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

IN THE MATTER OF:

Ashwini Kumar Upadhyay
S/o Sh. Suresh Chandra Upadhyay
[Office:15, M.C. Setalvad Chambers, Supreme Court]
Residence: G-284, Govindpuram, Ghaziabad-201013
...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, Shashtri Bhawan, New Delhi-110001
3. Law Commission of India
   Through the Chairman
   Loknayak Bhawan, New Delhi-110003

……Respondents

PIL TO APPOINT CHAIRPERSON AND MEMBERS OF LAW COMMISSION

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 writ petition as a PIL under Article 32 seeking writ, order or direction to Centre to appoint the Chairperson and Members of the Law Commission of India within one month and make it a statutory body. Alternatively, being custodian of the Constitution and protector of fundamental rights, the Court may use its constitutional power to appoint the Chairperson and Members of the Law Commission of India and declare it a statutory body.

2. The Cause of action accrued on **31.8.2018** and continues, when the tenure of twenty-first Law Commission was ended but Centre neither extended the tenure of its Chairperson and Members nor notified Twenty Second Law Commission. Although, on **19.2.2020**, Centre approved constitution of Twenty-second Law Commission but it has not appointed the Chairperson and Members till date.

3. Injury to public is extremely large as the Law Commission of India is headless since **1.9.2018** hence unable to examine public issues. Even the directions of the Constitutional Courts to Law Commission have become dead letter. On **11.12.2020**, petitioner withdrew **WP(C) 1300/2020** seeking action on Vohra Report and **WP(C) 1301/2020** seeking **100%** confiscation of black money, benami property and disproportionate assets and life imprisonment to looters with liberty to approach the Law Commission but unable to do so as its headless.

4. Law Commission is not working since **1.9.2018** so Centre doesn't have the benefit of recommendations from this specialized body on the different aspects of law, which are entrusted to the Commission for its study and recommendations. The Commission, on a reference made to it by the Centre, Apex Court & High Courts, undertakes research in law and review existing laws for making reforms therein and enacting new legislations. It also undertake studies and research

for bringing reforms in justice delivery systems for elimination of delay in procedures, speedy disposal of cases, reduction in cost of litigation etc. The Law Commission of India not only identify laws which are no longer needed or relevant and can be immediately repealed but also examine the existing laws in the light of Directive Principles of State Policy and suggest the ways of improvement and reform. The Commission also suggests such legislations as might be necessary to implement Directive Principles and to attain the objectives set out in Preamble of the Constitution.

5. Law Commission of India considers and conveys to the Centre, Apex Court and High Courts, its views on any subject relating to law and judicial administration that is referred to it and also consider the requests for providing research to foreign countries. It takes all measures as may be necessary to harness law and the legal process in the service of poor and revise Central Acts of general importance so as to simplify them and remove anomalies, ambiguities and the inequities. The Law Commission has been able to make important contribution towards the progressive development and codification of Law of the country and it has so far submitted **277** reports.

6. The power conferred by Article 32 of the Constitution of India is in the widest terms and is not confined to issuing the high prerogative writs specified therein, but includes within its ambit the power to

issue any directions or orders or writs which may be appropriate for enforcement of fundamental rights. Therefore, even when the conditions for issue of any of these writs are not fulfilled, the Supreme Court would not be constraint to fold its hand in despair and plead inability to help the citizen who has come before it for judicial redress. The Court is not helpless to grant relief in a case of violation of right to life and liberty and it should be prepared to *"forge new tools and device new remedies"./*

7. For purpose of vindicating these precious fundamental rights, in so far as the Supreme Court is concerned, apart from Articles 32 and 142, which empower the Court to issue such directions as may be necessary for doing complete justice in any matter, Article 144 also mandates all authorities civil or judicial in the territory of India, to act in aid of the order passed by the Supreme Court. Being the protector of civil liberties of citizens, the Supreme Court has not only the power and jurisdiction, but also an obligation to protect the fundamental rights, guaranteed by part-III in general and under Article 21 in particular zealously and vigilantly. The Supreme Court and High Courts are the sentinels of justice and have been vested with extra ordinary powers of judicial review to ensure that rights of citizens are duly protected. **[ML Sharma (2014) 2 SCC 532]**

8. It is not merely right of individual to move the Supreme Court, but also responsibility of the Court to enforce fundamental rights. Therefore, if the petitioner satisfies the Supreme Court that his fundamental right has been violated, it is not only the 'right' and 'power', but the 'duty' and 'obligation' of the Court to ensure that the petitioners fundamental right is protected and safeguarded. **[Ramchandran, Law of Writs, 6th Edition, 2006, Pg. 131, Vol-1]**

9. The power of Supreme Court is not confined to issuing prerogative writs only. By using expression "in the nature of", the jurisdiction has been enlarged. The expression "in the nature of" is not the same thing as the other phrase "of the nature of". The former emphasis the essential nature and latter is content with mere similarity. **[M. Nagraj (2006) 8 SCC 2012]** Supreme Court cannot refuse an application under Article 32, merely on the grounds: **(i)** that such application have been made to Supreme Court in the first instance without resort to the High Court under Article 226 **(ii)** that there is some adequate alternative remedy available to petitioner **(iii)** that the application involves an inquiry into disputed questions of fact / taking of evidence. **(iv)** that declaratory relief i.e. declaration as to unconstitutionality of impugned statute together with consequential relief, has been prayed for **(v)** that the proper writ or direction has not been paid for in the application **(vi)** that the common writ law

has to be modified in order to give proper relief to the applicant. **[AIR 1959 SC 725 (729)] (vii)** that the article in part three of the constitution which is alleged to have been infringed has not been specifically mentioned in petition, if the facts stated therein, entitle the petitioner to invoke particular article. **[PTI, AIR 1974, SC 1044]**

10. Article 32 of the Constitution provides important safeguard for the protection of the fundamental rights. It provides guaranteed quick and summary remedy for enforcing the fundamental right because a person complaining of breach of any of his fundamental rights by an administrative action can go straight to the Court for vindication of his right without having to undergo directory process of proceeding from lower to the higher court as he has to do in other ordinary litigation. The Court has thus been constituted as protector defender and guarantor of the fundamental rights of the people. It was held: *"the fundamental rights are intended not only to protect individual rights but they are based on high public. Liberty of the individual and protection of fundamental rights are very essence of democratic way of life adopted by the Constitution and it is the privilege and duty of this Court to uphold those rights. This Court would naturally refuse to circumscribe them or to curtail them except as provided by Constitution itself."* **[AIR 1961 SC1457].** In another case, Court held: *"the fundamental right to move this Court can therefore be*

described as the corner stone of the democratic edifice raised by Constitution. That is why it is natural that the Court should regard itself as the protector and guarantor of fundamental rights and should declare that it cannot consistently with the responsibility led upon it, refuse to entertain application seeking protection against infringement of such right. In discharging the duties assigned to it, the Court has to play the role of a "sentinel on the qui vive" and it must always regard it as its solemn duty to protect the said fundamental right zealously and vigilantly." **[Prem Chand Garg, AIR 1963 SC 996].**

11. Language used in Articles 32 and Article 226 is very wide and the powers of the Supreme Court as well as of the High Court's extends to issuing orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provision of the Constitution, there is no need to look back to procedural technicalities of the writs in English Law. The Court can make and order in the nature of these prerogative writs in appropriate cases in appropriate manner so long as the fundamental principles that regulate the exercise of jurisdiction in matter of granting such writ in law are observed**[AIR 1954 SC 440]**

12. An application under Article 32 of the Constitution cannot be thrown out simply because the proper direction or writ has not been prayed for. Thus, where an order in the nature of mandamus is sought in a particular form, nothing debars the Court from granting it in a different form. Article 32 gives a very wide discretion in the matter of framing the writ to suit the exigencies of particular cases. **[AIR 1951 SC 41]** Even if petitioner has asked for wider relief which cannot be granted by Court, it can grant such relief to which the petitioner is entitled to **[Rambhadriah, AIR 1981 SC 1653]**. The Court has power to grant consequential relief or grant any relief to do full - complete justice even in favour of those persons who may not be before Court or have not moved the Court. **[Probodh Verma, AIR 1985 SC 167]** For the protection of fundamental right and rule of law, the Supreme Court under this article can confer jurisdiction on a body or authority to act beyond the purview of statutory jurisdiction or function, irrespective of the question of limitation prescribed by the statute. Exercising such power, Supreme Court entrusted the NHRC to deal with certain matters with a direction that the Commission would function pursuant to its direction and all the authorities are bound by the same. NHRC was declared not circumscribed by any condition and given free hand and thus act *sui generis* conferring jurisdiction of a special nature. **[Paramjit Kaur,**

AIR 1999 SC 340] Simply because a remedy exists in the form of Article 226 for filing a writ in the High Court, it does not prevent any bar on aggrieved person to directly approach the Supreme Court under Article 32. It is true that the Court has imposed a self-restraint in its own wisdom on the exercise of jurisdiction where the aggrieved person has an effective alternative remedy in the form of Article 226. However, this rule which requires the exhaustion of alternative remedy is rule of convenience and a matter of discretion rather than rule of law. It does not oust of the jurisdiction of the Supreme Court to exercise its writ jurisdiction under Article 32 of the Constitution of India. **[Mohd. Ishaq (2009) 12 SCC 748]**

13. The Supreme Court is entitled to evolve new principle of liability to make the guaranteed remedy to enforce fundamental rights real and effective, to do complete justice to aggrieved person. It was held in that case that the court was not helpless and the wide powers given to the Supreme Court by Article 32, which itself is a fundamental right imposes a constitutional obligation on the Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enables reward of monetary compensation in appropriate cases, where that is the only redress available. The remedy in public law has to be more readily available when invoked by have-nots who

are not possessed of the where withal for enforcement of their right in private law, even though its exercise is to be tempted by judicial restraint to avoid circumvention of private law remedies, which more appropriate. Under Article 32, the Supreme Court can pass appropriate orders or facts to do complete justice between parties even if it is found that writ petition filed is not maintainable in law. **[Saihba Ali, (2003) 7 SCC 250]**

14. GUJARAT URJA VIKAS NIGAM [(2016)9 SCC 103 PARA 41]

"*We are of the view that in the first instance the Law Commission may look into the matter with the involvement of all stakeholders.* ***Para 43.*** *The questions which may be examined by Law Commission are:* ***43.1.*** *Whether any changes in statutory framework constituting various tribunals with regard to persons appointed, manner of appointment, duration of appointment, etc. is necessary in the light of judgment of this Court in Madras Bar Association (2014)10SCC 1] or on any other consideration from point of view of strengthening the rule of law?* ***43.2.*** *Whether it is permissible and advisable to provide appeals routinely to this Court only on a question of law or substantial question of law which is not of national or public importance without affecting the constitutional role assigned to the Supreme Court having regard to the desirability of decision being rendered within reasonable time?****43.3.*** *Whether direct statutory*

*appeals to the Supreme Court bypassing the High Courts from the orders of Tribunal affects access to justice to litigants in remote areas?**43.4.** Whether it is desirable to exclude jurisdiction of all courts in the absence of equally effective alternative mechanism for access to justice at grass root level as has been done in provisions of the TDSAT Act (S. 14-15).**43.5.** Any other incidental or connected issue which may be appropriate. **Para 44.** We request the Law Commission to give its report as far as possible within one year".*

15. BCCI v Bihar Cricket Association [(2016)8SCC 535] "Para 93. *We are not called upon in these proceedings to issue direction insofar as the above aspect is concerned. All that we need say is that since BCCI discharges public functions and since those functions are in the nature of a monopoly in hands of BCCI with tacit State and Centre approvals, the public at large has right to know/demand information as to the activities and functions of BCCI especially when it deals with funds collected in relation to those activities as a trustee of wherein the beneficiary happens to be the people of this country. As a possible first step in the direction in bringing BCCI under the RTI, we expect the Law Commission to examine the issue, make a suitable recommendation. Beyond that we do not consider it necessary to say anything at this stage. **Para 94.** So also the recommendation made by the Committee that betting should be*

legalised by law, involves the enactment of a law which is a matter that may be examined by the Law Commission and the Government for such action as it may consider necessary in the facts and circumstances of the case.

16. **Babloo Chauhan v. Govt. Of Delhi [(2017) SCC DEL 12045]** "***Para 11.*** *Third issue concerns the possible legal remedies for victims of wrongful incarceration and malicious prosecution. The report of Prof. Bajpai refers to the practice in United States of America and the United Kingdom. He points out that that there are 32 states in the USA including District of Columbia (DC) which have enacted laws that provide monetary and non-monetary compensation to people wrongfully incarcerated. There are specific schemes in the UK and New Zealand in this regard.****17.*** *The Court, accordingly, requests Law Commission of India to undertake a comprehensive examination of the issue highlighted in paras 11 to 16 of this order and make its recommendation thereon to the Government of India."*

17. **AP Pollution Control Board v. Prof M.V. Nayudu [(2001)2 SCC 62] T**he Court held as thus: **"*Para 73.*** *Inasmuch as most of the statutes dealing with environment are by Parliament, we would think that the Law Commission could kindly consider the question of review of the environmental laws and the need for constitution of*

Environmental Courts with experts in environmental law, in addition to judicial members, in the light of experience in other countries. Point 5 is decided accordingly."

18. **Mahipal Singh Rana [(2016) 8 SCC 335]** ***"Para 58,*** *In view of the above, we request the Law Commission to go into all relevant aspects relating to regulation of legal profession in consultation with all concerned at an early date. We hope that the Government will consider taking further appropriate steps in the light of the report of the Law Commission within six months thereafter. The Central may file an affidavit in this regard within month after expiry of one year".*

19. **Naresh Kumar Matta [2013 SCC ONLINE DEL 2388] "*Para 12***

Delay of five years in computing the cost of a flat is totally incomprehensible. The Court is of the opinion that the Law Commission should consider preparation of an enactment to recover damages/compensation from officers who take unduly long time in taking decisions or do not take a decision."

20. **Pravasi Bhalai Sangathan [(2014) 11 SCC 477]** "***Para 29***

However, in view of the fact that the Law Commission has undertaken the study as to whether the Election Commission should be conferred the power to derecognise a political party disqualifying it or its members, if a party or its members commit the offences

referred to hereinabove, we request the Law Commission to also examine the issues raised herein thoroughly and also to consider, if it deems proper, defining the expression "hate speech" and make recommendations to Parliament to strengthen Election Commission to curb the menace of "hate speeches" irrespective of whenever made.

21. Petitioner name is Ashwini Kumar Upadhyay G-284, Govindpuram, Ghaziabad-201013, Ph. 8800278866, Email: aku.adv@gmail.com, PAN: AAVPU7330G, AADHAAR: 659982174779. Income: 10 LPA. Petitioner is an Advocate and a social-political activist.

22. Petitioner hasn't filed any other similar petition either in this Court or in other Court, seeking same/similar directions, as prayed.

23. Petitioner has no personal interest, individual gain, private motive or oblique reasons in filing this PIL.

24. There is no civil, criminal or revenue litigation, involving petitioner, which has/could have legal nexus, with issue involved.

25. There is no requirement to move authority for the relief sought. There is no other remedy except filing this PIL. The Respondents may be directed to consider this petition as a Representation.

26. True Copy of WP(C)1300/2020 and the Supreme Court Order dated 11.12.2020 is annexed as **Annexure P-1.** (page

27. True Copy of the WP(C) 1301/2020 and the Supreme Court Order dated 11.12.2020 is annexed as **Annexure P-2.** (page

PRAYERS

Keeping in view the above stated facts and circumstances; the Court may be pleased to issue appropriate writ, order or direction to:

a) direct the Centre to take appropriate steps to appoint a Chairperson and Members of Twenty Second Law Commission of India within one month and make Law Commission of India a statutory body;

b) alternatively, being custodian of the Constitution and protector of the fundamental rights, the Court may be pleased to use its plenary constitutional power to appoint the Chairperson and Members of the Twenty Second Law Commission of India and declare that the Law Commission of India is a statutory body;

c) direct the Law Commission of India to consider the Annexure P-1 (copy of the WP(C)1300/2020 seeking action on Vohra Report) and Annexure P-2 (copy of WP(C)1301/2020 seeking 100% confiscation of black money, benami property & disproportionate assets and life imprisonment to looters) as a Representation and prepare two separate reports within three months;

d) pass such other order(s) as the Court may deem fit and proper in facts and circumstances of the cases and allow the cost to petitioner.

New Delhi Advocate for petitioner

24.12.2020 (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 aged 45 years, son of Sh. Suresh Upadhyay, Office: 15, New Lawyers Chambers, Supreme Court, New Delhi-110001, Residence at: G-284, Govindpuram, Ghaziabad-201013, at present at New Delhi, do hereby solemnly affirm and declare as under:

1. I am 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 - K) writ petition paras (1 -27) pages (1 - 16) and total pages (1 - 88) which are true and correct to my knowledge and belief.
3. Annexures filed with petition are true copies of its respective original.
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 authority for relief sought in this petition. There is no other remedy available except approaching this 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, which was in my power, to collect the data or material, whichis available and relevant for the Court to entertain the 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 24th day of December 2020 at New Delhi.

(Ashwini Kumar Upadhyay)
DEPONENT

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO 1300 OF 2020

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay
S/o Sh. Suresh Chandra Upadhyay
Residence: G-284, Govindpuram, Ghaziabad-201013 ...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 information 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.

39. Petitioner's name is Ashwini Kumar Upadhyay. Residence at: G-284, Govindpuram, Ghaziabad-201013, Ph. 08800278866, E-mail: aku.adv@gmail.com, PAN: AAVPU7330G, AADHAAR-659982174779 Income is 10 LPA. Petitioner is an Advocate & social-political activist and striving for gender justice, gender equality & dignity of women; unity & national integration and transparency & good governance.

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

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO 1300 OF 2020
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay …Petitioner

Verses

Union of India & others ...Respondents

AFFIDAVIT

1. I, Ashwini Kumar Upadhyay aged 45 years, son of Sh. Suresh Upadhyay, Residence at: G-284, Govindpuram, Ghaziabad-201013, at present at New Delhi, do hereby solemnly affirm and declare as under:

2. I am the sole petitioner above named and well acquainted with the facts and circumstances of the case and as such competent to swear this affidavit.

3. I have read and understood contents of accompanying synopsis and list of dates pages (B –J) writ petition paras (1 – 45) pages (1 – 35) and total pages (1 - 64) which are true and correct to my knowledge and belief.

4. Annexures filed with the petition are true copy of the respective originals.

5. 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.

6. 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.

7. There is no civil, criminal or revenue litigation, involving petitioner, which has or could have legal nexus, with issue involved in this petition.

8. There is no requirement to move concerned government authority for relief sought in this petition. There is no other remedy except filing this PIL.

9. I have gone through the Article 32 and the Supreme Court Rules and do hereby affirm that the present petition is in conformity thereof.

10. 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.

11. 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.

12. 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, Deponent do hereby verify that 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. 16th day of November 2020 at Delhi.

(Ashwini Kumar Upadhyay)

DEPONENT

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO 1301 OF 2020
(UNDER ARTICLE 32 OF THE CONSTITUTION)

IN THE MATTER OF:

Ashwini Kumar Upadhyay
S/o Sh. Suresh Chandra Upadhyay
[Office:15, M.C. Setalvad Chambers, Supreme Court]
Residence: G-284, Govindpuram, Ghaziabad-201013
...Petitioner

Verses

1. Union of India
Through Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110001

2. Union of India
Through Secretary,

Ministry of Finance,
North Block, New Delhi-110001

3. Union of India
Through Secretary,
Ministry of Law and Justice,
Shashtri Bhawan, New Delhi-110001

4. Law Commission of India
Through the Chairman/Secretary
Loknayak Bhawan, Khan Market, New Delhi-110003

5. Chairperson-Lokpal
6, Vasant Kunj Institutional Area
Phase-2, New Delhi-110070,

……Respondents

PIL SEEKING DIRECTION TO CENTRE TO ASCERTAIN THE FEASIBILITY OF CONFISCATING CENT PERCENT BENAMI PROPERTY, DISPROPORTIONATE ASSETS AND BLACK MONEY AND AWARDING LIFE IMPRISONMENT IN OFFENCES RELATING TO BRIBERY, BLACK MONEY, BENAMI PROPERTY DISPROPORTIONATE ASSETS, TAX EVASION AND MONEY LAUNDERING ETC

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 writ petition as a PIL under Article 32 seeking writ, order or direction to the Centre to ascertain the feasibility of confiscating cent percent Benami Property Disproportionate Assets and Black Money and awarding Life Imprisonment in the offences relating to bribery, black money, benami property, disproportionate assets, money laundering, tax evasion, profiteering, grain hoarding, food adulteration, human and drug trafficking, black marketing, cheating, fraud, forgery, dishonest misappropriation of property, criminal breach of trust, dishonestly inducing delivery of property,

cheating by personation, concealment of property, falsification of accounts, benami transaction, corporate fraud and forensic fraud.

2. Alternatively, being custodian of the Constitution and protector of fundamental rights, the Court may direct the Law Commission of India and/or the Lokpal to examine and publish the best Anti-Corruption Laws of the world, particularly the most strict and effective provisions related to bribery, black money, benami property, disproportionate assets, tax evasion, money laundering, profiteering grain hoarding food adulteration, human and drug trafficking, black marketing, cheating, farud, forgery, dishonest misappropriation of property, criminal breach of trust, dishonestly inducing delivery of property, cheating by personation, concealment of property, falsification of accounts, benami transactions and fraud including corporate fraud, capital market fraud and forensic fraud.

3. Cause of action accrued on 24.1.2020, when corruption watchdog Transparency International put India at 80 in Corruption Perception Index. India ranked 66 in 1998, 72 in 1999, 69 in 2000, 71 in 2001, 71 in 2002, 83 in 2003, 90 in 2004, 88 in 2005, 70 in 2006, 72 in 2007, 85 in 2008, 84 in 2009, 87 in 2010, 95 in 2011, 94 in 2012, 87 in 2013, 85 in 2014, 76 in 2015, 79 in 2016, 81 in 2017, 78 in 2018.

4. Due to weak and ineffective anti-corruption laws, India has never been ranked even among top 50 in Corruption Perception Index but

Centre has not strengthened them to weed-out the menace of corruption, which brazenly offends rule of law as well as right to life liberty dignity guaranteed under Articles 14 and 21. Due to rubbish laws, none of the welfare schemes and government departments are free from corruption and this is the reason, India ranked 1st in Fresh Water Withdrawal, illegal gun ownership, Homeless Population and illegal immigration, 2nd in Intentional Homicides and Traffic Related Deaths, 3rd in CO2 Emission & 4th in Slavery Index. Due to massive corruption, India ranked 42 in Employment Rate, 43 in Quality of Life Index, 51 in Democracy Index, 68 in Rule of Law Index, 84 in Air Quality Index, 102 in Hunger Index, 115 in Human Capital Index, 125 in Gender Discrimination, 130 in Life Expectancy Index, 134 in Youth Development Index, 136 in Global Peace Index, 139 in GDP Per Capita, 142 in Press Freedom Index, 144 in World Happiness Index, 145 in Education Index, 168 in Literacy Rate and 177 in Environment Performance Index, but Centre did nothing till date.

5. Right to live happily with dignity, is guaranteed under Article 21 but due to massive corruption, our ranking in Happiness Index is very low. In **World Happiness Index,** India ranked 140 in 2019, 133 in 2018, 122 in 2017, 118 in 2016, 117 in 2015, 120 in 2014, 111 in 2013 and 133 in 2012. Similarly, right to live peacefully is integral

part of Article 21 but due to huge corruption, our ranking is extremely low. In **Global Peace Index,** India ranked 141 in 2019, 137 in 2018, 137 in 2017, 141 in 2016, 144 in 2015, 142 in 2014, 141 in 2013, 144 in 2012, 147 in 2011, 144 in 2010, 144 in 2009, 143 in 2008 and 107 in 2007. Rule of Law is integral part of Article 14 but due to wild corruption, our ranking in "**Rule of Law Index"** is extremely low. 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.

6. Right to trade is guaranteed under Article 19 but due to mammoth corruption, our international ranking is very low. In **Ease of Doing Business Index,** India ranked 63 in 2019, 77 in 2018, 100 in 2017, 130 in 2016, 130 in 2015, 142 in 2014, 134 in 2013, 132 in 2012, 132 in 2011, 134 in 2010, 133 in 2009, 122 in 2008, 120 in 2007, 134 in 2006 and 116 in 2005. We never ranked even among top 50 in the "Ease of Doing Business Index" but Centre has not implemented the best anti-corruption laws and policies of the developed countries.

7. Total budget of Centre, States, Local bodies is around 70 lacs crore but due to massive corruption in every department, around 10% of this budget (7 lacs crore) becomes black money. Centre can save this huge public money by recalling currency above Rs. 100, restricting

cash transaction above Rs. 5000, linking assets above Rs. 50,000 with AADHAAR, confiscating 100% black money, benami property, disproportionate assets and awarding life imprisonment to looters.

8. Due to Centre's inaction, even after 73 years of independence and 70 years after becoming sovereign socialist secular democratic republic, none of our districts are free from bribery, black money, benami property, disproportionate assets, tax evasion, money laundering, profiteering, grain hoarding, food adulteration, human and drug trafficking, black marketing, cheating, mischief, forgery, dishonest misappropriation of property, criminal breach of trust, dishonestly inducing delivery of property, cheating by personation, concealment of property, falsification of accounts, benami transactions and fraud including corporate fraud, capital market fraud and forensic fraud.

9. Due to weak and ineffective anti-corruption laws, even one district is not free from land mafias, drug and liquor mafias, mining mafias, medicine-hospital mafias, transfer-posting mafias, betting mafias, tender mafias, hawala mafias, school and coaching mafias, illegal immigration mafias, conversion mafias, superstition-black magic mafias and white-collar political mafias, who divide our society and country on the basis of religion race caste sex and place of birth.

10. Due to weak and ineffective anti-corruption laws, India ranked 80 in Corruption Perception Index. It confirms Centre's poor performance on many fronts viz. absence of corruption, fundamental rights, open government, public order and security, regulatory enforcement and civil and criminal justice system. Corruption has devastating effects on right to life liberty dignity, badly affects social economic justice, fraternity, dignity of individual, unity and national integration thus offends fundamental rights guaranteed under Articles 14 and 21.

11. The injury caused to people is extremely large because corruption is insidious plague, having wide range of corrosive effects on society. It undermines democracy and rule of law, leads to violations of human rights, distorts markets, erodes quality of life and allows organized crime like separatism, terrorism, naxalism, radicalism, gambling, smuggling, kidnapping, money laundering and extortion, and other threats to human security to flourish. It hurts the EWS-BPL families disproportionately by diverting the funds intended for development, undermines government's ability to provide basic services, seeds inequality & injustice and discourages foreign aids and investment.

12. Corruption is key element in economic underperformance and main obstacle in poverty alleviation. Right to life and liberty guaranteed under Article 21 cannot be secured and the golden goals of Preamble

cannot be achieved without curbing corruption. Therefore, it is duty of Centre to implement the best and most effective anti-corruption laws of the world in order to give strong message that Government is determined to weed-out corruption, black money generation, benami transaction and money laundering. Centre must take steps to reaffirm the rule of law, improve transparency and to warn the looters that betrayal of public trust will no longer be tolerated.

13. The injury to the EWS-BPL families is very large because corruption distorts and disrupts entire public distribution system. It is inimical to fostering of excellence & has adverse impact on EWS-BPL group. Due to huge corruption, even after 73 years of independence, 50% population is in distress, leading hand-to-mouth existence and not knowing where next meal is coming from, with abominable health standards and primary education levels. Much of this malaise is traceable to extensive black money generation, benami transaction. There is no country in top 50 of Human Development Index, which has significant amount of corruption. There is correlation between welfare State with attention to education, public health and absence of corruption. Therefore, Centre must take steps to confiscate cent percent black money, benami properties & disproportionate assets and award rigorous life imprisonment to looters & money launders.

14. Rule of law, guaranteed under Article 14; right to trade, guaranteed under Article 19; right to clean air, right to drinking water, right to health, right to peaceful sleep, right to shelter, right to livelihood and right to education guaranteed under Articles 21-21A; can't be secured without curbing corruption black money generation benami transaction but Centre hasn't taken steps to weedout these menaces. Petitioner submits that clean governance is impossible without recalling currency above Rs. 100, restricting cash transactions above Rs.5000, linking assets above Rs. 50,000 with AADHAAR and confiscating cent percent black money, benami properties and disproportionate assets and awarding life imprisonment to looters.

15. Cash transaction in high value currency is used for illegal activities - terrorism, naxalism, separatism, radicalism, gambling, smuggling, money laundering, kidnapping, extortion, bribing and dowry etc. It also inflates price of essential commodities as well as major assets like real estate, gold etc. Hence, these problems can be curbed up to great extent by recalling currency above Rs. 100/-, restricting cash transaction above Rs. 5000/-, linking assets above Rs. 50,000/- with AADHAAR, confiscating cent percent black money, benami property and disproportionate assets and awarding life imprisonment. These 5 steps will weed-out corruption & black money generation. Another benefit is that the looters would be

forced to declare their unaudited fixed-movable assets and deposit their cash in banks; thus, not only Centre but also States and Local Bodies will get sufficient revenue, which can be used to develop good quality infrastructure and best facilities throughout the country and for welfare of the citizens.

16. If Centre recalls currency above Rs. 100/-, restricts cash transaction above Rs. 5,000/-, links assets above Rs. 50,000/- with AADHAAR, confiscate 100% disproportionate assets, award life imprisonment to looters, it will lead to an increment of 2% GDP. It will also clean election, which is dominated by black-money benami transactions and thrives on cycle of black investments, capture of power through foul means, use of political strength to amass wealth, with disdain of the citizen. There may be some inconvenience for a short period and politicians who have black money benami property disproportionate assets may focus on the distress to common man, but not even one honest citizen will lose his savings and nothing will get confiscated.

17. India's anti-corruption laws are very weak and ineffective and failed to control corruption. The Benami Transactions Act, passed in 1988 was gathering dust without action. Though present government added some teeth to it but activities to catch benami properties are still going very slow. For example, amended Act came into existence from 1.11.2016 but action taken is restricted to few

immovable properties and bank deposits after demonetization. Finding real beneficiary of benami properties is herculean task and that is the main reason for its slow implementation. To speed up this information gathering, Centre came out with cash reward up to Rs 1 crore for *'secret informers'* but, success is less because people are scared that the rogue employee of the investigation agencies will leak information about the informer. Similar scheme by Income Tax and Customs Department has also failed in fetching big information.

18. Benefits of recalling currency above 100, restricting cash transaction above 5,000, linking assets above 50,000 with AADHAAR and confiscating cent percent benami properties-disproportionate assets and awarding life imprisonment are: **(i)** clean-transparent economy **(ii)**20% more revenue for Centre States Local Bodies **(iii)**20% drop in commodity prices **(iv)** bank loan at 5% annual interest rate **(v)** 10% reduction in construction and infrastructure cost **(vi)** 50% reduction in terrorism separatism and fundamentalism **(vii)** 50% reduction in casteism communalism linguism regionalism**(vii)** 20% more subsidy to EWS-BPL families **(viii)** world class infrastructure across the country **(ix)** 20% growth in industry agriculture and service sector **(x)** significant growth in employment **(xi)** more social security benefits for citizens **(xii)** focus shift from tax manipulation

to innovation **(xiii)** Business will become globally competitive **(xvi)** better rule of law **(xv)** security of right to life liberty and dignity

19. Every family has debit card and AADHAAR therefore restricting cash transaction above Rs. 5,000/- and linking property with AADHAAR is feasible. The advantage is that the tax authorities will get details about black money benami transaction immediately. Looters used to register their properties in other's name and keep original property documents with themselves. Such property deals in fictitious names would be identified very easily. The moment benami transaction is detected, tax authorities can approach the owner and if owner is unaware or deny knowledge of the ownership, property can be treated as benami property. Even if owner takes onus and claims that it is his property, he needs to show the source of income for buying it. Opponents may come out against this move. Will this amount to harassing the genuine tax payers as the opponents will put it? No, because there are several provisions in Benami Act to protect them. Usual transactions like buying property in the name of spouse, kids, parents, joint names with siblings is exempted in the Benami Act. However, they need to show the source of money used for such purchase. This may cause some discomfort to genuine tax payers but majority would support above steps

because it will result in unearthing the massive black money and benami properties.

20. Root cause of 50% problems is corruption and it can't be controlled without tax reform police reform judicial reform democratic reform administrative reform and legal reform. Many eminent commissions including the Law Commission Election Commission Venkatchaliya Commission and Administrative Commission have given more than 500 suggestions to weedout corruption and secure the democracy but Centre did nothing to implement them. Petitioner submits that Black money coming into banking system will brought along with massive data, a treasure-trove that would enable the Centre to take action against looters and Ill-gotten wealth will be part of economy.

21. In monthly addresses to the nation, the Prime Minister has reiterated his plan to weedout black money benami properties. This is because a major part of black money is held in form of benami properties. Demonetization, announced on 8.11.2016, was the first step towards the fight against black money. Noting that digital transactions help in bringing *irreversible change* in people's interest, the Prime Minister reiterated that it will work as a big weapon to weed-out corruption. Cashless transaction played key role in ensuring that scholarship pension and subsidies reaches real poor. At inaugural

session of *Hindustan Times Leadership Summit* Prime Minister said: *"Linking Aadhaar with mobile and Jan Dhan accounts have evolved such a system which was not even thought of till some years ago, a system which is irreversible. Earlier pension money and students stipend was distributed in crores of fake accounts. All that has been addressed with the help of Aadhaar in the last three years."*

22. In Nirbhaya Case [Criminal Appeal 607-608 of 2017), three Judges Bench of this Hon'ble Court has very categorically observed: ***"144.*** *Society's reasonable expectation is that deterrent punishment commensurate with the gravity of the offence be awarded. When the crime is brutal, shocking the collective conscience of the community, sympathy in any form would be misplaced and it would shake the confidence of public in the administration of criminal justice system. As held in Om Prakash v. State of Haryana [(1999) 3 SCC 19], the Court must respond to the cry of society and to settle what would be a deterrent punishment for what was apparently abominable crime.* ***145****. Bearing in mind the above principles governing the sentencing policy, I have considered aggravating and mitigating circumstances in the present case. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the crime. Justice demands that the courts should impose punishments befitting the crime so that it reflects public abhorrence*

of the crime. Crimes like the one before us cannot be looked with magnanimity. Factors like young age of the accused and poor background cannot be said to be mitigating circumstances. Likewise, post-crime remorse and post-crime good conduct of the accused, the statement of the accused as to their background and family circumstances, age, absence of criminal antecedents and their good conduct in prison, in my view, cannot be taken as mitigating circumstances to take the case out of the category of "rarest of rare cases". The circumstances stated by the accused in their affidavits are too slender to be treated as mitigating circumstances."

23. In State of Andhra Pradesh v Vasudeva Rao[(2014)9SCC 319] the Apex Court has very categorically reiterated that *"Corruption is one of the most talked about subjects today in the country since it is believed to have penetrated into every sphere of the public activity. It is described as wholly widespread and spectacular. Corruption as such has reached dangerous heights and dangerous potentialities. The word 'corruption' has wide connotation and embraces almost all the spheres of our day to day life the world over."*

24. In B.C. Goswami v. Delhi Administration [AIR 1973 SC 1457], this Hon'ble Court very categorically observed: *"Now the question of sentence is always a difficult question, requiring as it does, proper*

adjustment and balancing of various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realize that he has committed an act which is not only harmful to the society of which he forms an integral part but also is harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and re-claim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however reformative aspect is being given somewhat greater importance. Too lenient as well as too harsh sentence both loose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal."

25. In State of M.P. v Ram Singh, [(2000) 5 SCC 88] Court held:

"Corruption in a civilised society is a disease like cancer, which if not detected in time, is sure to maliganise the polity of the country leading to disastrous consequences. It is termed as a plague which is not only contagious but if not controlled spreads like a fire in a

jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence — shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society."

26. In Subramanian Swamy v Manmohan Singh [(2012)3SCC 64] the Apex Court very reiterated: *"Corruption not only poses a grave danger to concept of constitutional governance, it also threatens the very foundation of the democracy and the Rule of Law. The magnitude of corruption in public life is incompatible with concept of the Socialist, Secular and Democratic Republic. Where corruption begins all rights end. Corruption devalues human rights, chokes development, and undermines justice, liberty, equality and fraternity, which are the values in Indian Preambular vision…".*

27. In State of Gujarat versus R.A. Mehta,[(2013) 3 SCC 1], the Court observed: *"Corruption threatens constitutional governance and shakes the foundation of democracy and rule of law. Corruption is*

opposed to democracy and social order as being not only anti-people, but also due to the fact, that it affects the economy of a country and destroys its cultural heritage. It threatens security of the society, undermines the ethical value and justice and jeopardizes sustainable development. Corruption devalues human rights, chokes development and corrodes the moral fabric of society. It causes considerable damage to the national economy, national interest and image of the country. The very object, the noble and grand vision of Preamble will be defeated if corruption is not curbed immediately".

28. Preamble is not a mere flourish of words, but is an ideal setup for practices & observances on matters of law through Constitutional mechanism. The purpose of Preamble is to clarify who has made the Constitution, what is its source, what is ultimate sanction behind it; what is the nature of polity, which is sought to be established by the Constitution and what are its goals and objectives. Preamble acknowledges, recognizes, proclaims that the Constitution emanates from 'People of India' and not from any external source and meant for 'Welfare of the People'. Constitution must be read as a whole and in case of doubt; it is interpreted consistent with basic structure to promote great objectives stated in the Preamble. Welfare of the people is ultimate goal of all laws, State actions and above all the Constitution. They have one common object that is to promote well-

being of the society as a whole. It is impossible to achieve the great golden goals of Preamble without curbing corruption, the greatest menace to democracy-development.

29. The punishment for white collar crimes is not sufficient as we can see in the Coal Scam. As per CAG, the scam was of 1,85,591 crores, which affected the entire nation but the maximum punishment awarded was 3 years with fine of Rs 50,00,000. Likewise, CWG scam was a 70,000 Crore, which not only affected our economy but also the integrity of the nation. In this case accused were charged with conspiracy, forgery, and misconduct and under provisions of PC Act. This clearly shows that not only the sentence under the PCA should be increased but also it should be consecutive.

30. On 29.9.2014, Spaniard Lopez Tardon was sent to prison for 150 years in money-laundering case. He was guilty of a conspiracy charge that carried up to 20 years in prison and guilty of 13 money-laundering charges that carried up to 10 years each. In US judge had authority to craft prison term that effectively added up to life term. Major John Cockerham, while working as Army contracting officer, awarded contracts for services to be delivered carrying more than $9 million in bribe process. He directed contractors to pay Carolyn Blake, his sister of Sunnyvale, Texas and wife Melissa and others in order to conceal receipt of bribe payments. Wife Melissa Cockerham

admitted to have stored the cash in safe deposit boxes at banks in Kuwait-Dubai. Carolyn Blake admitted to accepting over $3 million bribe proceeds on behalf of her brother. Blake expected 10% of the amount she collected. Having pleaded guilty in March, 2009 before US Magistrate Judge in the Western District of Texas, San Antonio Division, the sister Carolyn Blake faces 20 years in prison and fine upto $500000 or two times the value of laundered funds, whichever is greater. Cockerhams were also convicted on their pleas and faced imprisonment and fine of the similar quantum. A List of Prisoners, sentenced to more than 100 years is **Annexure P-1.** (pages 31-41)

31. On 30.04.2016, Justice Arijit Pasayat (Chairman of SIT-Black Money) called for a more stringent Prevention of Money Laundering Act with increased jail term. He was of the opinion that the 3-7 years sentence prescribed under the PMLA is too less. Justice Pasayat cited example of United States where such offenders are sentenced for upto 150 years. He said: *"How I wish we had such sentencing here. Those stealing one rupee and those laundering Rs 300 crores are given the same sentence here,"* Justice Pasayat said: *"While murder and attempt to murder are predicate offences, tax offences are still not included in the category. If you are evading massive amount of tax, that is murder of the economy which will eventually impact people,"* Moreover, in catena of decisions, this Hon'ble

Court has reiterated that corruption is menace of our social and economic development. [*State of MP v. Ram Singh (2000) 5 SCC 88; State of AP v. V Vasudeva Rao (2004) 9 SCC 319; Subramanian Swamy v. Manmohan Singh (2012) 3 SCC 64; State of Gujarat v. R. A. Mehta (2013) 3 SCC 1*] This Hon'ble Court has reiterated that there is no sentencing principle [*State of Punjab v. Prem Sagar (2008) 7 SCC 550; Soman v. State of Kerala (2013) 11 SCC 382*]. However, Centre has not taken any steps till date.

32. The Supreme Court has indicated the need of consecutive sentence in three decisions. [*Mohammad Akhtar Hussain v. Assistant Collector of Customs (1988) 4 SCC 183; O. M. Cherian v. State of Kerala (2015) 2 SCC 501; Muthu Ramalingam v. State (2016) 8 SCC 313*] However, due to Centre's inaction, India doesn't have a defined policy of consecutive and concurrent sentence till date.

33. The Supreme Court has observed about sentencing principle of proportionality thrice. [*Om Prakash v. State of Haryana (1999) 3 SCC 19; Jai Kumar v. State of MP (1999) 5 SCC 1; Alister Anthony Pareira v. State of Maharashtra (2012) 2 SCC 648*] However, Centre has not taken appropriate steps in this regard till date.

DIRECTION TO THE LAW COMMISSION TO PREPARE REPORT

34. GUJARAT URJA VIKAS NIGAM [(2016)9 SCC 103 PARA 41]

We are of the view that in the first instance the Law Commission may look into the matter with the involvement of all stakeholders. ***Para 43.*** *The questions which may be examined by Law Commission are:* ***43.1.*** *Whether any changes in statutory framework constituting various tribunals with regard to persons appointed, manner of appointment, duration of appointment, etc. is necessary in the light of judgment of this Court in Madras Bar Association (2014)10SCC 1] or on any other consideration from point of view of strengthening the rule of law?* ***43.2.*** *Whether it is permissible and advisable to provide appeals routinely to this Court only on a question of law or substantial question of law which is not of national or public importance without affecting the constitutional role assigned to the Supreme Court having regard to the desirability of decision being rendered within reasonable time?****43.3.*** *Whether direct statutory appeals to the Supreme Court bypassing the High Courts from the orders of Tribunal affects access to justice to litigants in remote areas of the country?****43.4.*** *Whether it is desirable to exclude jurisdiction of all courts in the absence of equally effective alternative mechanism for access to justice at grass root level as has been done in provisions of the TDSAT Act (S. 14-15).****43.5.*** *Any other incidental or connected issue which may be appropriate.* ***Para***

44. *We request the Law Commission to give its report as far as possible within one year. Thereafter matter may be examined by authorities concerned.*

35. BCCI v Bihar Cricket Association (2016)8SCC 535 Para 93. *We are not called upon in these proceedings to issue direction insofar as the above aspect is concerned. All that we need say is that since BCCI discharges public functions and since those functions are in the nature of a monopoly in hands of BCCI with tacit State and Centre approvals, the public at large has right to know/demand information as to the activities and functions of BCCI especially when it deals with funds collected in relation to those activities as a trustee of wherein the beneficiary happens to be the people of this country. As a possible first step in the direction in bringing BCCI under the RTI, we expect the Law Commission to examine the issue, make a suitable recommendation. Beyond that we do not consider it necessary to say anything at this stage.* ***Para 94.*** *So also the recommendation made by the Committee that betting should be legalised by law, involves the enactment of a law which is a matter that may be examined by the Law Commission and the Government for such action as it may consider necessary in the facts and circumstances of the case.*

36. Babloo Chauhan v Govt. Of Delhi (2017) SCC DEL 12045 "***Para 11.*** *Third issue concerns the possible legal remedies for victims of wrongful incarceration and malicious prosecution. The report of Prof. Bajpai refers to the practice in United States of America and the United Kingdom. He points out that that there are 32 states in the USA including District of Columbia (DC) which have enacted laws that provide monetary and non-monetary compensation to people wrongfully incarcerated. There are specific schemes in the UK and New Zealand in this regard.****17.*** *The Court, accordingly, requests Law Commission of India to undertake a comprehensive examination of the issue highlighted in paras 11 to 16 of this order and make its recommendation thereon to the Government of India."*

37. AP Pollution Control Board v Prof M.V. Nayudu[(2001)2 SCC 62] ***Para 73.*** *Inasmuch as most of the statutes dealing with environment are by Parliament, we would think that the Law Commission could kindly consider the question of review of the environmental laws and the need for constitution of Environmental Courts with experts in environmental law, in addition to judicial members, in the light of experience in other countries. Point 5 is decided accordingly.*

38. Mahipal Singh Rana [(2016) 8 SCC 335] *The Court held:* ***Para 58,*** *In view of the above, we request the Law Commission to go into all*

relevant aspects relating to regulation of legal profession in consultation with all concerned at an early date. We hope that the Government will consider taking further appropriate steps in the light of the report of the Law Commission within six months thereafter. The Central may file an affidavit in this regard within month after expiry of one year.

39. Naresh Kumar Matta v DDA [2013SCC ONLINE DEL 2388] *Para 12 Delay of five years in computing the cost of a flat is totally incomprehensible. The Court is of the opinion that the Law Commission should consider preparation of an enactment to recover damages/compensation from officers who take unduly long time in taking decisions or do not take a decision.*

40. Pravasi Bhalai Sangathan (2014) 11 SCC 477] ***Para 29*** *However, in view of the fact that the Law Commission has undertaken the study as to whether the Election Commission should be conferred the power to derecognise a political party disqualifying it or its members, if a party or its members commit the offences referred to hereinabove, we request the Law Commission to also examine the issues raised herein thoroughly and also to consider, if it deems proper, defining the expression "hate speech" and make recommendations to Parliament to strengthen Election Commission*

to curb the menace of "hate speeches" irrespective of whenever made.

41. Petitioner name is Ashwini Kumar Upadhyay G-284, Govindpuram, Ghaziabad-201013, Ph. 8800278866, Email: aku.adv@gmail.com, PAN: AAVPU7330G, AADHAAR: 659982174779. Income: 10 LPA. Petitioner is an Advocate and a social-political activist.

42. Petitioner hasn't filed any other similar petition either in this Court or in other Court, seeking same/similar directions, as prayed.

43. Petitioner has no personal interest, individual gain, private motive or oblique reasons in filing this PIL.

44. There is no civil criminal or revenue litigation, involving petitioner, which has/could have legal nexus, with issue involved.

45. There is no requirement to move concerned authority for the relief sought. There is no other remedy except filing the PIL.

46. Our Anti-Corruption Laws are weak-ineffective. For Example:

S.N	LAWS	CURRENT PUNISHMENT
A.	**PCA**	
1	**S.7** Public servant taking illegal remuneration	Imprisonment up to 5 years. No provision to forfeit 100% property
2	**S.8** Taking gratification by illegal means	Imprisonment up to 5 years. No provision to forfeit 100% property
3	**S.9** Taking gratification to influence public servant	Imprisonment up to 5 years. No provision to forfeit 100% property

4	**S.10** Punishment for abetment by public servant	Imprisonment up to 5 years. No provision to forfeit 100% property
5	**S.11** Public servant obtaining valuable thing	Imprisonment of up 5 years. No provision to forfeit 100% property
6	**S.12** Punishment for abetment of offences	Imprisonment up to 5 years. No provision to forfeit 100% property
7	**S.13** Criminal misconduct by public servant	Imprisonment of 1-7 years. No provision to forfeit 100% property
8	**S.14** Habitual offender under sections 8, 9 and 12	Imprisonment of 2-7 years. No provision to forfeit 100% property
9	**S.15** Punishment for attempt	Imprisonment of 1-3 years. No provision to forfeit 100% property
B.	**BENAMI PROPERTY ACT**	
1	**S.53** Penalty for Benami transaction	Imprisonment of 1-7 years. No provision to forfeit 100% property
C.	**MONEY-LAUNDERING ACT**	
	S.4 Punishment for Money laundering	Imprisonment of 3-7 years. No provision to forfeit 100% property
D.	**FCRA 2010**	
1	**S.33** Making of false statement, declaration or delivering false accounts	Imprisonment for a term which may extend to 6 months or with fine No provision to forfeit 100% property
2	**S.34** Penalty for contravention of section 10	Imprisonment of 1-3 years. No provision to forfeit 100% property
3	**S.35** Punishment for contravention of provision	Imprisonment of 1-5 years. No provision to forfeit 100% property

4	**S.36** Power to impose additional fine where article or currency or security is not available for confiscation	Punishable with fine not exceeding 5 times the value of article or currency or security or one thousand rupees, whichever is more, if such article or currency or security is not available for confiscation, and the fine so imposed shall be in addition to any other fine which may be imposed on such person under this Act
5	**S.37** Penalty for offences where no separate punishment been provided	Punishable with imprisonment for a term which may extend to one year. No provision to forfeit 100% property

PRAYERS

The Court may issue appropriate writ/order/direction to Centre to:

e) ascertain the feasibility of confiscating cent percent Black Money, Benami Properties and Disproportionate Assets and awarding Life Imprisonment in offences relating to bribery, black money, benami property, disproportionate assets, tax evasion, money laundering, profiteering, grain hoarding, food adulteration, human and drug trafficking, black marketing, cheating, fraud, forgery, dishonest misappropriation of property, criminal breach of trust, falsification of accounts, benami transaction, corporate fraud and forensic fraud;

f) Alternatively, being custodian of the Constitution and protector of fundamental rights, the Court may direct the Law Commission of India and/or Lokpal to examine and publish the best anti-corruption laws of the world, particularly the most effective provisions related to bribery, black money, benami property, disproportionate assets, tax evasion, money laundering, profiteering, grain hoarding, food

adulteration, human-drug trafficking, black marketing, cheating, forgery, criminal breach of trust, falsification of accounts, benami transactions and fraud including corporate fraud and forensic fraud;

g) pass such other order(s) as the Court may deem fit and proper.

New Delhi Advocate for petitioner
13.11.2020 (Ashwani Kumar Dubey)

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO 1301 OF 2020

IN THE MATTER OF:

Ashwini Kumar Upadhyay …Petitioner

Verses

Union of India & others ...Respondents

AFFIDAVIT

I, Ashwini Kumar Upadhyay aged 45 years, son of Sh. Suresh Upadhyay, Office: 15, New Lawyers Chambers, Supreme Court, New Delhi-110001, Residence at: G-284, Govindpuram, Ghaziabad-201013, at present at New Delhi, do hereby solemnly affirm and declare as under:

12. I am sole petitioner above named and well acquainted with facts and circumstances of the case and as such competent to swear this affidavit.

13. I have read and understood contents of accompanying synopsis and list of dates pages (B - H) writ petition paras (1 - 46) pages (1 - 29) and total pages (1 - 44) which are true and correct to my knowledge and belief.

14. Annexure filed with petition are true copies of its respective original.

15. 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.

16. 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.

17. There is no civil, criminal or revenue litigation, involving petitioner, which has or could have legal nexus, with issue involved in this petition.

18. There is no requirement to move concerned authority for relief sought in this petition. There is no other remedy available except approaching this Court.

19. I have gone through the Article 32 and the Supreme Court Rules and do hereby affirm that the present petition is in conformity thereof.

20. I have done whatsoever enquiry, which was in my power, to collect the data or material, whichis available and relevant for the Court to entertain the petition.

21. 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.

22. 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 13th day of November 2020 at New Delhi.

(Ashwini Kumar Upadhyay)
DEPONENT

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

UNION OF INDIA & OTHERS

...RESPONDENTS

PAPER BOOK

[FOR INDEX KINDLY SEE INSIDE]

(ADVOCATE FOR PETITIONER: ASHWANI KUMAR DUBEY)

Diary No …… OF 2020

DECLARATION

All defects have been duly cured. Whatever has been added/deleted/modified in this petition, is the result of curing of defects and nothing else. Except curing the defects, nothing has been changed. Paper books are complete in all respects.

ADVOCATE FOR PETITIONER

(**ASHWANI KUMAR DUBEY**)

Advocate-on-Record

Registration Code No-1797

ashwanik.advocate@gmail.com

9818685007, 011-22787061, 45118563

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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, 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

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1. Nature of Matter: Civil
2. (a) Petitioner / Appellant : Ashwini Kumar Upadhyay

   (b) Email ID: aku.adv@gmail.com,

   (c) Phone No: 08800278866,

3. (a) Respondent: Union of India and others

(b) Email ID: N/A

(c) Phone No: N/A

4. (a) Main Category: 08 PIL Matters

(b) Sub Category: 0812, others

5. Not to be listed before: N/A

6(a). Similar disposed of matter: No similar matter

6(b). Similar pending matter: No similar matter

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: 24.12.2020

ADVOCATE FOR PETITIONER

(**ASHWANI KUMAR DUBEY**)

Advocate-on-Record

Registration Code No-1797

ashwanik.advocate@gmail.com

9818685007, 011-22787061, 45118563
ashwanik.advocate@gmail.com AOR-1797

SYNOPSIS & LIST OF DTATES

Petitioner is filing this writ petition as a PIL under Article 32 seeking writ, order or direction to Centre to appoint the Chairperson and Members of the Law Commission of India within one month and make it a statutory body. Alternatively, being custodian of the Constitution and protector of fundamental rights, the Court may use its constitutional power to appoint the Chairperson and Members of the Law Commission of India and declare it a statutory body.

Cause of action accrued on **31.8.2018** and continues, when the tenure of twenty-first Law Commission was ended but Centre neither extended the tenure of its Chairperson and Members nor notified Twenty Second Law Commission. Although, on **19.2.2020**, Centre approved constitution of Twenty-second Law Commission but it has not appointed the Chairperson and Members till date.

Injury to public is extremely large as the Law Commission of India is headless since august 2018 hence unable to examine public issues. Even the directions of the Constitutional Courts to Law Commission have become dead letter. On **11.12.2020,** petitioner withdrew **WP(C) 1300/2020** seeking action on Vohra Report and

WP(C) 1301/2020 seeking **100%** confiscation of black money, benami property and disproportionate assets and life imprisonment to looters with liberty to approach the Law Commission of India but unable to do so as the Commission is not working.

Law Commission of India is not working since **1.9.2018** hence Centre doesn't have the benefit of recommendations from this specialized body on the different aspects of law, which are entrusted to the Commission for its study and recommendations. The Law Commission, on a reference made to it by the Centre, Apex Court & High Courts, undertakes research in law and review existing laws for making reforms therein and enacting new legislations. It also undertake studies and research for bringing reforms in justice delivery systems for elimination of delay in procedures, speedy disposal of cases, reduction in cost of litigation etc. The Law Commission of India not only identify laws which are no longer needed or relevant and can be immediately repealed but also examine the existing laws in the light of Directive Principles of State Policy and suggest the ways of improvement and reform. The Commission also suggests such legislations as might be necessary to implement Directive Principles and to attain the objectives set out in Preamble of the Constitution of India.

Law Commission conveys its views on any subject relating to law and judicial administration and also considers the requests for providing research to foreign countries. It takes all measures as may be necessary to harness law and the legal process in the service of poor and revise Central Acts of general importance so as to simplify them and remove anomalies, ambiguities and the inequities. The Law Commission has been able to make important contribution towards the progressive development and codification of Law of the country and it has so far submitted 277 reports.

The power conferred by Article 32 of the Constitution of India is in the widest terms and is not confined to issuing the high prerogative writs specified therein, but includes within its ambit the power to issue any directions or orders or writs which may be appropriate for enforcement of fundamental rights. Therefore, even when the conditions for issue of any of these writs are not fulfilled, the Supreme Court would not be constraint to fold its hand in despair and plead inability to help the citizen who has come before it for judicial redress. The Court is not helpless to grant relief in a case of violation of right to life and liberty and it should be prepared to *"forge new tools and device new remedies".*

For purpose of vindicating these precious fundamental rights, in so far as the Supreme Court is concerned, apart from Articles 32

and 142, which empower the Court to issue such directions as may be necessary for doing complete justice in any matter, Article 144 also mandates all authorities civil or judicial in the territory of India, to act in aid of the order passed by the Supreme Court. Being the protector of civil liberties of citizens, the Supreme Court has not only the power and jurisdiction, but also an obligation to protect the fundamental rights, guaranteed by part-III in general and under Article 21 in particular zealously and vigilantly. The Supreme Court and High Courts are the sentinels of justice and have been vested with extra ordinary powers of judicial review to ensure that rights of citizens are duly protected. **[ML Sharma (2014) 2 SCC 532]**

It is not merely right of individual to move the Supreme Court, but also responsibility of the Court to enforce fundamental rights. Therefore, if the petitioner satisfies the Supreme Court that his fundamental right has been violated, it is not only the 'right' and 'power', but the 'duty' and 'obligation' of the Court to ensure that the petitioners fundamental right is protected and safeguarded. **[Ramchandran, Law of Writs, 6th Edition, 2006, Pg. 131, Vol-1]**

The power is not confined to issuing prerogative writs only. By using expression "in the nature of", the jurisdiction has been enlarged. The expression "in the nature of" is not the same thing as the other phrase "of the nature of". The former emphasis essential

nature, latter is content with mere similarity.**(2006) 8 SCC 2012]** Supreme Court cannot refuse an application under Article 32, merely on the grounds: **(i)** that such application have been made to Supreme Court in the first instance without resort to the High Court under Article 226 **(ii)** that there is some adequate alternative remedy available to petitioner **(iii)** that the application involves an inquiry into disputed questions of fact / taking of evidence. **(iv)** that declaratory relief i.e. declaration as to unconstitutionality of impugned statute together with consequential relief, has been prayed for **(v)** that the proper writ or direction has not been paid for in the application **(vi)** that the common writ law has to be modified in order to give proper relief to the applicant. **[AIR 1959 SC 725 (729)] (vii)** that the article in part three of the constitution which is alleged to have been infringed has not been specifically mentioned in petition, if the facts stated therein, entitle the petitioner to invoke particular article. **[PTI, AIR 1974, SC 1044]**

Article 32 of the Constitution provides important safeguard for the protection of the fundamental rights. It provides guaranteed quick and summary remedy for enforcing the fundamental right because a person complaining of breach of any of his fundamental rights by an administrative action can go straight to the Court for vindication of his right without having to undergo directory process

of proceeding from lower to the higher court as he has to do in other ordinary litigation. The Court has thus been constituted as protector defender and guarantor of the fundamental rights of the people. It was held: *"the fundamental rights are intended not only to protect individual rights but they are based on high public. Liberty of the individual and protection of fundamental rights are very essence of democratic way of life adopted by the Constitution and it is the privilege and duty of this Court to uphold those rights. This Court would naturally refuse to circumscribe them or to curtail them except as provided by Constitution itself."* **[AIR 1961 SC1457].** In another case, Court held: *"the fundamental right to move this Court can therefore be described as the corner stone of the democratic edifice raised by Constitution. That is why it is natural that the Court should regard itself as the protector and guarantor of fundamental rights and should declare that it cannot consistently with the responsibility led upon it, refuse to entertain application seeking protection against infringement of such right. In discharging the duties assigned to it, the Court has to play the role of a "sentinel on the qui vive" and it must always regard it as its solemn duty to protect the said fundamental right zealously and vigilantly."* **[Prem Chand Garg, AIR 1963 SC 996].**

Language used in Articles 32 and Article 226 is very wide and the powers of the Supreme Court as well as of the High Court's extends to issuing orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provision of the Constitution, there is no need to look back to procedural technicalities of the writs in English Law. The Court can make and order in the nature of these prerogative writs in appropriate cases in appropriate manner so long as the fundamental principles that regulate the exercise of jurisdiction in matter of granting such writ in law are observed**[AIR 1954 SC 440]**

An application under Article 32 of the Constitution cannot be thrown out simply because the proper direction or writ has not been prayed for. Thus, where an order in the nature of mandamus is sought in a particular form, nothing debars the Court from granting it in a different form. Article 32 gives a very wide discretion in the matter of framing the writ to suit the exigencies of particular cases. **[AIR 1951 SC 41]** Even if petitioner has asked for wider relief which cannot be granted by Court, it can grant such relief to which the petitioner is entitled to **[Rambhadriah, AIR 1981 SC 1653]**.

The Court has power to grant consequential relief or grant any relief to do full - complete justice even in favour of those persons who may not be before Court or have not moved the Court. **[Probodh Verma, AIR 1985 SC 167]** For the protection of fundamental right and rule of law, the Supreme Court under this article can confer jurisdiction on a body or authority to act beyond the purview of statutory jurisdiction or function, irrespective of the question of limitation prescribed by the statute. Exercising such power, Supreme Court entrusted the NHRC to deal with certain matters with a direction that the Commission would function pursuant to its direction and all the authorities are bound by the same. NHRC was declared not circumscribed by any condition and given free hand and thus act *sui generis* conferring jurisdiction of a special nature. **[Paramjit Kaur, AIR 1999 SC 340]** Simply because a remedy exists in the form of Article 226 for filing a writ in the High Court, it does not prevent any bar on aggrieved person to directly approach the Supreme Court under Article 32. It is true that the Court has imposed a self-restraint in its own wisdom on the exercise of jurisdiction where the aggrieved person has an effective alternative remedy in the form of Article 226. However, this rule which requires the exhaustion of alternative remedy is rule of convenience and a matter of discretion rather than rule of law. It does not oust of the jurisdiction of the

Supreme Court to exercise its writ jurisdiction under Article 32 of the Constitution of India. **[Mohd. Ishaq (2009) 12 SCC 748]**

The Supreme Court is entitled to evolve new principle of liability to make the guaranteed remedy to enforce fundamental rights real and effective, to do complete justice to aggrieved person. It was held in that case that the court was not helpless and the wide powers given to the Supreme Court by Article 32, which itself is a fundamental right imposes a constitutional obligation on the Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enables reward of monetary compensation in appropriate cases, where that is the only redress available. The remedy in public law has to be more readily available when invoked by have-nots who are not possessed of the where withal for enforcement of their right in private law, even though its exercise is to be tempted by judicial restraint to avoid circumvention of private law remedies, which more appropriate. Under Article 32, the Supreme Court can pass appropriate orders or facts to do complete justice between parties even if it is found that writ petition filed is not maintainable in law. **[Saihba Ali, (2003) 7 SCC 250]**

31.8.2018: Tenure of 21st Law Commission of India was ended.

19.2.2020: Union Cabinet approved the 22nd Law Commission of India for 3 years from the date of publication of the Order of Constitution in the Official Gazette.

11.12.2020: Petitioner withdrew WP(C)1300/2020 and WP(C) 1301/ 2020 with liberty to approach the Law Commission but unable to do so as the Commission is not working.

24.12.2020: Law Commission of India is not working since last **28** months. Hence, this PIL in the interest of justice.