate to offence punishable with life imprisonment. (17 cases against sitting legislators and 14 against former legislators).
- Cases mentioned at Sl.No. 3 to 6 pending in Additional Sessions Judge, Beed district relate to incidents of 2013 and punishable with life imprisonment; however, charge has yet not been framed.
- There are many other cases of like nature pending in various courts, where charge has not been framed.

Orissa

- There are 331 cases, out of which in 220 cases sitting legislators are accused.
- 32 cases relate to offence punishable with life imprisonment. (10 cases against sitting legislators and 22 against former legislators). Status of some of these cases are as follows:-

Sl.No.	District	Incident period	Status
95	Cuttack	2012	Charge framing
111	Ganjam	2010	4 out of 74 witnesses examined
12	Ganjam	2012	8 out of 49 witnesses examined
115	Ganjam	2016	7 out of 19 witnesses examined
116	Ganjam	2016	11 out of 20 witnesses examined
117	Ganjam	2017	2 out of 37 witnesses examined
122	Ganjam	2015	7 out of 16 witnesses examined

Madhya Pradesh

- There are 184 cases, out of which in 125 cases sitting legislators are accused.
- All the cases are pending before Special Judge, Bhopal. The incidents in these cases relate to different parts of the State.

- 31 cases are those which are punishable with life imprisonment (12 cases against sitting legislators and 19 against former legislators). The status of some of these are as follows:-

Sl.No.	District	Incident period	Status
29	Sagar	2013	Final arguments
170	Jabalpur	2012	Evidence
3	Bhopal	2012	Evidence
14	Ujjain	2011	Evidence
18	Rewa	1998	Evidence
19	Bhopal	2015	Charge hearing
21	Bhopal	2015	Charge hearing
22	Bhopal	2015	Charge hearing
23	Bhopal	2013	Charge hearing
24	Bhopal	2015	Charge hearing
27	Hosangabad	2009	Evidence
35	Indore	2006	Presentation of case diary
55	Morena	2012	Evidence
73	Ashok Nagar	2010	Stay

Andhra Pradesh

- There are 106 cases and all are pending before one Special Court, Vijaywada.
- In 85 cases sitting MPs/ MLAs are accused. However, the number of legislators involved are more than total number of cases since there are more than one accused in one case. For example case at Sl.No. 40 (Case CC No. 56 of 2018), there are 21 accused legislators. The said case relates to an offence under section 188 IPC punishable with imprisonment for 2 years.

- A large number of cases, many of whom are sitting MLAs are at stage of appearance (Sl. No. 6, 9, 10, 14, 15, 16, 18, 24, 25, 26, 28, 29, 30, 32, 33, 35, 36, 39, 51, 53, 56, 57, 60, 61, 62, 65, 66, 71, 73, 88, 89, 91, 92, 93, 96, 97, 101, 102 and 104). Most of the cases are under section 188 IPC punishable for imprisonment upto two years. However, some are punishable with imprisonment of 10 years and pending since 10 years. (*see Sl.No. 101*).
- The Special Judge in respect of case at Sl.No. 9 has recorded that "NBW is pending" against A1. A special memo was issued to SHO for his appearance and report was sought. In spite of the said direction also the SHO did not appear before the court. Hence while marking the copy to SP, Chittor, a show cause notice was issued to SHO." Similar comments have been made in various other cases.

West Bengal

- There are total 131 pending cases, out of which in 101 cases sitting legislators are accused.
- All 131 cases from various districts have been transferred to and are pending before Special Court constituted at Barasat, North 24 Parganas.
- It appears from the report that in most of the cases charges have yet not been framed, as against the column of date of framing charge it has been stated as 'Nil', even when the cases relate to incidents of as far back as 1981.
- In many cases remark has been made as 'ER of WA', i.e., Execution required of warrant of arrest.

- 8 cases relate to offence punishable with life imprisonment (3 cases against sitting legislators and 5 against former legislators). Status of some of these cases are as follows:-

Sl.No.	District	Incident period	Status
17	Hoogly	2007	Execution required of warrant of arrest
20	Birbhum	2010	Evidence
35	West Midnapore	2011	Charge hearing
54	Birbhum	2009	Appearance
68	Birbhum	2010	Charge hearing
69	Birbhum	2010	Evidence
74	Kolkata	2014	Production
94	Purlia	2001	Hearing

Karnataka

- There are 164 cases, out of which in 107 cases sitting MPs/ MLAs are accused.
- All the cases are pending in one Special Court at Bengaluru, even if the offence has been committed in different parts of the State.
- There are more than one case against one accused legislator. Thus, legislators involved do not correspond to number of cases. For example, cases at Sl.No. 5, 6, 8 to 12 are against same accused person. Similarly, cases at Sl.No. 21 to 27 is against same accused person. So also, cases at 36 to 40 and 44 to 48 are against the same accused.

- In number of cases in Prevention of Corruption Act 1988, even charge-sheet has not been filed (Sl.No. 110 to 141) though they relate to period between 2015 and 2016.
- 56 cases have been stayed by High Court.
- 53 cases relate to offences punishable with life imprisonment (27 cases against sitting legislators and 26 against former legislators).

Kerala

- There are 333 cases, out of which in 310 cases sitting legislators are accused.
- Cases at Sl.No. 2 and 6(2) relate to incidents of 1997 and 1992 respectively and are offences punishable with death/ life imprisonment. However, trial in both the cases have been stayed by the High Court.
- Case at Sl.No. 7 relates to an incident of 2009 and the offence is punishable with life imprisonment; however, the charge has yet not been framed.
- In more than 100 (including at Sl. no 22 to 33) cases charges have not been framed though they relate to incidents of as far back as 2012 and 2013.

Assam

- There are 35 cases pending, out of which in 25 cases sitting legislators are accused.
- 12 cases relate to offences punishable with imprisonment for life, out of which 8 are against sitting legislators.
- Cases at Sl.No. 4 and 5 are offences punishable under Section 302 IPC, and relate to incidents of 2001 and 2007 respectively.

- In case at Sl.No. 4, 90 PWs have been examined and 80 more have to be examined, and similarly in case at Sl.No. 5, 2 have been examined and 35 more have to be examined. Expected time 'PO transferred'.
- Case at Sl.No. 6 is punishable under section 302 IPC, though the incident is of 2016 and charge-sheet have been filed in 2017, charge has not been framed.
- The case mentioned at Sl.No. 7 relate to incident of 2001 punishable under section 302 IPC; however, trial has been stayed by the High Court.
- Cases mentioned at Sl.No. 15 to 18 are against a sitting MP, all of which are offences punishable with life/ death. These cases relate to incident of 1998, 2005 and 2012. In all these cases some of the witnesses have been examined and large number of them are yet to be examined. In the column of expected time for completion of trial, it has been stated "PO on leave".

Delhi

- There are 87 cases pending before two Special Courts one each at sessions (25) and magisterial level (62).
- 118 legislators (87 sitting and 31 former) are accused in these cases. The number of legislators involved are more than total number of cases since there are more than one accused in one case, and the same legislator is an accused in more than one case.
- Some of these cases have been transferred from different States to Delhi.
- 12 cases are stayed by the orders of High Court (9) and this Hon'ble Court (3).

Punjab

- There are 35 cases, out of which in 21 cases sitting MPs/ MLAs are accused.
- Cases at Sl.No. 6 and 19 relate to NDPS Act and section 302 IPC respectively are stayed by this Hon'ble Court. The order of stay was passed in respect of case at Sl.No. 6 on 17.11.2017 and at Sl.No. 19 on 02.05.2014.
- Cases at Sl.No. 11 and 22(5), which relate to incidents of 2009 and 2012 and are offences punishable with life imprisonment have been stayed by the High Court.
- Case at Sl.No. 22(2) relate to an incident of 1983 and punishable with life imprisonment wherein, charge was framed in 2019, that is, after a period of 36 years.

Jharkhand

- There are 142 cases, out of which in 86 cases sitting legislators are accused.
- Case at Sl.No. 17 relate to an incident of 1996 and offence is punishable with life imprisonment, and the same is at evidence stage.
- The case at Sl.No. 27 relate to an offence punishable with death/ life imprisonment, and expected period of trial is 3 years.
- Large number of cases are pending evidence and expected time for completion is 2 to 3 years.
- In column for expected period of completion of trial, in large number of cases it has been mentioned that "prosecution is directed to produce in expedite ways".

Gujarat

- There are 89 cases pending, out of which in 69 cases sitting MPs/ MLAs are accused persons.
- 8 cases are offences are punishable with life imprisonment.
- Cases at Sl.No. 68 and 69 relate to incidents of 1994 and 1995 and are punishable with life imprisonment. However, hearing of these cases at the stage of hearing on charge.
- Case at Sl.No. 76 relates to 2006 incident punishable with life imprisonment and is under stay by the High Court.

Telangana

- There are 118 cases and in 107 sitting legislators are accused persons. All these cases are pending before one Special Court at Hyderabad.
- In many cases are pending at stage of "summons to the accused to be served" even when the incidents are of 2012 onwards.

Rajasthan

- There are 49 pending cases, out of which 17 legislators are accused.
- In 1 case, stay has been granted by the High Court.
- There are 4 cases which relate to offences punishable with life imprisonment, and all of them are against former legislators.

Chhattisgarh

- There are 21 cases pending out of which in 13 cases sitting MLAs are accused.

- Case at Sl.No. 7 relates to an offence committed in 2015, punishable with life imprisonment. However, due to stay granted by the High Court the trial could not proceed.

Uttarakhand

- There are 20 cases and in 16 cases sitting legislators are accused persons.
- In 3 cases trial has been stayed by the High Court.
- Case mentioned at Sl.No. 14 relate to incident of 2012 and offence punishable with life imprisonment; however, charge has not yet been framed. The State has filed an application of withdrawal from prosecution under section 321 Cr.P.C. and the same is pending.
- In 13 out of the said 20 cases, the charge has not yet been framed.

Goa

- There are total 12 cases, out of which in 10 cases sitting legislators are accused.
- The case at Sl.No. 7 relates to an incident of 2008 for an offence punishable with life imprisonment; however, the proceedings have been stayed by the High Court.

Manipur

- There are 15 cases out of which in 10 cases sitting legislators are accused.
- Case at Sl.No. ix is under NDPS Act relating to an incident of 2013. In the column for expected time for completion of trial it has been stated that "it can be disposed of within 2 months if the prosecution assisting court properly."
- Case at Sl.No. xiii is for offence punishable with life imprisonment relating to an incident of 2018 and charge sheet has not yet been filed.

Mizoram

- There are 4 cases against three sitting legislators, out of which two are punishable with life imprisonment and two other with imprisonment of 10 years. These cases are of 2009, 2010 and 2014 and are at stage of prosecution evidence.

Other States

- Details of other States have not been furnished since there are few cases and there are no issues to be specifically brought to the notice of this Hon'ble Court.

B. SUMMING UP OF REPORTS

4. The reports submitted by all High Courts show that there are total number of 4442 cases pending, out of which in 2556 cases sitting legislators are accused persons. Trial in 352 cases are held up due to stay granted by higher courts. A tabulated statement of sitting and former MPs/ MLAs and cases under stay is as hereunder:-

SI.No.	State/UT	MP Sitting	MLA Sitting	MP Former	MLA Former	Total cases	Cases under stay
	1	2	3	4	5	6	7
1	Andhra Pradesh	6	79	7	53	106	3
2	Arunachal Pradesh	0	6	0	11	17	0
3	Assam	25		10		35	3
4	Bihar	256		275		531	4
5	Chhattisgarh	0	13	0	8	21	3
6	Goa	10		2		12	1
7	Gujarat	69		22		89	5
8	Haryana	1	10	2	29	42	8
9	Himachal Pradesh	35		13		48	0
10	Jharkhand	86		56		142	10

11	Karnataka	4	103	2	55	164	56
12	Kerala	310		23		333	15
13	Madhya Pradesh	7	118	15	44	184	4
14	Maharashtra	222		165		330	15
15	Manipur	0	10	0	6	15	0
16	Meghalaya	0	0	0	4	4	0
17	Mizoram	0	3	0	1	4	0
18	Nagaland	0	0	0	0	0	0
19	Orissa	220		128		331	12
20	Punjab	5	16	0	14	35	10
21	Rajasthan	17		32		49	1
22	Sikkim	0	0	0	0	0	0
23	Tamil Nadu	26	113	36	162	324	92
24	Telangana	107		11		118	4
25	Tripura	1	6	1	2	10	0
26	Uttar Pradesh	446		795		1217	85
27	Uttarakhand	0	16	1	4	20	3
28	West Bengal	101		30		131	2
UT 1	Delhi	35	54	7	24	87	12
UT 2	Dadra and Nagar Haveli	0		0		0	0
UT 3	Daman and Diu	0	0	0	0	0	0
UT 4	Puducherry	1	17	0	17	35	3
UT 5	Chandigarh	1	0	0	0	1	0
UT 6	J&K, Ladakh	1	0	0	6	7	1
	TOTAL	2556		2044		4442	352

5. 413 cases relate to offences punishable with life imprisonment, out of which 174 cases sitting legislators are accused. A tabulated statement showing offences punishable with life imprisonment is as hereunder:-

Sl. No	State/UT	Life sentence cases		
		Sitting legislator	Former legislator	Total cases
1	Andhra Pradesh	0	0	0
2	Arunachal Pradesh	1	0	1
3	Assam	8	4	12
4	Bihar	30	43	73

5	Chhattisgarh	0	1	1
6	Goa	2	2	4
7	Gujarat	8	2	10
8	Haryana	2	3	5
9	Himachal Pradesh	0	0	0
10	Jharkhand	6	3	9
11	Karnataka	27	26	53
12	Kerala	4	0	4
13	Madhya Pradesh	12	19	31
14	Maharashtra	17	14	31
15	Manipur	1	1	2
16	Meghalaya	0	2	2
17	Mizoram	1	1	2
18	Nagaland	0	0	0
19	Orissa	10	22	32
20	Punjab	2	2	4
21	Rajasthan	0	4	4
22	Sikkim	0	0	0
23	Tamil Nadu	0	3	3
24	Telangana	1	0	1
25	Tripura	0	1	1
26	Uttar Pradesh	35	81	116
27	Uttarakhand	2	0	2
28	West Bengal	3	5	8
UT 1	Delhi	0	0	0
UT 2	Dadra and Nagar Haveli	0	0	0
UT 3	Daman and Diu	0	0	0
UT 4	Puducherry	1	0	1
UT 5	Chandigarh	0	0	0
UT 6	J&K, Ladakh	1	0	1
	TOTAL	174	239	413

C. BACKGROUND OF THE CASE

6. That this Hon'ble court in the case of Public Interest Foundation vs. Union of India 2015 (11) SCC 433 directed as under:-

"We, accordingly, direct that in relation to sitting MPs and MLAs who have charges framed against them for the offences which are specified in Sections 8(1), 8(2) and 8(3) of the RP Act, the trial shall be concluded as speedily and expeditiously as may be possible and in no case later than one year from the date of the framing of charge(s). In such cases, as far as possible, the trial shall be conducted on a day-to-day basis. If for some extraordinary circumstances the court concerned is not being able to conclude the trial within one year from the date of framing of charge(s), such court would submit the report to the Chief Justice of the respective High Court indicating special reasons for not adhering to the above time-limit and delay in conclusion of the trial. In such situation, the Chief Justice may issue appropriate directions to the court concerned extending the time for conclusion of the trial."

7. That the Law Commission of India in its 239th Report dated March, 2012 has extensively examined the question of "Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities" and has observed thus:

"4.3.5 The Commission is of the view that the cases of influential persons in public life need to come up for special focus for the reason

that the experience shows occurrence of long delays both in investigation and trial. This is because of the influence they can wield with the Police and witnesses. Delays are also often caused by their prolonged abstinence from the court proceedings and the Police not taking effective steps to produce them in court. Secondly, the persons holding public offices have a role to play in democratic governance and the people have legitimate expectation that the elected representatives are clean and free from criminal misconduct. Thus, public are equally interested in early conclusion of trial”.

The Commission noted the reasons for the delay and also suggested remedial measures. However, no steps appear to have been taken on the basis of the said report.

D. PROCEEDINGS IN THE PRESENT CASE

8. This Hon'ble Court vide order dated 01.11.2011 directed the Central Government to submit information as to how many of 1581 cases involving MLAs and MPs have been disposed of within a time frame of one year in terms of the judgment of this Hon'ble Court in *Public Interest Foundation (supra)*. The Central Government was also directed to explore setting up of Special Courts exclusively to deal with criminal cases involving political persons in the lines of Fast Track Courts.

9. This Hon'ble Court vide order dated 14.12.2017 directed setting up of 12 Special courts as proposed by the Union of India. The High Courts were directed to transfer cases against MPs and MLAs to such Special courts.

10. The Union of India vide letter dated 16.01.2018 has evolved a scheme to deal with criminal cases involving MPs/ MLAs according to which Special Courts would be constituted in States/ UTs where 65 or more such cases are pending. The Central Government sanctioned Rs. 7.80 crore for constitution of 12 Special Courts, 9 for sessions trial cases in the following States / UTs of –

- (i) Andhra Pradesh
- (ii) Bihar
- (iii) Karnataka
- (iv) Madhya Pradesh
- (v) Tamil Nadu
- (vi) Telangana
- (vii) Uttar Pradesh
- (viii) West Bengal
- (ix) Delhi

And 3 for magistrate cases in the States/ UTs of –

- (i) Maharashtra
- (ii) Kerala
- (iii) Delhi

11. That this Hon'ble Court vide order dated 04.12.2018, inter alia, directed:

"Having considered the matter we are of the view that the suggestions of the learned Amicus Curiae should be tried out with certain modifications and in a limited manner which is indicated below:-

Instead of one Sessions Court and one Magisterial Court in each District we request each High Court to assign/ allocate criminal cases involving former and sitting legislators to as many Sessions Courts and Magisterial Courts as the each High Court may consider proper, fit and expedient. This, according to us, would be a more effective step instead of concentrating all the cases involving former and sitting legislators in a Special Court(s) in the district."

However, the aforesaid directions were confined to the States of Bihar and Kerala.

12. This Hon'ble Court vide its order dated 05.03.2020 directed the High Courts to furnish information regarding pending cases of MPs and MLAs in a prescribed format to Amicus Curiae with a copy to Secretary General of this Hon'ble Court. In terms of the said order all the High Courts have sent the required information to Amicus Curiae. Vide order dated 31.08.2020 this Hon'ble Court permitted Amicus Curiae to compile the reports and make submission for expeditious disposal of cases. Accordingly, the reports have been compiled and summarised hereinabove.

E. SUBMISSIONS

13. In the aforesaid circumstances, the following submissions are made for ensuring expeditious trial of cases where MPs/ MLAs are accused:

(i) Special Courts in every district for MPs/MLAs

- a. Each High Court may be directed to assign/allocate criminal cases involving former and sitting legislators to as many Sessions Courts and Magisterial Courts as the respective High Courts may consider proper, fit and expedient having regard to the number and nature of pending cases. Such decisions may be taken by the High Courts within four weeks of the order.
- b. The State Governments will issue necessary notification in terms of the recommendation of the High Court within two weeks from the receipt of the recommendation.
- c. Case records to be transferred expeditiously to the Special Courts.

(ii) Practice Directions

- a. Special Courts will give priority to the trial of cases in the following order:
 - i. Offences punishable with death/ life imprisonment;
 - ii. Offences punishable with imprisonment for 7 years or more;
 - iii. Other offences.
- b. Cases involving sitting legislators to be given priority over former legislators.
- c. Forensic laboratories will give priority in furnishing the report in respect of cases being tried by the Special Courts and will submit all pending reports within one month.

- d. State Government/ UTs will appoint/ designate at least two Special Public Prosecutors for prosecuting cases in the Special Courts in consultation with District and Sessions Judge in the concerned District.
- e. No adjournment shall be granted except in rare and exceptional circumstances and for reasons to be recorded.
- f. The Superintendent of Police of respective District shall be responsible to ensure production of accused persons before the respective courts on the dates fixed and the execution of NBWs issued by the courts.
- g. The SHO of the concerned police station shall be personally responsible for service of summons to the witnesses and their appearance and deposition in the court.
- h. Courts will use technology of video conferencing for examination of witnesses and appearance of the accused persons, to the extent possible.

(iii) Cases under stay

- a. This Hon'ble court in *Asian Resurfacing of Road Agency Pvt. Ltd. Vs. CBI*, 2018 (16) SCC 299, held as under:

"If stay is granted, it should not normally be unconditional or of indefinite duration. Appropriate conditions may be imposed so that the party in whose favour stay is granted is accountable if court finally finds no merit in the matter and the other side suffers loss and injustice. To give effect to the legislative policy and the mandate of Article 21 for speedy justice in criminal cases, if stay is granted, matter should be taken on day-to-day basis and

concluded within two-three months. Where the matter remains pending for longer period, the order of stay will stand vacated on expiry of six months, unless extension is granted by a speaking order showing extraordinary situation where continuing stay was to be preferred to the final disposal of trial by the trial Court. This timeline is being fixed in view of the fact that such trials are expected to be concluded normally in one to two years.”

In view of the law laid down in the aforesaid case, trial courts to proceed with the trial notwithstanding any stay granted by the High Court unless fresh order is passed extending the stay by recording reasons.

- b. In the alternative, Registrar Generals may be directed to place the matters involving MPs and MLAs before Hon’ble the Chief Justice for appropriate orders for urgent listing of such cases.

(iv) Witness Protection

- a. Witness protection in all such cases is essential having regard to vulnerability of the witnesses and the influence exercised by the legislators facing criminal trials. This Hon’ble Court in the case of *Mahender Chawla vs Union of India*, 2018 (16) SCC 299 has framed “Witness Protection Scheme, 2018” and made it applicable to all the States till the enactment of suitable legislation by the Parliament or State legislatures.

- b. Trial courts shall consider granting of protection under the aforesaid scheme to all the witnesses, without any application by the respective witnesses.

(v) Monitoring by High Courts

- a. Each High Court shall register a Suo Moto case with the title "In Re: Special Courts for MPs/MLAs" to monitor the progress of cases pending in the State and ensure compliance of directions of this Hon'ble Court.
- b. The writ petition, so registered shall be heard by a Division Bench of the High Court to be constituted by the Chief Justice.
- c. A Senior Advocate shall be appointed as Amicus Curie.
- d. The State shall be represented by the Advocate General or an Additional Advocate General.
- e. A senior Police officer of the rank not below Inspector General of Police shall be present in the Court in each hearing to furnish requisite information, as and when required.
- f. Each Special Court will send a monthly status report to the High Court and the High Court, on examination of the same, will issue necessary directions to ensure speedy disposal of cases.
- g. The case shall be heard by the High Court at such interval as may be necessary; however, at least once three months.

DATED 08.09.2020

SUBMITTED BY
VIJAY HANSARIA, SR ADVOCATE