IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO ..... OF 2020

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Verses

1. Union of India
   Through Home Secretary,
   North Block, New Delhi-110001,
2. Chairperson-Lokpal
   6, Vasant Kunj Institutional Area
   Phase-2, New Delhi-110070,
3. Director
   National Investigation Agency
   CGO Complex, Lodhi Road, New Delhi-110003,
4. Director
   Central Bureau of Investigation
   CGO Complex, Lodhi Road, New Delhi-110003,
5. Director
   Enforcement Directorate
   Loknayak Bhawan, Khan Market, New Delhi-110003,
6. Director
   Intelligence Bureau
   North Block, New Delhi-110003,
7. Director
   Serious Fraud Investigation Office
   CGO Complex, Lodhi Road, New Delhi-110003,
8. Director
   Research and Analysis Wing
   CGO Complex, Lodhi Road, New Delhi-110003,
9. Director General
   Narcotics Control Bureau,
   Block-1, Wing-5, RK Puram, New Delhi-110003
10. Chairman
    Central Board of Direct Taxes
    North Block, New Delhi -110003, ...Respondents

PIL UNDER ARTICLE 32 FOR LOKPAL MONITORED INVESTIGATION OF CRIMINAL POLITICAL NEXUS REFERRED BY THE VOHRA COMMITTEE

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

1. Petitioner is filing this writ petition as a PIL under Article 32 seeking appropriate writ/order/direction for Lokpal Monitored Investigation of the criminal political nexus, as referred by the Vohra Committee and directed by the Supreme Court in WP(C)664/1995. (Annex P-1)

2. The facts constituting cause of action accrued on 5.10.1993, when Vohra Committee submitted its Report on criminal political nexus to the Centre. The Committee examined the problem of criminalisation of politics and the nexus among criminals-politicians-bureaucrats. It contains serious observations made by central agencies on the criminal network which was virtually running parallel government. It also discussed about criminal gangs who enjoyed patronage and protection of politicians and public servants and revealed that politicians had become the leaders of the gangs. The unpublished annexures of the Vohra Committee Report contain highly explosive material that's why the Supreme Court recommended establishing a high level committee for comprehensive investigation into the

findings of the Vohra Committee and to secure the prosecution of all accused. However, Centre has not taken appropriate steps, so, even one politician-public servant-criminal has not been prosecuted yet.

3. The injury to the public is extremely large because due to inaction of the Centre, many Law-breaker politicians, who had close links with underworld, became Law-Makers and Ministers. Even today, few of them are Member of Loksabha, Rajyasabha and State Assemblies and Centre has conferred them Padma Awards also. It is necessary to state that in big cities, the main source of illegal income relates to real estate- forcibly occupying lands/buildings, procuring properties at cheap rates by forcing out the existing occupants/tenants etc. Money power thus acquired is used to build contacts with bureaucrats-politicians to expand the illegal activities. Money power is used to develop network of muscle-power, which is also used by politicians during elections. The nexus among the criminals, politicians and public servants had come out clearly in various parts of the country because the existing criminal justice system, which is essentially designed to deal with individual crimes, is unable to deal with the activities of the Mafias; and the provisions of law in regard to the economic offences are very weak.

4. There are many cases, where initial failure has led to the emergence of Mafias who have become too big to be tackled. Likewise, there has been a rapid spread and growth of criminal gangs, armed senas, drug mafias, drug smugglers, drug peddlers and economic lobbyists, which have, over the years, developed an extensive network with public servants and politicians not only at local levels but also with strategically located individuals in the non-State sector. Some of the gangs have international linkages, including foreign intelligence agencies. The Mafias have developed significant muscle and money power and established linkages with governmental functionaries, political leaders and others to be able to operate with impunity.

5. Investigating agencies focus their respective charter of duties, dealing with the infringement of laws relating to their organisations and consciously putting aside the vital informations on linkages which they come across. Therefore, it is duty of the Centre to set-up a nodal point to which existing intelligence & enforcement agencies, irrespective of the department under which they are located, shall promptly pass on vital formations, which they may come across and relates to the activities of the crime syndicates. Petitioner submits that Lokpal may be declared as Nodal Body in such matters.

6. Democracy is on the threshold of completing 70 years of existence. Milestones such as this have traditionally been occasions to embark upon wide ranging assessments to survey the achievements and failures, highpoints and pitfalls, as well as the future prospects of the institution concerned. It is acknowledged that democracy in India has not risen up to the high expectations which heralded its conception and the root cause of the failure is the nexus among politicians-criminals-public servants. Criminalization of politics is the root causes of the malaise which have incapacitated the Indian democracy in particular and Indian society in general.

7. Vohra Committee Report is compilation of the responses of its member's viz. Secretary-RAW, Director-CBI, Director-IB, Secretary-Revenue. In main Report, these various reports have been analysed and it is noted that the growth and spread of crime syndicates in Indian society has been pervasive. It has been observed in the report that the Mafias Smugglers and Money Launderers have developed an extensive network of contacts with bureaucrats, government functionaries, politicians, legislators, strategically located persons in the non-Governmental sector and some of the criminal syndicates have international links with foreign intelligence agencies.

8. The Report recommended that an efficient Nodal Cell be set up with powers to take stringent action against crime syndicates, while ensuring that it would be immune from being influenced. However, no follow-up action on the findings of Vohra Committee Report had been initiated in last 27 years. In July 1995, a young political activist Naina Sahni was brutally murdered and the main accused happened to be an active politician who had held important political positions. Newspaper published a series of articles on the criminalisation of politics within the country, and the growing links among criminals' politicians and public servants. The attention of the masses was drawn towards the existence of Vohra Report and Centre's inaction. It was suspected that the contents of Vohra Report were such that the Centre was reluctant to make it public. As a consequence of the resulting controversy, incomplete report was placed in parliament.

9. On 1.81995, Vohra Committee Report was tabled in Parliament, where it became the subject of a prolonged intense debate. Sh. Dinesh Trivedi actively participated in the debates. On 16.8.1995, he made a written representation to then Home Minister demanding that the Union Government make public the reports which were the basis for Vohra Committee Report and that the names of individuals

who would become identifiable as a result of studying the various background papers, be released. Mr. Dinesh Trivedi alleged that Centre was trying to suppress the background reports and without them, Vohra Committee Report was baseless. Being unsuccessful in securing satisfactory response from Centre, he filed WP(C)664/1995 and the Judgment was pronounced on 20.3.1997 [Annexure P-1].

10. Petitioner submits that **(i)** government agencies in their written reports have indicated that they are aware of the local national and international links between criminals and politicians **(ii)** the nexus are such that they amount to a parallel system of government **(iii)** common citizen is unprotected and bound to live in constant fear of his life and property **(iv)** even the members of the judiciary have not escaped the embrace of mafias-politicians **(v)** the existing criminal justice system is unable to deal with activities of mafia-smugglers **(vi)** Vohra Report reveals alarming trends; hence it must be made the subject of comprehensive investigation **(vii)** the Report tabled in the parliament is not the complete Report but betrays an incomplete substitute prepared hurriedly for the purpose of meeting the demand and suppresses vital information regarding unholy nexus among the criminals, politicians and public servants.

11. Petitioner bases this assertion on the statement made in parliament, a day prior to the publication of Vohra Report, by the Minister for Parliamentary Affairs that Report extended to over 100 pages but document placed before the House numbered only 11 pages. The Report, as it was tabled, is not in the form of continuous paras; on the contrary, after paragraph 3.7, the next paragraph is 6.1. Vohra Report is based on the reports of Director-CBI, ED and RAW etc that had been placed before it that's why without supporting documents, the Report is incomplete and genuineness is shrouded in suspicion.

12. Citizens have right to be informed not only of the contents of report, but also of the details of the reports, notes, letters and other forms of evidence that were placed for consideration by Vohra Committee. It is axiomatic that citizens have a right to know about the affairs of the State which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. Citizens have right to know every public act, everything that is done in public way, by public servants. They are entitled to know the particulars of every public transaction in all its bearing. The right to know derived from the freedom of speech, is a factor which should make one wary, when secrecy is claimed for transactions which have no

repercussion on public security. To cover with the veil of secrecy, the common routine business is not in the interest of public. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is chief safeguard against oppression and corruption. To ensure the continued participation of the people in the democratic process, they must kept informed of the vital decisions taken and the basis thereof. Democracy, therefore, expects openness and openness is a concomitant of a free society.

13. Citizens have right to know about complete Vohra Report and its disclosure is not only necessary to maintain the democracy but also essential to ensure transparency in the governance. Vohra Report addresses to those cases which not fall within the 'Public Order' but instead involving narco-terrorist elements, smuggling of arms and ammunitions, which are completely within the Centre's domain. Hence, the details of reports and events mentioned in the Report can be disclosed by Centre. Therefore, petitioner seeks appropriate writ order or direction to reveal the names of criminals, politicians, and public servants on the official website of Home Ministry, against whom there are tangible evidence in the Vohra Committee Report.

14. Vohra Report reveals several alarming and deeply disturbing trends that are prevalent in our present society. For some time now, it has been generally perceived that nexus among politicians, bureaucrats and criminal elements in our society has been on the rise, the adverse affects of which are increasingly being felt on various aspects of social life. Indeed, the situation has worsened to such an extent that the President of India makes references to phenomenon in his Addresses to the Nation. The matter is, therefore, one that needs to be handled with extreme care and circumspection. The Report while recording widespread development of crime syndicates within the country, points out that under the existing system, there is no provision by which the various intelligence agencies can coordinate with each other in properly utilising the information relating to the links developed by crime syndicates which comes their way. Sharing of such information is rare, and much of it is discarded without being put to any productive use. The Report, therefore, recommended the setting up of a Nodal Agency to which all existing intelligence and enforcement agencies irrespective of the department under which they are located shall promptly pass on information relating to crime syndicates which they come across.

15. Petitioner requests the Court to direct the Centre to handover the complete report with annexures, memorials and written evidence (that were placed before Vohra Committee) to the Director NIA, CBI, ED, IB, SFIO, RAW, CBDT, NCB for comprehensive investigation. Only setting-up Nodal Agency would serve no purpose for it would be as prone to failure as the agencies it sought to supervise had proven themselves to be. Therefore, the Court may setup a Judicial Commission consisting of retired Judge(s) of the Apex Court with sufficient experience of criminal matters to monitor the probe by NIA, CBI, ED, IB, SFIO, RAW, CBDT, NCB into the disclosures that would be made consequent to the directions and further legal action could be pursued by the Court once the Commission submits its complete report. Alternatively, the Court may direct the Lokpal of India to monitor the investigation by NIA, CBI, ED, IB, SFIO, RAW, CBDT, NCB. The Court may empower Lokpal to exercise statutory powers under the CrPC and declare that it would be able to launch prosecutions against politicians-bureaucrats-criminals on the basis of evidence collected for offences under the IPC and other laws. The Court may direct to setup Special Courts to expeditiously try all such cases referred in Report as did in petitioner's PIL[WP(C)699/2016].

16. The Report contains recommendations as to the manner in which Nodal Agency should be set up while simultaneously emphasising the need for ensuring that the information available with the agency set-up is used strictly and purely for taking stringent action against the crime syndicates, without offering any scope whatsoever of its being exploited for political gain. Need for complete confidentiality was also emphasised. The Agency set-up by the Centre pursuant to the Parliament debate does not conform to the recommendations of the Report. The Nodal Agency suffers from certain limitations. Being only a supervisory body, without having clearly delineated powers, it cannot effectively control pace and thrust of investigative efforts.

17. On 20.3.1997, Apex Court in Dinesh Trivedi Case [(1997)4 SCC 306] had held: *"**30.** We are of the view that the grave nature of the issue demands deft handling by an all-powerful body which will have the means and the power to fully secure its foundational ends. The Nodal Agency, in its present form, comprises senior bureaucrats of the highest level. While it is suited to coordinate an exchange of information between different investigating agencies, its composition is such that it may not be viewed by the public as completely independent or immune from pressures of every kind. It is, therefore,*

not suitable for pursuing an investigation of this kind and taking it to the state of prosecution where may be nexus between the persons under investigation and powerful persons such as those referred to in the Vohra Committee Report. In view of the seriousness of the charges involved and the clout wielded by those who are likely to become the focus of investigation, it is necessary that the body which is entrusted with the task of following the investigation through to the stage of prosecution, be such that it is capable of enjoying the complete trust and confidence of the people. Moreover, in view of the suspicion that those involved may well be individuals who occupy, or have occupied, high positions in Government, it is necessary that the body be able to obtain the sanctions which are necessarily required before any prosecutions can be launched. In the case of public servants, sanctions are required, for instance, under Section 197 of the Code of criminal procedure and under Section 6 of the prevention of corruption Act, 1947. The Nodal Agency, in its present form, may not command the confidence of the people in this regard; this is a serious handicap for, in such matters, people's confidence is of the essence. An institution like the Ombudsman or a Lokpal, properly set up, could command such confidence and respect.

31. We are, therefore, of the view that the matter needs to be addressed by a body which function with the highest degree of independence, being completely free from every conceivable influence and pressure. Such a body must possess the necessary powers to be able to direct investigation of all charges thoroughly before it decides, if at all, to launch prosecutions. To this end the facilities and services of trained investigators with distinguished records and impeccable credentials must be made available to it. The Report, the supporting material upon which it is based and the unequivocal assistance of all existing intelligence agencies must be forwarded to this body. In time if the need is so felt, the body may even consider the feasibility of designating Special Courts to try those who are identified by it, which proposal may then be considered by the Union Government. To this end, and in the absence of any existing suitable institution or till its creation, we recommend that a high level committee be appointed by the president of India on the advice or the Prime Minister, and after consultation with the Speaker of the Lok Sabha. The Committee shall monitor investigations involving the kind of nexus referred to in the Vohra Committee Report and carry out the objectives described earlier".

18. The consequences of permitting criminals to contest elections and become legislators are extremely serious for our democracy and secularism: **(i)** during the electoral process itself, not only do they deploy enormous amounts of illegal money to interfere with the outcome, they also intimidate voters and rival candidates. **(ii)** Thereafter, in our weak rule-of-law context, once they gain entry into our system of governance as legislators, they interfere with, and influence, functioning of the 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 themselves, 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. The empirical evidence supports the view, therefore, to the extent that the current legislative framework permits criminals to enter electoral process

and become legislators, it **(a)** interferes with the purity and integrity of electoral process; **(b)** violates the right to choose freely the candidate of the voter's choice and, therefore, the freedom of expression of voter under Article 19(1); **(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 the Article 14.

19. 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 the 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 the similar data and analysis from the social sciences.

20. When 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. It is evident that electoral-democratic reform is not priority of any government.

21. The Supreme Court has repeatedly issued directions in the past to Election Commission to exercise plenary powers under Article 324 with respect to "*superintendence, direction and control*" of conduct of elections to Parliament, State legislatures and Local bodies to redress not only the violations of the fundamental rights of voters guaranteed under Article 19(1) but also to protect purity of electoral process and ensure free and fair election. There are many reasons why the Court must take steps to weedout the criminal-politician nexus. Host of reports by eminent judicial commissions and expert committees including the Election Commission in its "*Proposed Electoral Reforms*" (2004), the Law Commission in its 170th and 244th Reports (1999 and 2014), the Consultation Paper on Electoral Reforms issued by the NCRWC (2002), Second Administrative Reforms Commission (2009) and the Vohra Committee (1993) have drawn attention to the severity of problem and have suggested electoral reforms to stem the tide of criminals flowing into polity.

22. Taking note of these reports, the Supreme Court has in a series of decisions over the last two decades taken many 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* [(1997) 4 SCC 306]; **(ii)** directing the Election Commission to ensure that candidates file affidavits along with their nomination papers setting out the criminal cases pending against them in ADR Case [(2002) 5 SCC 294]; **(iii)** holding that the disqualification under Section 8 of the 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 RPA, 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 **(v)** the most recently, in petitioner's PIL [WP(C)699/2016] directing all High Courts to set up Special Courts to complete the trial of pending criminal cases against sitting and former Legislators within one year. On the other hand, instead of taking steps to prosecute criminals-politicians referred to in Vohra Report, Centre has conferred 'Padma Awards' to few of them.

23. Decisions of the Supreme Court support compelling necessity to take immediate steps to deter candidates who have charges framed against them from standing for elections: ***First***: In the context of upholding the denial of the right to vote to those confined in jail or in police custody, this Hon'ble Court in *Anukul Chandra Pradhan v. Union of India* [(1997) 6 SCC 1, para 5], held that: "*...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*" (Law Commission's 244th Report also records that 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 law-makers. In ADR Case this Court held that "*...voters may not elect law-breakers as law-makers, some flowers of democracy may blossom.*" [*Prabhakaran*, para54] ***Third:*** Candidates with criminal antecedents also interfere with the

purity of the electoral process through coercion and intimidation of voters and rival candidates, which is a violation of the freedom of expression of the voter under Article 19(1)(a). This Court in *Prabhakaran* (para 54) 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, para 28], the Court recognized that *"...casting of the vote is a facet of the right of expression of an individual and the said right is provided under Article 19(1).* [(ADR (2002) 5 SCC 294, PUCL, (2003) 4 SCC 399)]. ***Fourth:*** Permitting criminals to become legislators' results in the breakdown of the rule of law both in terms of government machinery as well as in terms of the system of administration of justice. Therefore, this Hon'ble Court must take steps to not only deter criminals from becoming legislators but also to uphold the rule of law inherent in Article 14.

24. The Court in *Manoj Narula* Case 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 rule of law". In this background, it is submitted that the Court should direct the ECI to insert in Paragraph 6A "*Conditions for recognition as State Party*" and Paragraph 6B "*Conditions for recognition as National Party*" of the Election Symbols Order, 1968, the condition – "*No candidate with criminal antecedents shall be set up by the Political Party*". In accordance with the recommendations in the 244th Report of Law Commission on the disqualification proposed therein, a definition should also be introduced in paragraph 2: *"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.*

25. There are many precedents for this Hon'ble Court to give directions to preserve purity of elections. In ADR Case, the Court directed the ECI to call for information on affidavit from candidate, *inter alia*, listing the offences with which he is charged and the assets of himself and his family by issuing necessary orders in exercise of its power under Article 324. The Court held: "***48.*** *Finally, in our view this Court would have ample power to direct the ECI to fill the void,*

in absence of suitable legislation covering the field and the voters are required to be well informed, educated about contesting candidates so that they can elect a proper candidate by their own assessment. It is duty of executive to fill the vacuum by executive orders because its field is coterminous with that of the legislature, and where there is inaction by 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 candidate is directed to declare his/her spouse's and dependants' assets —immovable, movable and valuable articles — it would have its own effect...."

26. In *S. Subramaniam Balaji* [(2013) 9 SCC 659], the Court directed the ECI to exercise its powers under Article 324 to frame guidelines governing the contents of an election manifesto to be included in the Model Code of Conduct. The Court justified the need for such a direction by holding 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."

27. In PUCL Case [(2013)10 SCC 1], the Court directed 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 the 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 of India to implement the same either in a phased manner or at a time with the assistance of the Government of India...."

28. The proposed direction does not constitute a disqualification in violation of Articles 102(1)(e) or 191(1)(e) because affected candidate can always stand for election as an independent. Any such direction by the 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 ECI in exercise solely of its plenary powers under Article 324. This follows because:

(i) Power of the Election Commission 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 of India 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 of India 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 crystal clear that the proposed direction to the Election Commission of India to amend the Election Symbols Order 1968 would operate in a field where there is a legislative vacuum and which can be filled by the ECI under Article 324.

29. The proposed direction is vital because functions performed by the 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 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 for serious offences. In fact, Legislators are not only public servant but also the law makers hence they must comport higher ethics and morality.

30. There are very few offices as important as that of the MPs and MLAs. In PV Narasimha Rao Case *[(1998) 4 SCC 626 para 162]*, the Supreme 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 MP or a MLA who represents the people of his constituency in the highest law-making bodies at the Centre and State respectively. He is 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."* Of course, the refusal to consider candidates for judgeship/IAS may be on touchstone of suitability and not eligibility. It is worth noting, however, that the proposed direction is not an eligibility condition for legislators, rather it merely imposes a condition on political parties. Moreover, in context of institutional integrity of office of the CVC, this Court has held that the pendency of criminal cases may be considered a bar on appointment to important offices such as the CVC. *[(2011) 4 SCC 1.]*

31. The effect of proposed direction would only be to impose an additional condition on political party for obtaining and retaining the status of the *"recognized national party" or " recognized state party",* which would entitle it to a reserved the symbol under the the Election Symbols Order. The statutory right to register political party would not be affected in any way. Moreover, political parties are exempted from paying income tax on contributions received by them. Therefore imposing condition during elections and preventing them from fielding candidates with criminal antecedents in election, is a reasonable restriction keeping in mind the concessions and privileges enjoyed by them. 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 the elections and nothing more. *(Krishnamoorthy, paras 59-60)* Further, even assuming that the accused 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 criminals and corrupted elements.

32. 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 the disqualification of a similar nature considering presumption of constitutionality, keeping in mind the larger public interest referred to above. The proposed direction cannot result in a violation of the fundamental right under Article 19(1) 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 political party. Further, even assuming that it could be characterized as falling within the scope of Article 19(1), proposed direction arguably is a reasonable restriction and can be justified on the ground of public order and morality in Article 19(4). Such a law would also pass 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 criminalization of polity.

33. The objections may be that it would violate 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* Case, (para 55) this Hon'ble Court had held that " *...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...*".

34. Direction doesn't impinge upon presumption of innocence. ***First,*** the proposed direction does not have the 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 cannot 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 short period of time until 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, the Constitution Bench in *Prabhakaran Case* (para 61), held that the 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, the presumption of innocence is not absolute. In India it's notorious that persons under trial for criminal offences spend years, even decades sometimes, in jail, often beyond the sentence that they would suffer if convicted.

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

36. The additional protection envisaged by the Law Commission of India in its 244th Report is that charges should have been framed at least one year before the scrutiny of nominations. During this period, candidate could also apply to the High Court under Section 482 of the CrPC or under Article 226 for quashing 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 because 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) of the Constitution. It would only deter political parties from giving tickets to criminals. This Hon'ble Court in catena of decisions had held that right to contest is only 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 (Para 8)] Kuldip Nayyar v. UOI [(2006) 7 SCC 1 (Paras 299-300 Page 107)] K. Krishnmurthy v. UOI [(2010) 7 SCC 202 (Para 78)] PUCL v. UOI [(2013) 10 SCC 1 (Para 25)] Krishnamoorthy v. Sivakumar & others [(2015) 3 SCC 467]*

37. In catena of decisions, this Hon'ble Court had held that Constituent Assembly debates throw light on the intention of the framers: *TMA Pai Foundation [(2002) 8 SCC 481 (Paras 203-208, pg. 604)] S.R.Chaudhari v. State of Punjab [(2001) 7 SCC 126 (Para 33)] A.K. Roy v. Union of India [(1982) 1 SCC 271 (Page 288)] Indra Sawhney v. UOI [(1992) Supp (3) SCC 217 at Page 710]* Similarly, in a catena of decisions, this Hon'ble Court has repeatedly held that Statement of objects and reasons show intention of the legislator. *Bakhtawar Trust v. M.D.Narayan (2003) 5 SCC 298 (Page 313); RIB Tapes Pvt. Ltd v. UOI (1986) 4 SCC 185 (Para 8, Page 189); State of TN v. K Shyam Sunder (2011) 8 SCC 737 (Para 66-68)*

38. Separation of power cannot prevent the Supreme 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.* It is necessary to state that many laws have been enacted in last two years but Centre did nothing to amend the RPA in spirit of the recommendations of the Law Commission and the judgment dated 25.9.2018. Therefore, being Custodian of the Constitution and protector of fundamental right, this Hon'ble Court cannot be a mute spectator now.

40. There is no civil, criminal or revenue litigation, involving petitioner, which has/could have legal nexus, with the issue involved in this PIL.

41. Petitioner has no personal interests, individual gain, private motive or oblique reasons in filing this PIL. This is purely in public interest.

42. Petitioner has not submitted representation to authorities because despite the direction they have not taken appropriate steps.

43. There is no need to approach respondents because despite repeated observations by this Hon'ble Court, they did nothing to investigate the nexus referred by the Vohra Committee and debar them from contesting. There is no remedy except approaching the Court again.

44. The Supreme Court judgment dated 20.3.1997 in WP(C) 664/1995 [(1997)4SCC 306] is annexed as Annexure P-1. [pages 37-49]

45. The Supreme Court Order dated 4.11.2020 in WP(C) 699/2016 is annexed herewith as Annexure P-2. [pages 50-61]

PRAYER

The Court may be pleased to issue writ, order or direction to:

a) direct the Home Secretary to handover the true copy of the Vohra Committee Report with annexures and notes to the Director- NIA, Director- CBI, Director- ED, Director- IB, Director- SFIO, Director- RAW, Director- NCB, Chairman- CBDT and Chairperson- Lokpal;

b) direct the Director - NIA, Director - CBI, Director - ED, Director - IB, Director - SFIO, Director - RAW, Director - NCB and the Chairman CBDT to take appropriate steps for comprehensive investigation of criminals-politicians nexus referred to in Vohra Committee Report;

c) direct the Chairperson-Lokpal to monitor the investigation involving the nexus referred to in Vohra Committee Report and take steps to carry out the objectives described in Dinesh Trivedi Case[Annex P-1]

d) In the alternative, being custodian of the Constitution and protector of fundamental rights; constitute a Judicial Commission to monitor the investigation by NIA, CBI, ED, IB, SFIO, RAW, NCB and CBDT;

e) direct the Home Secretary to withdraw the Padma Awards, given to politicians-public servants, referred to in Vohra Committee Report;

f) issue other order(s)/direction(s) as the Court deems fit and proper.

16.11.2020 (Ashwani Kumar Dubey)
New Delhi Advocate for the Petitioner