2018 INSC 862

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 536 OF 2011

Public Interest Foundation & Ors. …Petitioner(s)

Versus

Union of India & Anr. …Respondent(s)

WITH

CRIMINAL APPEAL NOS. 1714-1715 OF 2007

WRIT PETITION (CRIMINAL) NO. 208 OF 2011

AND

WRIT PETITION (CIVIL) NO. 800 OF 2015

J U D G M E N T

Dipak Misra, CJI

In ***Yogendra Kumar Jaiswal and others v. State of Bihar and others***[1]**,** the Court opined:-

[1] (2016) 3 SCC 183

> "Corruption, a 'noun' when assumes all the characteristics of a Verb', becomes self-infective and also develops resistance to antibiotics. In such a situation the disguised protagonist never puts a Hamletian question-"to be or not to be"-but marches ahead with perverted proclivity-sans concern, sans care for collective interest, and irrefragably without conscience. In a way, corruption becomes a national economic terror."

2. The constitutional functionaries, who have taken the pledge to uphold the constitutional principles, are charged with the responsibility to ensure that the existing political framework does not get tainted with the evil of corruption. However, despite this heavy mandate prescribed by our Constitution, our Indian democracy, which is the world's largest democracy, has seen a steady increase in the level of criminalization that has been creeping into the Indian polity. This unsettlingly increasing trend of criminalization of politics, to which our country has been a witness, tends to disrupt the constitutional ethos and strikes at the very root of our democratic form of government by making our citizenry suffer at the hands of those who are nothing but a liability to our country.

3. The issue that emerges for consideration before this Bench is whether disqualification for membership can be laid down by the Court beyond Article 102(a) to (d) and the law made by the Parliament under Article 102(e). A three-Judge Bench hearing the matter was of the view that this question is required to be addressed by the Constitution Bench under Article 145(3) of the Constitution. Be it stated, a submission was advanced before the three-Judge Bench that the controversy was covered by the decision in ***Manoj Narula v. Union of India***[2]. The said submission was not accepted because of the view expressed by Madan B. Lokur, J. in his separate judgment.

4. In the course of hearing, the contour of the question was expanded with enormous concern to curb criminalization of politics in a democratic body polity. The learned counsel for the petitioners submitted that having regard to the rise of persons with criminal antecedents, the fundamental concept of decriminalization of politics should be viewed from a wider spectrum and this Court, taking into consideration the facet of interpretation, should assume the role of judicial statesmanship. Mr. K.K. Venugopal, learned Attorney General

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[2] (2014) 9 SCC 1

for India and other learned counsel, per contra, would submit that there can be no denial that this Court is the final arbiter of the Constitution and the Constitution empowers this wing of the State to lay down the norms of interpretation and show judicial statesmanship but the said judicial statesmanship should not ignore the fundamental law relating to separation of powers, primary responsibility conferred on the authorities under the respective powers and the fact that no authority should do anything for which the power does not flow from the Constitution. In essence, the submission of Mr. Venugopal is that the Court should not cross the 'Lakshman Rekha'. Resting on the fulcrum of constitutional foundation and on the fundamental principle that if the Court comes to hold that it cannot legislate but only recommend for bringing in a legislation, as envisaged under Article 102(1)(e) of the Constitution, it would not be appropriate to take recourse to any other method for the simon pure reason that what cannot be done directly, should not be done indirectly. We shall advert to the said submission at a later stage.

5. Article 102 reads as follows: -

"102. **Disqualifications for membership**—(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

Explanation. —For the purposes of this clause a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule."

6. In this context, we may also refer to Article 191 of the Constitution that deals with disqualifications for membership. It is as follows: -

"191. **Disqualifications for membership**—(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

Explanation. —For the purposes of this clause, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule."

7. On a perusal of both the Articles, it is clear as crystal that as regards disqualification for being chosen as a member of either

House of Parliament and similarly disqualification for being chosen or for being a member of the Legislative Assembly or Legislative Council of a State, the law has to be made by the Parliament. In ***Lily Thomas v. Union of India and others***[3], it has been held:-

> "26. Articles 102(1)(*e*) and 191(1)(*e*) of the Constitution, on the other hand, have conferred specific powers on Parliament to make law providing disqualifications for membership of either House of Parliament or Legislative Assembly or Legislative Council of the State other than those specified in sub-clauses (*a*), (*b*), (*c*) and (*d*) of clause (1) of Articles 102 and 191 of the Constitution. We may note that no power is vested in the State Legislature to make law laying down disqualifications of membership of the Legislative Assembly or Legislative Council of the State and power is vested in Parliament to make law laying down disqualifications also in respect of Members of the Legislative Assembly or Legislative Council of the State. For these reasons, we are of the considered opinion that the legislative power of Parliament to enact any law relating to disqualification for membership of either House of Parliament or Legislative Assembly or Legislative Council of the State can be located only in Articles 102(1)(*e*) and 191(1)(*e*) of the Constitution and not in Article 246(1) read with Schedule VII List I Entry 97 and Article 248 of the Constitution. We do not, therefore, accept the contention of Mr. Luthra that the power to enact sub-section (4) of Section 8 of the Act is vested in Parliament under Article 246(1) read with Schedule VII List I Entry 97 and Article 248 of the

[3] (2013) 7 SCC 653

> Constitution, if not in Articles 102(1)(*e*) and 191(1)(*e*) of the Constitution."

We have no hesitation in saying that the view expressed above in ***Lily Thomas*** (supra) is correct, for the Parliament has the exclusive legislative power to lay down disqualification for membership.

8. In ***Manoj Narula*** (supra), the question centered around the interpretation of Article 75 of the Constitution. The core issue pertained to the legality of persons with criminal background and/or charged with offences involving moral turpitude to be appointed as ministers in the Central and the State Governments. The majority referred to the constitutional provisions, namely, Articles 74, 75, 163 and 164, adverted to the doctrine of implied limitation and, in that context, opined thus:-

> "64. On a studied scrutiny of the ratio of the aforesaid decisions, we are of the convinced opinion that when there is no disqualification for a person against whom charges have been framed in respect of heinous or serious offences or offences relating to corruption to contest the election, by interpretative process, it is difficult to read the prohibition into Article 75(1) or, for that matter, into Article 164(1) to the powers of the Prime Minister or the Chief Minister in such a manner. That would

> come within the criterion of eligibility and would amount to prescribing an eligibility qualification and adding a disqualification which has not been stipulated in the Constitution. In the absence of any constitutional prohibition or statutory embargo, such disqualification, in our considered opinion, cannot be read into Article 75(1) or Article 164(1) of the Constitution."

9. There has been advertence to the principle of constitutional silence or abeyance and, in that context, it has been ruled that it is not possible to accept that while interpreting the words "advice of the Prime Minister", it can legitimately be inferred that there is a prohibition to think of a person as a minister if charges have been framed against him in respect of heinous and serious offences including corruption cases under the criminal law. Thereafter, the majority addressed the concepts of 'constitutional morality', 'constitutional governance' and 'constitutional trust' and analysed the term 'advice' employed under Article 75(1) and stated that formation of an opinion by the Prime Minister in the context of Article 75(1) is expressed by the use of the said word because of the trust reposed in the Prime Minister under the Constitution and the said advice, to put it differently, is a constitutional advice. Reference was made to the

debate in the Constituent Assembly which had left it to the wisdom of the Prime Minister because of the intrinsic faith in him. Discussing further, it has been stated: -

> "At the time of framing of the Constitution, the debate pertained to conviction. With the change of time, the entire complexion in the political arena as well as in other areas has changed. This Court, on number of occasions, as pointed out hereinbefore, has taken note of the prevalence and continuous growth of criminalisation in politics and the entrenchment of corruption at many a level. In a democracy, the people never intend to be governed by persons who have criminal antecedents. This is not merely a hope and aspiration of citizenry but the idea is also engrained in apposite executive governance."

And again: -

> "That the Prime Minister would be giving apposite advice to the President is a legitimate constitutional expectation, for it is a paramount constitutional concern. In a controlled Constitution like ours, the Prime Minister is expected to act with constitutional responsibility as a consequence of which the cherished values of democracy and established norms of good governance get condignly fructified. The Framers of the Constitution left many a thing unwritten by reposing immense trust in the Prime Minister. The scheme of the Constitution suggests that there has to be an emergence of constitutional governance which would gradually grow to give rise to constitutional renaissance."

10. Lokur, J. opined: -

> "132. While it may be necessary, due to the criminalisation of our polity and consequently of our politics, to ensure that certain persons do not become Ministers, this is not possible through guidelines issued by this Court. It is for the electorate to ensure that suitable (not merely eligible) persons are elected to the legislature and it is for the legislature to enact or not enact a more restrictive law."

Proceeding further, the learned Judge stated: -

> "137. In this respect, the Prime Minister is, of course, answerable to Parliament and is under the gaze of the watchful eye of the people of the country. Despite the fact that certain limitations can be read into the Constitution and have been read in the past, the issue of the appointment of a suitable person as a Minister is not one which enables this Court to read implied limitations in the Constitution."

He had also, in his opinion, reproduced the words of Dr. B.R. Ambedkar in the Constituent Assembly on 25.11.1949 and the sentiments echoed by Dr. Rajendra Prasad on 26.11.1949. Dr. Ambedkar had said:-

> "As much defence as could be offered to the Constitution has been offered by my friends Sir Alladi Krishnaswami Ayyar and Mr T.T. Krishnamachari. I shall not therefore enter into the merits of the Constitution. Because I feel, however

> good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of State such as the Legislature, the Executive and the Judiciary. The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics. Who can say how the people of India and their parties will behave? Will they uphold constitutional methods of achieving their purposes or will they prefer revolutionary methods of achieving them? If they adopt the revolutionary methods, however good the Constitution may be, it requires no prophet to say that it will fail. It is, therefore, futile to pass any judgment upon the Constitution without reference to the part which the people and their parties are likely to play."

11. The learned Judge reproduced the words of Dr. Rajendra Prasad, which ring till today, are:-

> "Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. That will depend upon the men who administer it. It is a trite saying that a country can have only the Government it deserves. Our Constitution has provisions in it which appear to some to be objectionable from one point or another. We must admit that the defects are inherent in the situation in the country and the

people at large. If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country. After all, a Constitution like a machine is a lifeless thing. It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them."

12. Kurian Joseph, J., concurring with the opinion, has stated:-

"152. No doubt, it is not for the Court to issue any direction to the Prime Minister or the Chief Minister, as the case may be, as to the manner in which they should exercise their power while selecting the colleagues in the Council of Ministers. That is the constitutional prerogative of those functionaries who are called upon to preserve, protect and defend the Constitution. But it is the prophetic duty of this Court to remind the key duty holders about their role in working the Constitution. Hence, I am of the firm view, that the Prime Minister and the Chief Minister of the State, who themselves have taken oath to bear true faith and allegiance to the Constitution of India and to discharge their duties faithfully and conscientiously, will be well advised to consider avoiding any person in the Council of Ministers, against whom charges have been framed by a criminal court in respect of offences involving moral turpitude and also offences specifically referred to in Chapter III of the Representation of the People Act, 1951."

13. The thrust of the matter is whether any disqualification can be read as regards disqualification for membership into the constitutional provisions. Article 102(1) specifies certain grounds and further provides that any disqualification can be added by or under any law made by the Parliament. Article 191 has the same character.

14. Chapter III of the Representation of the People Act, 1951 (for brevity, 'the Act') deals with disqualification for membership of the Parliament and the State Legislatures. Section 7 deals with Definitions. It is as follows:-

> "7. Definitions.—In this Chapter,—
>
> (a) "appropriate Government" means in relation to any disqualification for being chosen as or for being a member of either House of Parliament, the Central Government, and in relation to any disqualification for being chosen as or for being a member of the Legislative Assembly or Legislative Council of a State, the State Government;
>
> (b) "disqualified" means disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State. <u>under the provisions of this Chapter, and on no other ground</u>."
>
> [Emphasis is ours]

15. The word 'disqualified' clearly states that a person be disqualified from being a member under the provisions of the said Chapter and/or on no other ground. The words 'no other ground' are of immense significance. Apart from the grounds mentioned under Article 102(1)(a) to 102(1)(d) and Article 191(1)(a) to 191(1)(d), the other grounds are provided by the Parliament and the Parliament has provided under Sections 8, 8A, 9, 9A, 10 and 10A which read thus:

> "**8. Disqualification on conviction for certain offences.**—(1) A person convicted of an offence punishable under—
>
> (a) section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or section 17IE (offence of bribery) or section 17IF (offence of undue influence or personation at an election) or sub-section (1) or sub-section (2) of section 376 or section 376A or section 376B or section 376C or section 376D (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code (45 of 1860); or

(b) the Protection of Civil Rights Act, 1955 (22 of 1955), which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or

(c) section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (52 of 1962); or

(d) sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or

(e) the Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or

(f) the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(g) section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(h) section 7 (offence of contravention of the provisions of sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or

(i) section 125 (offence of promoting enmity between classes in connect ion with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) or clause (a) of sub - section (2) of section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act; or

(j) section 6 (offence of conversion of a place or worship) of the Places of Worship (Special Provisions) Act 1991, or

(k) section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971); or

(l) the Commission of Sati (Prevention) Act, 1987 (3 of 1988); or

(m) the Prevention of Corruption Act, 1988 (49 of 1988); or

(n) the Prevention of Terrorism Act, 2002 (15 of 2002),

shall be disqualified, where the convicted person is sentenced to—

(i) only fine, for a period of six years from the date of such conviction;

(ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(2) A person convicted for the contravention of—

(a) any law providing for the prevention of hoarding or profiteering; or

(b) any law relating to the adulteration of food or drugs; or

(c) any provisions of the Dowry Prohibition Act, [1961 (28 of 1961)

and sentenced to imprisonment for not less than six months, shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (1) or sub-

section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(4) Notwithstanding anything in sub-section (1), sub-section (2) and sub-section (3) a disqualification under either sub-section shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.

Explanation.—In this section—

(a) "law providing for the prevention of hoarding or profiteering" means any law, or any order, rule or notification having the force of law, providing for—

(i) the regulation of production or manufacture of any essential commodity;

(ii) the control of price at which any essential commodity may be brought or sold;

(iii) the regulation of acquisition, possession, storage, transport, distribution, disposal, use or consumption of any essential commodity;

(iv) the prohibition of the withholding from sale of any essential commodity ordinarily kept for sale;

(b) "drug" has the meaning assigned to it in the Drugs and Cosmetics Act, 1940 (23 of 1940);

(c) "essential commodity" has the meaning assigned to it in the Essential Commodities Act, 1955 (10 of 1955);

(d) "food" has the meaning assigned to it in the Prevention of Food Adulteration Act, 1954 (37 of 1954).

8A. Disqualification on ground of corrupt practices.—(1) The case of every person found guilty of a corrupt practice by an order under section 99 shall be submitted, as soon as may be within a period of three months from the date such order takes effect, by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period:

Provided that the period for which any person may be disqualified under this sub-section shall in no case exceed six years from the date on which the order made in relation to him under section 99 takes effect.

(2) Any person who stands disqualified under section 8A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), may, if the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period.

(3) Before giving his decision on any question mentioned in sub-section (1) or on any petition submitted under sub-section (2), the President shall obtain the opinion of the Election Commission on such question or petition and shall act according to such opinion.

9. Disqualification for dismissal for corruption or disloyalty.—(1) A person who having held an office under the Government of India or under the Government of any State has been dismissed for corruption or for disloyalty to the State shall be disqualified for a period of five years from the date of such dismissal.

(2) For the purposes of sub-section (1), a certificate issued by the Election Commission to the effect that a person having held office under the Government of India or under the Government of a State, has or has not been dismissed for corruption or for disloyalty to the State shall be conclusive proof of that fact:

Provided that no certificate to the effect that a person has been dismissed for corruption or for disloyalty to the State shall be issued unless an opportunity of being heard has been given to the said person.

9A. Disqualification for Government contracts, etc.—A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.

Explanation.—For the purposes of this section, where a contract has been fully performed by the person by whom it has been entered into with the appropriate Government, the contract shall be deemed not to subsist by reason only of the fact that the Government has not performed its part of the contract either wholly or in part.

10. Disqualification for office under Government company.—A person shall be disqualified if, and for so long as, he is a managing agent, manager or secretary of any company or corporation (other than a co-operative society) in the capital of which the appropriate Government has not less than twenty-five per cent share.

> **10A. Disqualification for failure to lodge account of election expenses.—**If the Election Commission is satisfied that a person—
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> (a) has failed to lodge an account of election expenses, within the time and in the manner required by or under this Act; and
> (b) has no good reason or justification for the failure,
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> the Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order."

16. From the aforesaid, it is decipherable that Section 8 deals with disqualification on conviction for certain offences. Section 8A provides for disqualification on ground of corrupt practices. Section 9 provides for the disqualification for dismissal for corruption or disloyalty. Section 9A deals with the situation where there is subsisting contract between the person and the appropriate Government. Section 10 lays down disqualification for office under Government company and Section 10A deals with disqualification for failure to lodge account of election expenses. Apart from these disqualifications, there are no other disqualifications and, as is noticeable, there can be no other ground. Thus, disqualifications are

provided on certain and specific grounds by the legislature. In such a state, the legislature is absolutely specific.

17. The submission of the learned counsel appearing for the petitioners is that the law breakers should not become law makers and there cannot be a paradise for people with criminal antecedents in the Parliament or the State Legislatures. Reference has been made to the recommendations of the Law Commission which has seriously commented on the prevalent political atmosphere being dominated by people with criminal records.

18. It has also been highlighted by the petitioners that criminalization in politics is on the rise and the same is a documented fact and recorded by various committee reports. The petitioners also highlight that the doctrine of fiduciary relationship has been extended to several constitutional posts and that if members of Public Service Commission, Chief Vigilance Commissioner and the Chief Secretary can undergo the test of integrity check and if "framing of charge" has been recognized as a disqualification for such posts, then there is no reason to not extend the said test of "framing of charge" to the posts of Members of Parliament and State Legislatures as well. To further

accentuate this stand, the petitioners point out that such persons hold the posts in constitutional trust and can be made subject to rigours and fetters as the right to contest elections is not a fundamental right but a statutory right or a right which must confirm to the constitutional ethos and principles.

19. The petitioners are attuned to the principle of "presumption of innocence" under our criminal law. But they are of the opinion that the said principle is confined to criminal law and that any proceeding prior to conviction, such as framing of charge for instance, can become the basis to entail civil liability of penalty. The petitioners, therefore, take the stand that debarring a person facing charges of serious nature from contesting an election does not lead to creation of an offence and it is merely a restriction which is distinctively civil in nature.

20. The intervenor organization has also made submissions on a similar note as that of the petitioners to the effect that persons charged for an offence punishable with imprisonment for five years or more are liable to be declared as disqualified for being elected or for being a Member of the Parliament as a person chargesheeted in a crime involving moral turpitude is undesirable for a job under the

government and it is rather incongruous that such a person can become a law maker who then control civil servants and other government machinery and, thus, treating legislators on a different footing amounts to a violation of Article 14 of the Constitution.

21. Mr. Venugopal, learned Attorney General for India, refuting the aforesaid submission, would urge that the Parliament may make law on the basis of the recommendations of the Law Commission but this Court, as a settled principle of law, should not issue a mandamus to the Parliament to pass a legislation and can only recommend. That apart, submits Mr. Venugopal, that when there are specific constitutional provisions and the statutory law, the Court should leave it to the Parliament.

22. It is well settled in law that the Court cannot legislate. Emphasis is laid on the issuance of guidelines and directions for rigorous implementation. With immense anxiety, it is canvassed that when a perilous condition emerges, the treatment has to be aggressive. The petitioners have suggested another path. But, as far as adding a disqualification is concerned, the constitutional provision states the

disqualification, confers the power on the legislature, which has, in turn, legislated in the imperative.

23. Thus, the prescription as regards disqualification is complete is in view of the language employed in Section 7(b) read with Sections 8 to 10A of the Act. It is clear as noon day and there is no ambiguity. The legislature has very clearly enumerated the grounds for disqualification and the language of the said provision leaves no room for any new ground to be added or introduced.

Criminalization of politics

24. Though we have analyzed the aforesaid aspect, yet we cannot close the issue, for the learned counsel for the petitioners and some of the intervenors have argued with immense anguish that there is a need for rectification of the system failing which there will be progressive malady in constitutional governance and gradually, the governance would be controlled by criminals. The submission has been advanced with sanguine sincerity and genuine agony. There have been suggestions as well as arguments with the purpose of saving the sanctity of democracy and to advance its enduring

continuance. To appreciate the same, we will focus on the criminalization of politics.

25. In the beginning of the era of constitutional democracy, serious concerns were expressed with regard to the people who are going to be elected. Dr Rajendra Prasad on the Floor of the Constituent Assembly, before putting the motion for passing of the Constitution, had observed:-

> "...It requires men of strong character, men of vision, men who will not sacrifice the interests of the country at large for the sake of smaller groups and areas...We can only hope that the country will throw up such men in abundance."[4]

26. An essential component of a constitutional democracy is its ability to give and secure for its citizenry a representative form of government, elected freely and fairly, and comprising of a polity whose members are men and women of high integrity and morality. This could be said to be the hallmark of any free and fair democracy.

27. The *Goswami Committee on Electoral Reforms (*1990) had addressed the need to curb the growing criminal forces in politics in

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[4] Dr Rajendra Prasad, President, Constituent Assembly of India, 26th November, 1949

order to protect the democratic foundation of our country. The Committee stated that:-

> "The role of money and muscle powers at elections deflecting seriously the well accepted democratic values and ethos and corrupting the process; rapid criminalisation of politics greatly encouraging evils of booth capturing, rigging, violence etc.; misuse of official machinery, i.e. official media and ministerial; increasing menace of participation of non-serious candidates; form the core of our electoral problems. Urgent corrective measures are the need of the hour lest the system itself should collapse."

28. Criminalization of politics was never an unknown phenomenon in the Indian political system, but its presence was seemingly felt in its strongest form during the 1993 Mumbai bomb blasts which was the result of a collaboration of a diffused network of criminal gangs, police and customs officials and their political patrons. The tremors of the said attacks shook the entire Nation and as a result of the outcry, a Commission was constituted to study the problem of criminalization of politics and the nexus among criminals, politicians and bureaucrats in India. The report of the Committee, Vohra (Committee) Report, submitted by Union Home Secretary, N.N. Vohra, in October 1993, referred to several observations made by official agencies, including the CBI, IB, R&AW, who unanimously expressed their opinion on the

criminal network which was virtually running a parallel government. The Committee also took note of the criminal gangs who carried out their activities under the aegis of various political parties and government functionaries. The Committee further expressed great concern regarding the fact that over the past few years, several criminals had been elected to local bodies, State Assemblies and the Parliament. The Report observed:-

> "In the bigger cities, the main source of income relates to real estate - forcibly occupying lands/buildings, procuring such properties at cheap rates by forcing out the existing occupants/tenants etc. Over time, the money power thus acquired is used for building up contacts with bureaucrats and politicians and expansion of activities with impunity. The money power is used to develop a network of muscle-power which is also used by the politicians during elections."

And again:-

> "The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country. The existing criminal justice system, which was essentially designed to deal with the individual offences /crimes, is unable to deal with the activities of the Mafia; the provisions of law in regard economic offences are weak"

29. The Election Commission has also remained alive to the issue of criminalization of politics since 1998. While proposing reforms to tackle the menace of criminalization of politics, the Former Chief Election Commissioner, Mr. T.S. Krishna Murthy, highlighted the said issue by writing thus:-

> "There have been several instances of persons charged with serious and heinous crimes like murder, rape, dacoity, etc. contesting election, pending their trial, and even getting elected in a large number of cases. This leads to a very undesirable and embarrassing situation of lawbreakers becoming lawmakers and moving around under police protection. The Commission had proposed that the law should be amended to provide that any person for five years or more should be disqualified from contesting election even when trial is pending, provided charges have been framed against him by the competent court. Such a step would go a long way in cleansing the political establishment from the influence of criminal elements and protecting the sanctity of the Legislative Houses"[5]

30. In the case of ***Dinesh Trivedi, M.P. and others v. Union of India and others***[6] the court lamented the faults and imperfections which have impeded the country in reaching the expectations which

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[5] https://eci.nicJn/eci_main/PROPOSED_ELECTORAL_REFORMS.pdf
[6] (1997) 4 SCC 306

heralded its conception. While identifying one of the primary causes, the Court referred to the report of N.N. Vohra Committee that was submitted on 5.10.1993. The Court noted that the growth and spread of crime syndicates in Indian society has been pervasive and the criminal elements have developed an extensive network of contacts at many a sphere. The Court, further referring to the report, found that the Report reveals several alarming and deeply disturbing trends that are prevalent in our present society. The Court also noticed that the nexus between politicians, bureaucrats and criminal elements in our society has been on the rise, the adverse effects of which are increasingly being felt on various aspects of social life in India.

31. In ***Anukul Chandra Pradhan, Advocate Supreme Court v. Union of India and others***[7], the Court, in the context of the provisions made in the election law, observed that they have been made to exclude persons with criminal background, of the kind specified therein, from the election scene as candidates and voters

[7] (1997) 6 SCC 1

with the object to prevent criminalization of politics and maintain propriety in elections. Thereafter, the three-Judge Bench opined that any provision enacted with a view to promote the said object must be welcomed and upheld as subserving the constitutional purpose.

32. In ***K. Prabhakaran v. P. Jayarajan***[8], in the context of enacting disqualification under Section 8(3) of the Act, the Court observed that persons with criminal background pollute the process of election as they have no inhibition in indulging in criminality to gain success in an election. Further, the Court observed:-

> "Those who break the law should not make the law. Generally speaking the purpose sought to be achieved by enacting disqualification on conviction for certain offences is to prevent persons with criminal background from entering into politics and the house - a powerful wing of governance. Persons with criminal background do pollute the process of election as they do not have many a holds barred (sic) and have no reservation from indulging into criminality to win success at an election."

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[8] AIR 2005 SC 688

33. The Court in ***Manoj Narula*** (supra), while observing that criminalization of politics is an anathema to the sacredness of democracy, stated thus:-

> "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 the potentiality to obstruct, if not derail, the rule of law. Democracy, which has been best defined as the Government of the People, by the People and for the People, expects prevalence of genuine orderliness, positive propriety, dedicated discipline and sanguine sanctity by constant affirmance of constitutional morality which is the pillar stone of good governance.

And again: -

> "...systemic corruption and sponsored criminalization can corrode the fundamental core of elective democracy and, consequently, the constitutional governance. The agonized concern expressed by this Court on being moved by the conscious citizens, as is perceptible from the authorities referred to hereinabove, clearly shows that a democratic republic polity hopes and aspires to be governed by a Government which is run by the elected representatives who do not have any involvement in serious criminal offences or offences relating to corruption, casteism, societal problems, affecting the sovereignty of the nation and many other offences."

34. The 18th Report presented to the Rajya Sabha on 15th March, 2007 by the Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on Electoral Reforms (Disqualification of Persons from Contesting Elections on Framing of Charges Against Them for Certain Offences) acknowledged the existence of criminal elements in the Indian polity which hit the roots of democracy. The Committee observed thus:-

> "...the Committee is deeply conscious of the criminalization of our polity and the fast erosion of confidence of the people at large in our political process of the day. This will certainly weaken our democracy and will render the democratic institutions sterile. The Committee therefore feels that politics should be cleansed of persons with established criminal background. The objective is to prevent criminalisation of politics and maintain probity in elections. Criminalization of politics is the bane of society and negation of democracy."

35. The Chairman of the Law Commission, in the covering letter of the 244th Law Commission Report titled "Electoral Disqualifications", wrote to the then Minister of Law and Justice stating thus:-

> 1. "While the Law Commission was working towards suggesting its recommendations to the Government on Electoral Reforms, an Order was passed by the

> Hon'ble Supreme Court dated 16.12.2013 in Public Interest Foundation and Ors. Vs. Union of India and Anr., vide D.O. No. 4604/2011/SC/PIL(W] dated 21st December, 2013.
>
> 2. In the aforesaid Order, the Hon'ble Supreme Court noted that Law Commission may take some time for submitting a comprehensive report on all aspects of electoral reforms. However, the Hon'ble Court further mentioned that "the issues with regard to de-criminalization of politics and disqualification for filing false affidavits deserve priority and immediate consideration" and accordingly requested the Law Commission to "expedite consideration for giving a report by the end of February, 2014, on the two issues, namely:
>
> 1. Whether disqualification should be triggered upon conviction as it exists today or upon framing of charges by the court or upon the presentation of the report by the Investigating Officer under Section 173 of the Code of Criminal procedure? [Issue No. 3.1 (ii) of the Consultation Paper], and
>
> 2. Whether filing of false affidavits under Section 125A of the Representation of the People Act, 1951 should be a ground for disqualification? And if yes, what mode of mechanism needs to be provided for adjudication on the veracity of the affidavit? [Issue No.3.5 of the Consultation Paper]"

36. Thereafter, the 244th Law Commission, while accentuating the need for electoral reforms, observed that a representative government, sourcing its legitimacy from the People, who were the ultimate sovereign, was the kernel of the democratic system

envisaged by the Constitution. Over the time, this has been held to be a part of the 'basic structure' of the Constitution, immune to amendment, with the Supreme Court of India declaring that it is beyond the pale of reasonable controversy that if there be any unamendable features of the Constitution on the score that they form a part of the basic structure of the Constitution, it is that India is a Sovereign Democratic Republic.

37. The Commission laid stress on the model of representative government based on popular sovereignty which gives rise to its commitment to hold regular free and fair elections. The importance of free and fair elections stems from two factors— instrumentally, its central role in selecting persons who will govern the people, and intrinsically, as being a legitimate expression of popular will. Emphasizing on the importance of free and fair elections in a democratic polity, reference was made to the decision in ***Mohinder Singh Gill v. Chief Election Commissioner***[9] wherein the Court had ruled:-

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[9] AIR 1978 SC 851

> "Democracy is government by the people. It is a continual participative operation, not a cataclysmic periodic exercise. The little man, in his multitude, marking his vote at the poll does a social audit of his Parliament plus political choice of this proxy. Although the full flower of participative Government rarely blossoms, the minimum credential of popular government is appeal to the people after every term for a renewal of confidence. So we have adult franchise and general elections as constitutional compulsions… It needs little argument to hold that the heart of the Parliamentary system is free and fair elections periodically held, based on adult franchise, although social and economic democracy may demand much more."

38. The Commission addressed the issue pertaining to the extent of criminalization in politics and took note of the observations made by Mr. C. Rajagopalachari who, as back as in 1922, had anticipated the present state of affairs twenty-five years before Independence, when he wrote in his prison diary:-

> "Elections and their corruption, injustice and tyranny of wealth, and inefficiency of administration, will make a hell of life as soon as freedom is given to us..."

39. The Commission also observed that the nature of nexus changed in the 1970s and instead of politicians having suspected links to criminal networks, as was the case earlier, it was persons with extensive criminal backgrounds who began entering politics and

this fact was confirmed in the Vohra Committee Report in 1993 and again in 2002 in the report of the National Commission to Review the Working of the Constitution (NCRWC). The Commission referred to the judgment of this Court in ***Union of India v. Association for Democratic Reforms***[10] which had made an analysis of the criminal records of candidates possible by requiring such records to be disclosed by way of affidavit and this, as per the Commission, had given a chance to the public to quantitatively assess the validity of such observations made in the previous report.

40. As per the extent of criminalization that has pervaded Indian Politics, the Commission observed that in the ten years since 2004, 18% of the candidates contesting either National or State elections have criminal cases pending against them (11,063 out of 62,847). In 5,253 or almost half of these cases (8.4% of the total candidates analysed), the charges are of serious criminal offences that include murder, attempt to murder, rape, crimes against women, cases under the Prevention of Corruption Act, 1988 or under the Maharashtra Control of Organised Crime Act, 1999 which, on conviction, would

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[10] (2002) 5 SCC 294

result in five years or more of jail, etc. 152 candidates had 10 or more serious cases pending, 14 candidates had 40 or more such cases and 5 candidates had 50 or more cases against them. Further, the Commission observed that the 5,253 candidates with serious cases together had 13,984 serious charges against them and of these charges, 31% were cases of murder and other murder related offences, 4% were cases of rape and offences against women, 7% related to kidnapping and abduction, 7% related to robbery and dacoity, 14% related to forgery and counterfeiting including of government seals and 5% related to breaking the law during elections. The Commission was of the further view that criminal backgrounds are not limited to contesting candidates, but are found among winners as well, for, of the 5,253 candidates with serious criminal charges against them, 1,187 went on to winning the elections they contested, i.e., 13.5% of the 8,882 winners analysed from 2004 to 2013 and overall, including both serious and non-serious charges, 2,497 (28.4% of the winners) had 9,993 pending criminal cases against them.

41. Elaborating further, the Commission took note of the fact that in the current Lok Sabha, 30% or 162 sitting MPs have criminal cases pending against them, of which about half, i.e., 76 have serious criminal cases and further, the prevalence of MPs with criminal cases pending has increased over time as statistics reveal that in 2004, 24% of Lok Sabha MPs had criminal cases pending which increased to 30% in the 2009 elections and this situation is similar across States with 31% or 1,258 out of 4,032 sitting MLAs with pending cases, with again about half being serious cases. Not only this, the Commission also observed that some States have a much higher percentage of MLAs with criminal records: in Uttar Pradesh, 47% of MLAs have criminal cases pending and a number of these MPs and MLAs have been accused of multiple counts of criminal charges, for example, in a constituency of Uttar Pradesh, the MLA has 36 criminal cases pending including 14 cases relating to murder. As per the Commission, it is clear from this data that about one-third of the elected candidates at the Parliament and State Assembly levels in India have some form of criminal taint and also that the data elsewhere suggests that one-fifth of MLAs have pending cases which

have proceeded to the stage of charges being framed against them by a court at the time of their election. What the Commission found to be more disturbing was the fact that the percentage of winners with criminal cases pending is higher than the percentage of candidates without such backgrounds, as the data reveals that while only 12% of candidates with a "clean" record win on an average, 23% of candidates with some kind of criminal record win which implies that candidates charged with a crime actually fare better in elections than 'clean' candidates. This, as per the Commission, has resulted in the tendency for candidates with criminal cases to be given tickets a second time and not only do political parties select candidates with criminal backgrounds, but there is also evidence to suggest that untainted representatives later become involved in criminal activities and, thus, the incidence of criminalisation of politics is pervasive thereby making its remediation an urgent need.

42. The pervasive contact, in many a way, disturbed the political parties and this compelled the Law Commission to describe the role of political parties. It said:-

> "Political parties are a central institution of our democracy; "the life blood of the entire constitutional

> scheme." Political parties act as a conduit through which interests and issues of the people get represented in Parliament. Since political parties play a central role in the interface between private citizens and public life, they have also been chiefly responsible for the growing criminalisation of politics."

43. Thereafter, reference was made to the observations of the 170th report which was also quoted in ***Subhash Chandra Agarwal v. Indian National Congress and others***[11] by the Central Information Commission ("CIC"). The said observations are very pertinent to describe the position of political parties in our democracy:-

> "It is the Political Parties that form the Government, man the Parliament and run the governance of the country. It is therefore, necessary to introduce internal democracy, financial transparency and accountability in the working of the Political Parties. A political party which does not respect democratic principles in its internal working cannot be expected to respect those principles in the governance of the country. It cannot be dictatorship internally and democratic in its functioning outside.
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> x x x
>
> Though the RPA disqualifies a sitting legislator or a candidate on certain grounds, there is nothing regulating the appointments to offices within the organisation of the party. Political parties play a central

[11] (2013) CIC 8047

> role in Indian democracy. Therefore, a politician may be disqualified from being a legislator, but may continue to hold high positions within his party, thus also continuing to play an important public role which he has been deemed unfit for by the law. Convicted politicians may continue to influence law -making by controlling the party and fielding proxy candidates in legislature. In a democracy essentially based on parties being controlled by a high-command, the process of breaking crime-politics nexus extends much beyond purity of legislators and encompasses purity of political parties as well.
>
> ….It is suggested that political parties should refrain from appointing or allowing a person to continue holding any office within the party organisation if the person has been deemed to lack the qualities necessary to be a public official. Therefore, the legal disqualifications that prevent a person from holding office outside a party should operate within the party as well."

44. Commenting on the existing legal framework, it opined that legally, the prevention of entry of criminals into politics is accomplished by prescribing certain disqualifications that will prevent a person from contesting elections or occupying a seat in the Parliament or an Assembly and presently, the qualifications of Members of Parliament are listed in Article 84 of the Constitution, while the disqualifications can be found under Article 102. The

corresponding provisions for Members of the State Legislative Assemblies are found in Articles 173 and 191.

45. The Law Commission noted the decisions in ***Association for Democratic Reforms*** (supra), ***Lily Thomas*** (supra) and ***People's Union for Civil Liberties v. Union of India***[12] and, after referring to the previous Reports recommending reforms, recommended:-

> "To tackle the menace of wilful concealment of information or furnishing of false information and to protect the right to information of the electors, the Commission recommended that the punishment under Section 125A of RPA must be made more stringent by providing for imprisonment of a minimum term of two years and by doing away with the alternative clause for fine. Additionally, conviction under Section 125A RPA should be made a part of Section 8(1)(i) of the Representation of People Act, 1950."

46. Further, the Commission took note of the observations made by the Justice J.S. Verma Committee Report on Amendments to Criminal Law (2013) which proposed insertion of Schedule I to the Representation of the People Act, 1951 enumerating offences under IPC befitting the category of 'heinous' offences and it was also recommended in the said report that Section 8(1) of the RP Act be

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[12] (2003) 4 SCC 399

amended to cover, inter alia, the offences listed in the proposed Schedule 1, and this, in turn, would provide that a person in respect of whose acts or omissions a court of competent jurisdiction has taken cognizance under Section 190(1)(a),(b) or (c) of the Cr.PC. or who has been convicted by a court of competent jurisdiction with respect to the offences specified in the proposed expanded list of offences under Section 8(1) shall be disqualified from the date of taking cognizance or conviction, as the case may be. The Commission also referred to the proposal made in the said Report which was to the effect that disqualification in case of conviction shall continue for a further period of six years from the date of release upon conviction and in case of acquittal, the disqualification shall operate from the date of taking cognizance till the date of acquittal.

47. The rationale given by the Commission for introducing a disqualification at the stage of framing of charges was to the following effect:-

> "At the outset, the question that needs to be considered is whether disqualification should continue to be triggered only at the stage of conviction as is currently the case under Section 8 of the RPA. As detailed below, the current law suffers from three main problems: the rate of convictions among sitting MPs and MLAs is extremely

> low, trials of such persons are subject to long delays, and the law does not provide adequate deterrence to political parties granting tickets to persons of criminal backgrounds. This has resulted in a massive increase in the presence of criminal elements in politics, which affects our democracy in very evident ways."

48. Thereafter, the Commission went on to observe in its Reform Proposal as to why the stage of framing of charge sheet would not be an appropriate stage for disqualification. The Commission observed thus:-

> "When filing a charge-sheet, the Police is simply forwarding the material collected during investigation to a competent Court of law for the Court to consider what provisions the accused should be charged under. At this stage, there is not even a remote or prima facie determination of guilt of the accused by a Court of law. At the stage of filing or forwarding the charge-sheet to the Court, the material which is made a part of the charge-sheet has not even tested by a competent Court of law and the Judge has clearly not applied his mind to the said material. Courts have repeatedly held that a charge-sheet does not constitute a substantive piece of evidence as it not yet tested on the anvil of cross-examination.No rights of hearing are granted to the accused at this stage. At the stage of filing of charge-sheet, before summons are issued, the accused does not even have a copy of the charge-sheet or any connected material.
>
> Disqualifying a person therefore, simply on the basis of something which he has had no opportunity to look into, or no knowledge of, would be against the principles of natural justice.

> Disqualifying a person at this stage would mean that a person is penalized without proceedings being initiated against him. This would be tantamount to granting the judicial determination of the question of disqualification to the police, who are a prosecuting authority. At the National Consultation it was agreed by consensus that this was an inappropriate stage for disqualification of candidates for elected office."

49. The Commission then felt that it was worthwhile to discuss why the stage of taking of cognizance would be an inappropriate stage for disqualification and in this regard, the Commission observed that the taking of cognizance simply means taking judicial notice of an offence with a view to initiate proceedings in respect of such offence alleged to have been committed by someone and that it is an entirely different matter from initiation of proceedings against someone; rather, it is a precondition to the initiation of proceedings. The Commission took the view that while taking cognizance, the Court has to consider only the material put forward in the charge-sheet and it is not open for the Court at this stage to sift or appreciate the evidence and come to a conclusion that no prima facie case is made out for proceeding further in the matter. Further, at the stage of taking cognizance, the accused has no right to present any evidence or make any

submissions and even though the accused may provide exculpatory evidence to the police, the latter is under no obligation to include such evidence as part of the charge-sheet. The Commission went on to conclude that the stages of filing of charge sheet or taking cognizance would be inappropriate and observed thus:-

> "Due to the absence of an opportunity to the accused to be heard at the stage of filing of charge-sheet or taking of cognizance, and due to the lack of application of judicial mind at this stage, it is not an appropriate stage to introduce electoral disqualifications. Further, in a case supposed to be tried by the Sessions Court, it is still the Magistrate who takes cognizance. Introduction of disqualifications at this stage would mean that a Magistrate who has been deemed not competent to try the case still determines whether a person should be disqualified due to the charges filed.
>
> Because of these reasons, it is our view that the filing of the police report under Section 173 CrPC or taking of cognizance is not an appropriate stage to introduce electoral disqualifications..."

50. Thereafter, the Commission proceeded to examine why the framing of charges is an appropriate stage for disqualification. It went on to make the following observations on this aspect:-

> "The Supreme Court, in *Debendra Nath Padhi*, overruling *Satish Mehra*, held that the accused cannot lead any evidence at charging stage. Thus, the decision of the judge has to be based solely on the record of the case,

> i.e. the investigation report and documents submitted by the prosecution. Though the determination of framing of charges is based on the record of the case, the Supreme Court jurisprudence on Section 227 also imposes certain burdens to be discharged by the prosecution:
>
> > "If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence; if any, cannot show that the accused committed the offence then there will be no sufficient ground for proceeding with the trial."

51. The Commission was of the view that additionally, the burden on the prosecution at the stage of framing of charges also involves proving a prima facie case and as per the decision in ***State of Maharashtra v. Som Nath Thapa***[13] , a prima facie case is said to be in existence "if there is ground for presuming that the accused has committed the offence." Further, the Commission observed that in order to establish a prime facie case, the evidence on record should raise not merely some suspicion with regard to the possibility of conviction, but a "grave" suspicion and to corroborate its view, the

[13] (1996) 4 SCC 659

Commission referred to the observations in ***Union of India v. Prafulla Kumar Samal***[14] which were to the following effect:-

> "If two views are possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused."

52. After so analysing, the Commission concluded that since the stage of framing of charges is based on substantial level of judicial scrutiny, a totally frivolous charge will not stand such scrutiny and therefore, given the concern of criminalisation of politics in India, disqualification at the stage of framing of charges is justified having substantial attendant legal safeguards to prevent misuse. The Commission buttressed the said view on the following grounds:-

> "As explained above, the Supreme Court has made it clear that the framing of charges under Section 228 of the CrPC requires an application of judicial mind to determine whether there are sufficient grounds for proceeding against the accused. Further, the burden of proof at this stage is on the prosecution who must establish a prima facie case where the evidence on record raises 'grave suspicion'. Together, these tests offer protection against false charges being imposed.
>
> In addition to the safeguards built in at the stage of framing of charges, an additional option is available in the

[14] (1979) 3 SCC 4

shape of Section 311 of the Code of Criminal Procedure. Section 311 grants power to the Court to summon or examine any person at any stage of the trial if his evidence appears essential to the just decision of the case. Although this section is not very widely used, and the Supreme Court has cautioned against the arbitrary exercise of this power, it grants wide discretion to the court which may even be exercised suomotu. This section may be used by the Court to examine additional evidence before framing charges where the consequence of such framing may disqualify the candidate.

The framing of charges is therefore not an automatic step in the trial process, but one that requires a preliminary level of judicial scrutiny. The provisions in the CrPC require adequate consideration of the merits of a criminal charge before charges are framed by the Court. The level of scrutiny required before charges are framed is sufficient to prevent misuse of any provision resulting in disqualification from contesting elections.

Moreover enlarging the scope of disqualifications to include the stage of framing of charges in certain offences does not infringe upon any Fundamental or Constitutional right of the candidate. RPA creates and regulates the right to contest and be elected as a Member of Parliament or a State Legislature. From the early years of our democracy, it has been repeatedly stressed by the Supreme Court that the right to be elected is neither a fundamental nor a common law right. It is a special right created by the statute and can only be exercised on the conditions laid down by the statute. Therefore, it is not subject to the Fundamental Rights chapter of the constitution."

53. While addressing the three concerns, namely, misuse, lack of remedy for the accused and the sanctity of criminal jurisprudence, the

Commission stated that none of these concerns possess sufficient argumentative weight to displace the arguments in the previous section as although misuse is certainly a possibility, yet the same does not render a proposal to reform the law flawed in limine. Further, the Supreme Court has repeatedly pointed out in the context of statutory power vested in an authority that the possibility of misuse of power is not a reason to not confer the power or to strike down such provision. It observed:-

> "Similarly a potential fear of misuse cannot provide justification for not reforming the law per se. It does point to the requirement of instituting certain safeguards, circumscribing the conditions under which such disqualification will operate…Though there is a view that the accused has limited rights at the stage of framing of charge, the legal options available to him are fairly substantial. As the previous section shows, the stage of framing of charges involves considerable application of judicial mind, gives the accused an opportunity to be heard, places the burden of proof on the prosecution to demonstrate a prima facie case and will lead to discharge unless the grounds pleaded are sufficient for the matter to proceed to trial. Thus it is not as if the accused has no remedy till charges are framed—on the contrary, he has several legal options available to him prior to this stage.
>
> Finally, though criminal jurisprudence presumes a man innocent till proven otherwise, disqualifying a person from contesting elections at the stage of framing of charges does not fall foul of this proposition. Such a provision has no bearing on whether indeed the person concerned is

> guilty of the alleged offence or not. On the contrary, it represents a distinct legal determination of the types of persons who are suitable for holding representative public office in India. Given the proliferation of criminal elements in Parliament and State Assemblies, it is indicative of a public resolve to correct this situation. Further, the existing provisions which disqualify persons on conviction alone have been unable to achieve this task. Thus it is now strongly felt that it is essential to disqualify those persons who have had criminal charges framed against them by a court of competent jurisdiction, subject to certain safeguards, from contesting in elections. Such a determination of suitability for representative office has no bearing on his guilt or innocence which can, and will, only be judged at the criminal trial. To conflate the two and thereby argue that the suggested reform is jurisprudentially flawed would be to make a category mistake."

54. However, the Commission proposed certain safeguards in the form of limiting the disqualification to operate only in certain cases, defining cut-off period and period of applicability. The reasons for ensuring such safeguards as laid out in the report as are follows:

> "….Limiting the offences to which this disqualification applies has two clear reasons, i.e. those offences which are of such nature that those charged with them are deemed unsuitable to be people's representatives in Parliament or State Legislatures are included and the list is circumscribed optimally to prevent misuse to the maximum extent possible……
>
> …All offences which have a maximum punishment of five years or more ought to be included within the remit of this provision. Three justifications support this proposal: first,

> all offences widely recognised as serious are covered by this provision. This includes provisions for murder, rape, kidnapping, dacoity, corruption under the Prevention of Corruption Act and other crimes of a nature that justify those charged with them being disqualified from holding public office. Second, the data extracted above demonstrates that a large portion of offences for which MPs, MLAs and contesting candidates face criminal prosecutions relate to such provisions. Thus the reformed provision will ensure that such candidates are disqualified thereby creating a significant systemic impact. Third, it has the benefit of simplicity—by prescribing a standard five-year period, the provision is uniform and not contingent on specific offences which may run the risk of arbitrariness. The uniform five-year period thus makes a reasonable classification— between serious and non-serious offences and has a rational nexus with its object—preventing the entry of significantly criminal elements into Parliament and State Legislature."

55. With regard to laying down the safeguard of defining a cut-off period, the Commission observed thus:-

> "An apprehension was raised that introducing such a disqualification will lead to a spate of false cases in which charges might be framed immediately prior to an election with the sole intention of disqualifying a candidate. This is sought to be offset by a cut-off period before the date of scrutiny of nomination for an election, charges filed during which period, will not attract disqualification. The basis for this distinction is clear— to prevent false cases being filed against political candidates.
>
> x x x

> ….The cut-off period should be one year from the date of scrutiny of the nomination, i.e. charges filed during the one year period will not lead to disqualification. We feel that one year is an appropriate time-frame. It is long enough so that false charges which may be filed specifically to disqualify candidates will not lead to such disqualification; at the same time it is not excessively long which would have made such disqualification redundant. It thus allows every contesting candidate at minimum a one year period to get discharged. It thus strikes an appropriate balance between enlarging the scope of disqualification while at the same time seeks to disincentivise the filing of false cases solely with the view to engineer disqualification."

56. Another safeguard in the form of period of applicability was also proposed by the Commission which prescribes a time period or duration for which the said disqualification applies. It provides as follows:-

> "For convictions under Section 8(1) a person is disqualified for six years from conviction in case he is punished only with a fine or for the duration of the imprisonment in addition to six years starting from his date of release. For convictions under Section 8(2) and 8(3) he is disqualified simply for the duration of his imprisonment and six years starting from the date of release. Given that disqualifications on conviction have a time period specified, it would be anomalous if disqualification on the framing of charges omitted to do so and applied indefinitely. It is thus essential that a time period be specified…."

57. The rationale provided for fixing the time period as above was given in the following terms:-

> "…170th Law Commission under the Chairmanship of Justice B P Jeevan Reddy. In this report the specified period of disqualification was suggested to be five years from the date of framing of charge, or acquittal, whichever is earlier.
>
> ...We find great merit in this proposal. However it must be noted that the report did not recommend a cut-off period before the election, a charge framed during which would not lead to disqualification. Thus the rationale behind the five-year period was that the charged person would at least be disqualified from contesting in one election.
>
> This however will not be the case if a one-year cut off period is created. This is because if a person has a charged framed against him six months before an election, then he will not disqualified from this election because it is within the protected window. At the same time, assuming that the next election is five years later (which is a standard assumption) then he will not be disqualified from the second election as well because five years from the date of framing of charge will have lapsed by then. To take into account the effect of this cut-off period, it is thus recommended that the period of disqualification is increased to six years from the date of framing of charge or acquittal whichever is earlier.
>
> The rationale for this recommendation is clear: if a person is acquitted, needless to say the disqualification is lifted from that date. If he is not, and the trial is continuing, then the six-year period is appropriate for two reasons— first, it is long enough to ensure that the enlarged scope of disqualification has enough deterrent effect. A six-year period would at least ensure that a person will be disqualified from one election cycle thereby serving as a

real safeguard against criminals entering politics. At the same time it is the same as the period prescribed when a person is disqualified on conviction for certain offences, which such provision is comparable to. It thus has the added merit of uniformity. For these reasons, it is recommended that in the event of a charge being framed in respect of the enumerated offences against a person, he will be disqualified from contesting in elections for a period of six years from the date of framing of charge or till acquittal whichever is earlier, provided that the charge has not been framed within the protected window before an election."

58. The eventual recommendations and proposed Sections by the Law Commission read as follows:-

"1. x x x x x

2. The filing of the police report under Section 173 Cr.PC is not an appropriate stage to introduce electoral disqualifications owing to the lack of sufficient application of judicial mind at this stage.

3. The stage of framing of charges is based on adequate levels of judicial scrutiny, and disqualification at the stage of charging, if accompanied by substantial attendant legal safeguards to prevent misuse, has significant potential in curbing the spread of criminalisation of politics.

4. The following safeguards must be incorporated into the disqualification for framing of charges owing to potential for misuse, concern of lack of remedy for the accused and the sanctity of criminal jurisprudence:

i. Only offences which have a maximum punishment of five years or above ought to be included within the remit of this provision.

ii. Charges filed up to one year before the date of scrutiny of nominations for an election will not lead to disqualification.

iii. The disqualification will operate till an acquittal by the trial court, or for a period of six years, whichever is earlier.

iv. For charges framed against sitting MPs/ MLAs, the trials must be expedited so that they are conducted on a day-to-day basis and concluded within a 1-year period. If trial not concluded within a one year period then one of the following consequences ought to ensue:

- The MP/ MLA may be disqualified at the expiry of the one-year period; OR

- The MP/ MLA's right to vote in the House as a member, remuneration and other perquisites attaching to their office shall be suspended at the expiry of the one-year period.

5. Disqualification in the above manner must apply retroactively as well. Persons with charges pending (punishable by 5 years or more) on the date of the law coming into effect must be disqualified from contesting future elections, unless such charges are framed less than one year before the date of scrutiny of nomination papers for elections or the person is a sitting MP/MLA at the time of enactment of the Act. Such disqualification must take place irrespective of when the charge was framed.

x x x

1. There is large-scale violation of the laws on candidate affidavits owing to lack of sufficient legal consequences. As a result, the following changes should be made to the RPA:

i. Introduce enhanced sentence of a minimum of two years under Section 125A of the RPA Act on offence of filing false affidavits

ii. Include conviction under Section 125A as a ground of disqualification under Section 8(1) of the RPA.

iii. Include the offence of filing false affidavit as a corrupt practice under S. 123 of the RPA.

2. Since conviction under Section 125A is necessary for disqualification under Section 8 to be triggered, the Supreme Court may be pleased to order that in all trials under Section 125A, the relevant court conducts the trial on a day-to-day basis

3. A gap of one week should be introduced between the last date for filing nomination papers and the date of scrutiny, to give adequate time for the filing of objections to nomination papers."

59. The aforesaid recommendations for proposed amendment never saw the light of the day in the form of a law enacted by a competent legislature but it vividly exhibits the concern of the society about the progressing trend of criminalization in politics that has the proclivity and the propensity to send shivers down the spine of a constitutional democracy.

60. Having stated about the relevant aspects of the Law Commission Report and the indifference shown to it, the learned counsel for the petitioners and intervenors have submitted that

certain directions can be issued to the Election Commission so that the purity of democracy is strengthened. It is urged by them that when the Election Commission has been conferred the power to supervise elections, it can control party discipline of a political party by not encouraging candidates with criminal antecedents.

Role of Election Commission

61. Article 324 of the Constitution lays down the power of the Election Commission with respect to superintendence, direction and control of elections and reads thus:-

> "**324. Superintendence, direction and control of elections to be vested in an Election Commission:—**(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).
> (2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.
> (3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

> (4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).
> (5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine; Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:
> Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.
> (6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by Clause (1).”

62. This Court in a catena of judgments has elucidated upon the role of the Election Commission and the extent to which it can exercise its power under the constitutional framework.

63. In ***Election Commission of India and another. v. Dr. Subramaniam Swamy and another***[15], this Court ruled that the opinion of the Election Commission is a sine qua non for the Governor or the President, as the case may be, to give a decision on the question whether or not the concerned member of the House of the Legislature of the State or either House of Parliament has incurred a disqualification. The Court observed:-

> "Then we turn to Clause (2) of Article 192 which reads as under:
>
> > **192(2)** - Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.
> >
> > It is clear from the use of the words 'shall obtain' the opinion of the Election Commission, that it is obligatory to obtain the opinion of the Election Commission and the further stipulation that the Governor "shall act" according to such opinion leaves no room for doubt that the Governor is bound to act according to that opinion. The position in law is well settled by this Court's decision in *Brundaban v. Election Commission, [1965] 3 SCR 53* wherein this Court held that it is the obligation of the Governor to take a decision in accordance with the opinion of the

[15] (1996) 4 SCC 104

Election Commission. It is thus clear on a conjoint reading of the two clauses of Article 192 that once a question of the type mentioned in the first clause is referred to the Governor, meaning thereby is raised before the Governor, the Governor and the Governor alone must decide it but this decision must be taken after obtaining the opinion of the Election Commission and the decision which is made final is that decision which the Governor has taken in accordance with the opinion of the Election Commission. In effect and substance the decision of the Governor must depend on the opinion of the Election Commission and none else, not even the Council of Ministers. Thus the opinion of the Election Commission is decisive since the final order would be based solely on that opinion.

8. The same view came to be expressed in the case of *Election Commission of India v. N.G. Ranga, [1979] 1 SCR2 10,* while interpreting Article 103(2) of the Constitution, the language thereof is verbatim except that instead of the Governor in Article 192(2), here the decision has to be made by the President. So also the language of Articles 192(1) and 103(1) is identical except for the same change. The Constitution Bench of this Court reiterated that the President was bound to seek and obtain the opinion of the Election Commission and only thereafter decide the issue in accordance therewith. It other words, it is the Election Commission's opinion which is decisive."

64. *In* ***Mohinder Singh Gill*** (supra), Krishna Iyer J. opined:-

"12. The scheme is this. The President of India (Under Section 14) ignites the general elections across the nation by calling upon the People, divided into several constituencies and registered in the electoral rolls, to choose their representatives to the

> Lok Sabha. The constitutionally appointed authority, the Election Commission, takes over the whole conduct and supervision of the mammoth enterprise involving a plethora of details and variety of activities, and starts off with the notification of the time table for the several stages of the election (Section 30).' The assembly line operations then begin. An administrative machinery and technology to execute these enormous and diverse jobs is fabricated by the Act, creating officers, powers and duties, delegation of functions and location of polling stations. The precise exercise following upon the calendar for the poll, commencing from presentation of nomination papers, polling drill and telling of votes, culminating in the declaration and report of results are covered by specific prescriptions in the Act and the rules. The secrecy of the ballot, the authenticity of the voting paper and its' later identifiability with reference to particular polling stations, have been thoughtfully provided for. Myriad other matters necessary for smooth elections have been taken care of by several provisions of the Act."

65. Further, the Court observed in ***Mohinder Singh Gill*** (supra) that a re-poll for a whole constituency under compulsion of circumstances may be directed for the conduct of elections and can be saved by Article 324 provided it is bona fide and necessary for the vindication of the free verdict of the electorate and the abandonment of the previous poll was because it failed to achieve that goal. The Court ruled that even Article 324 does not exalt the Commission into

a law unto itself. Broad authority does not bar scrutiny into specific validity of a particular order. Having said that, the Court passed the following directions:-

> "2(a) The Constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This, responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances.
>
> (b) Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission shall act in conformity with, not in violation of such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from pushing forward a free and fair election with expedition- Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice in so far as conformance to such canons can reasonably and realistically be required of it as fairplay-in-action in a most important area of the constitutional order, viz., elections. Fairness does import an obligation to see that no wrong-doer candidate benefits by his own wrong. To put the matter beyond doubt natural justice enlivens and applies to the specific case of order for total repoll although not in full panoply but inflexible practicability. Whether it has been complied with is left open for the Tribunal adjudication."

66. In the concurring judgment in ***Mohinder Gill*** (supra), Goswami, J., with regard to Article 324, observed thus in para 113:-

> "...Since the conduct of all elections to the various legislative bodies and to the offices of the President and the Vice-President is vested under Article 324(1) in the Election Commission, the framers of the Constitution took care to leaving scope for exercise of residuary power by the Commission, in its own right, as a creature of the Constitution, in the infinite variety of situations that may emerge from time to time in such a large democracy as ours. Every contingency could not be foreseen, or anticipated with precision. That is why there is no hedging in Article 324. The Commission may be required to cope with some situation which may not be provided for in the enacted laws and the rules..."

67. In ***A.C. Jose v. Sivan Pillai and others***[16], this Court held that:-

> "It is true that Article 324 does authorise the Commission to exercise powers of superintendence, direction and control of preparation of electoral rolls and the conduct of elections to Parliament and State legislatures but then the Article has to be read harmoniously with the Articles that follow and the powers that are given to the Legislatures under entry No. 72 in the Union List and entry No. 37 of the State List of the Seventh Schedule to the Constitution. <u>The Commission in the garb of passing orders for regulating the conduct of elections cannot take upon itself a purely legislative activity which has been reserved under the scheme of the Constitution only to</u>

[16] AIR 1984 SC 921

> Parliament and the State legislatures. By no standards can it be said that the Commission is a third Chamber in the legislative be process within the scheme of the Constitution. merely being a creature of the Constitution will not give it plenary and absolute power to legislate as it likes without reference to the law enacted by the legislatures."
>
> [Emphasis added]

68. In ***Association for Democratic Reforms*** (supra), the Court opined:-

> "Under Article 324, the superintendence, direction and control of the 'conduct of all elections' to Parliament and to the Legislature of every State vests in Election Commission. The phrase 'conduct of elections' is held to be of wide amplitude which would include power to make all necessary provisions for conducting free and fair elections."

69. *In* ***Kuldip Nayar v. Union of India and others***[17]*,* this Court has observed:-

> "181. It has been argued by the petitioners that the Election Commission of India, which under the Constitution has been given the plenary powers to supervise the elections freely and fairly, had opposed the impugned amendment of changing the secret ballot system. Its view has, therefore, to be given proper weightage.

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[17] (2006) 7 SCC 1

> In this context, we would say that where the law on the subject is silent, Article 324 is a reservoir of power for the Election Commission to act for the avowed purpose of pursuing the goal of a free and fair election, and in this view it also assumes the role of an adviser. But the power to make law under Article 327 vests in the Parliament, which is supreme and so, not bound by such advice. We would reject the argument by referring to what this Court has already said in Mohinder Singh Gill (supra) and what bears reiteration here is that the limitations on the exercise of "plenary character" of the Election Commission include one to the effect that "when Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission, shall act in conformity with, not in violation of, such provisions."

70. The aforesaid decisions are to be appositely appreciated. There is no denial of the fact that the Election Commission has the plenary power and its view has to be given weightage. That apart, it has power to supervise the conduct of free and fair election. However, the said power has its limitations. The Election Commission has to act in conformity with the law made by the Parliament and it cannot transgress the same.

71. It is submitted by Mr. Krishnan Venugopal, learned senior counsel appearing for the petitioner in Writ Petition (Civil) No. 800 of 2015 that traditionally, the Court would not breach the principle of

separation of powers, however, this cannot prevent this Court from passing necessary directions to address the systemic growth of the problem of criminalization of politics and the political system without breaching the principle of separation of powers and this Court, in order to discharge its constitutional function, can give directions to the Election Commission to exercise its powers under Article 324 of the Constitution to redress violation of the fundamental rights and to protect the purity of the electoral process. Mr. Venugopal contends that in the past too, this Court, on several instances, had given directions to the Election Commission. He has also pointed out that the reason behind the urgent need for this Court to intervene to tackle the growing menace of criminalization of politics is that several law commission reports and other papers have unanimously concluded that there is widespread criminalization of politics and this Court has also taken cognizance of this fact in several of its judgments, but despite the said reports and the efforts of this Court, neither the Parliament nor the Government of India has taken serious actions to tackle the problem.

72. Further, Mr. Venugopal has drawn the attention of this Court to the findings in the Report titled 'Milan Vaishnav, When crime pays: Money and Muscle in Indian Politics"[18] to highlight that there is an alarming increase in the number of candidates with criminal antecedents and their chances of winning have actually increased steadily over the years and there is ample evidence in the form of statistical data which reinstates this fact.

73. On that basis, it is contended that the empirical evidence supports the view that the current legislative framework permits criminals to enter the electoral arena and become legislators which interferes with the purity and integrity of the electoral process, violates the right to choose freely the candidate of the voter's choice thereby violating the freedom of expression of a voter and amounts to a subversion of democracy which is a part of the basic structure and is, thus, antithetical to the Rule of Law.

74. Mr. Venugopal's submission has been supported by Mr. Dinesh Dwivedi, learned senior counsel appearing for the petitioners in Writ

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[18] Milan Vaishnav, When crime pays: Money and Muscle in Indian Politics, Yale Press University, New Haven (2017)

Petition (Civil) No. 536 of 2011 and Mr. Sidharth Luthra, learned Amicus Curiae, to the effect that if the Court does not intend to incorporate a prior stage in criminal trial, it can definitely direct the Election Commission to save democracy by including some conditions in the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 'the Symbols Order'). The submission is that a candidate against whom criminal charges have been framed in respect of heinous and grievous offences should not be allowed to contest with the symbol of the party. It is urged that the direction would not amount to adding a disqualification beyond what has been provided by the legislature but would only deprive a candidate from contesting with the symbol of the political party.

75. The aforesaid submission is seriously opposed by the learned Attorney General. It is the case of the first respondent that Section 29A of the Act does not permit the Election Commission of India to deregister a political party. To advance this view, the Union of India

has relied upon the decision of this Court in ***Indian National Congress (I) v. Institute of Social Welfare and others***[19].

76. It is also the asseveration of the first respondent that the power of this Court to issue directions to the Election Commission of India have been elaborately dealt with in ***Association for Democratic Reforms*** (supra) wherein this Court held that Article 32 of the Constitution of India only operates in areas left unoccupied by legislation and in the case at hand, the Constitution of India and the Representation of the People Act, 1951 already contain provisions for disqualification of Members of Parliament. Therefore, directing the Election Commission to (a) deregister a political party, (b) refuse renewal of a political party or (c) to not register a political party if they associate themselves with persons who are merely charged with offences would amount to adopting a colourable route, that is, doing indirectly what is clearly prohibited under the Constitution of India and the Representation of the People Act.

77. It is also contended on behalf of the Union of India that adding a condition to the recognition of a political party under the Symbols

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[19] (2002) 5 SCC 685

Order would also result in doing indirectly what is clearly prohibited. To buttress this stand, the Union of India has cited the decisions in ***Jagir Singh v. Ranbir Singh and another***[20] and ***M.C. Mehta v. Kamal Nath and others***[21].

78. Further, it has been submitted by the first respondent that Section 29A(5) of the Act is a complete, comprehensive and unambiguous provision of law and any direction to the Election Commission of India to deregister or refuse registration to political parties who associate themselves with persons merely charged with offences would result in violation of the doctrine of separation of powers as that would tantamount to making addition to a statute which is clear and unambiguous.

79. As per the first respondent, 'pure law' in the nature of constitutional provisions and the provisions of the Act cannot be substituted or replaced by judge made law. To advance the said stand, the first respondent has cited the judgments of this Court in ***State of Himachal Pradesh and others v. Satpal Saini***[22] and

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[20] (1979) 1 SCC 560
[21] (2000) 6 SCC 213
[22] (2017) 11 SCC 42

Kesavananda Bharati v. State of Kerala and another[23] wherein the doctrine of separation of powers was concretised by this Court. It is the contention of the first respondent that answering the present reference in the affirmative would result in violation of the doctrine of separation of powers.

80. The first respondent has also contended that the presumption of innocence until proven guilty is one of the hallmarks of Indian democracy and the said presumption attaches to every person who has been charged of any offence and it continues until the person has been convicted after a full-fledged trial where evidence is led. Penal consequences cannot ensue merely on the basis of charge.

81. Drawing support from the judgment of this Court in ***Amit Kapoor v. Ramesh Chander and another***[24], it is averred by the first respondent that the standard of charging a person is always less than a *prima facie* case, i.e., a person can be charged if the facts emerging from the record disclose the existence of all the ingredients constituting the alleged offence and, therefore, the consequences of

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[23] (1973) 4 SCC 225
[24] (2012) 9 SCC 460

holding that a person who is merely charged is not entitled to membership of a political party would be grave as it would have the effect of taking away a very valuable advantage of the symbol of the political party.

82. It has been further contended by the first respondent that every citizen has a right under Article 19(l)(c) to form associations which includes the right to be associated with persons who are otherwise qualified to be Members of Parliament under the Constitution of India and under the law made by the Parliament. Further, this right can only be restricted by law made by the Parliament and any direction issued by the Election Commission of India under Article 324 is not law for the purpose of Article 19(l)(c).

83. The first respondent also submits that the Act already contains detailed provisions for disclosure of information by a candidate in the form of Section 33A which requires every candidate to disclose information pertaining to offences that he or she is accused of. This information is put on the website of the Election Commission of India and requiring every member of a political party to disclose such

information irrespective of whether he/she is contesting election will have serious impact on the privacy of the said member.

84. Relying upon the decisions in ***Union of India and another v. Deoki Nandan Aggarwal***[25] and ***Supreme Court Bar Association v. Union of India and another***[26]**,** the first respondent has submitted that Article 142 of the Constitution of India does not empower this Court to add words to a statute or read words into it which are not there and Article 142 does not confer the power upon this Court to make law.

85. As regards the issue that there is a vacuum which necessitates interference of this Court, the first respondent has contended that this argument is untenable as the provisions of the Constitution and the Act are clear and unambiguous and, therefore, answering the question referred to in the affirmative would be in the teeth of the doctrine of separation of powers and would be contrary to the provisions of the Constitution and to the law enacted by the Parliament.

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[25] (1992) Supp (1) 323
[26] (1998) 4 SCC 409

Analysis of the Election Symbols Order

86. In the adverting situation and keeping in view the submissions on the behalf of the petitioners, it is pertinent to scan and analyse the relevant provisions of the Symbols Order which deals with allotment, classification, choice of symbols by candidates and restriction on the allotment of symbols. Clause (4) of the Symbols Order reads:-

> "4. **Allotment of symbols –** In every contested election a symbol shall be allotted to a contesting candidate in accordance with the provisions of this Order and different symbols shall be allotted to different contesting candidates at an election in the same constituency."

87. Clause (4) of the Symbols Order makes it clear that in each and every contested election, a symbol, to each and every contesting candidate, shall be allotted in accordance with the provisions of this Symbols Order and in case of an election in the same constituency, different symbols shall be allotted to different contesting candidates. Now, we must also dissect clause (5) of the Symbols Order which reads:-

> "**5. Classification of symbols –** (1) For the purpose of this Order symbols are either reserved or free.
>
> (2) Save as otherwise provided in this Order, a reserved symbol is a symbol which is reserved for a

> recognised political party for exclusive allotment to contesting candidates set up by that party.
>
> (3) A free symbol is a symbol other than a reserved symbol."

88. Sub-clause (1) of clause (5) of the Symbols Order, a priori, segregates the symbols for the purposes of this Symbols Order into two simon pure categories, i.e., 'Reserved' or 'Free'. Therefore, a symbol under the Symbols Order can either be reserved or it can be free. Before decoding sub-clause (2) of clause (5), we may first decipher sub-clause (3) which gives a negative definition to a free symbol. As per sub-clause (3) of clause (5), a symbol is free if is not reserved under the Symbols Order. Sub-clause (2) of clause (5) which defines a reserved symbol stipulates that except as otherwise provided in the Symbols Order, a reserved symbol is one which is reserved for a recognised political party for exclusive allotment to the contesting candidates set up by such political party.

89. Thereafter, clause (6) classifies political parties into state parties and national parties. Clauses (6A) and (6B) stipulate the conditions for recognition of state and national parties, respectively.

Under clause (17) of the Symbols Order the Election Commission publishes, by notification in the Official Gazette of India, the national parties, State parties and the symbols reserved for them. Clause (17) reads as under:-

> **"17. Notification containing lists of political parties and symbols –**
>
> (1) The Commission shall by one or more notifications in the Gazette of India publish lists specifying-
>
> (a) the National Parties and the symbols respectively reserved for them;
>
> (b) the State Parties, the State or States in which they are State Parties and the symbols respectively reserved for them in such State or States;
>
> x x x"

90. Another important provision in the matter of choice of symbols by candidates and restriction on the allotment thereof is clause (8) of the Symbols Order which reads thus:-

> "**8. Choice of symbols by candidates of National and State Parties and allotment thereof** –
>
> (1) A candidate set up by a National Party at any election in any constituency in India shall choose, and

shall be allotted, the symbol reserved for that party and no other symbol.

(2) A candidate set up by a State Party at an election in any constituency in a State in which such party is a State Party, shall choose, and shall be allotted the symbol reserved for that Party in that State and no other symbol.

(3) A reserved symbol shall not be chosen by, or allotted to, any candidate in any constituency other than a candidate set up by a National Party for whom such symbol has been reserved or a candidate set up by a State Party for whom such symbol has been reserved in the State in which it is a State Party even if no candidate has been set up by such National or State Party in that constituency."

91. For exegesis of clause (8) of the Symbols Order, it is apt that we refer to clause (13) which provides as to when a candidate is deemed to be set up by a political party. Clause (13) reads as under:-

"**13. When a candidate shall be deemed to be set up by a political party.—**For the purposes of an election from any parliamentary or assembly constituency to which this Order applies, a candidate shall be deemed to be set up by a political party in any such parliamentary or assembly constituency, if, and only if,-

(a) the candidate has made the prescribed declaration to this effect in his nomination paper;

(aa) the candidate is a member of that political party and his name is borne on the rolls of members of the party;

(b) a notice by the political party in writing, in Form B, to that effect has, not later than 3 p.m. on the last date for making nominations, been delivered to the Returning Officer of the constituency;

(c) the said notice in Form B is signed by the President, the Secretary or any other office bearer of the party, and the President, Secretary or such other office bearer sending the notice has been authorised by the party to send such notice;

(d) the name and specimen signature of such authorised person are communicated by the party, in Form A, to the Returning Officer of the constituency and to the Chief Electoral Officer of the State or Union Territory concerned, not later than 3 p.m. on the last date for making nominations; and

(e) Forms A and B are signed, in ink only, by the said office bearer or person authorised by the party:

Provided that no facsimile signature or signature by means of rubber stamp, etc., of any such office bearer or authorised person shall be accepted and no form transmitted by fax shall be accepted."

92. Clause (13) lays down an elaborate procedure in order for a candidate to be set up by a political party in both the elections to the Parliament as well as the Assembly constituencies.

93. Coming back to clause (8) of the Symbols Order, as per sub-clause (1) of clause (8), a candidate set up by a national party in terms of clause (13) in any constituency in India shall choose the symbol reserved for such national party and no other symbol. By

using the word 'shall', sub-clause (1) of clause (8) makes it mandatory for a candidate set up by a national party to choose the symbol reserved for such national party. Further, sub-clause (1), again on a second instance, by using the word 'shall' in the context of the Election Commission, makes it obligatory for the Election Commission to allot to a candidate set up by a national party the symbol reserved for such national party. Therefore, sub-clause (1) by casting this duty on the Election Commission, as a natural corollary, gives birth to a right to the candidate set up by a national party to contest elections under the symbol reserved for such national party.

94. That apart, the first part of sub-clause (3) of clause (8) stipulates that a symbol reserved, in terms of clause (5) read with clause (17) of the Symbols Order, shall neither be chosen by nor allotted by the Election Commission to any candidate in any constituency other than a candidate set up by a national party.

95. Sub-clause (2) of clause (8) and the latter part of clause (3) are corresponding provisions for choice of symbol by candidates of State

parties which, for the sake of brevity, we need not delve into. Coming to the last clause of the Symbols Order, clause (18) reads thus:-

> "**18. Power of Commission to issue instructions and directions:—**The Commission may issue instructions and directions-
>
> x x x
>
> x x x
>
> (c) in relation to any matter with respect to the reservation and allotment of symbols and recognition of political parties, for which this Order makes no provision or makes insufficient provision, and provision is in the opinion of the Commission necessary for the smooth and orderly conduct of elections."

96. In terms of sub-clause (c) of clause 18, the power to issue instructions and directions, in matters relating to reservation and allotment of symbols, has been reserved by the Election Commission itself.

97. What comes to the fore is that when a candidate has been set up in an election by a particular political party, then such a candidate has a right under sub-clause (3) of clause (8) to choose the symbol reserved for the respective political party by which he/she has been set up. An analogous duty has also been placed upon the Election

Commission to allot to such a candidate the symbol reserved for the political party by which he/she has been set up and to no other candidate.

98. Assuming a hypothetical situation, where a particular symbol is reserved for a particular political party and such a political party sets up a candidate in elections against whom charges have been framed for heinous and/or grievous offences and if we were to accept the alternative proposal put forth by the petitioners to direct the Election Commission that such a candidate cannot be allowed to contest with the reserved symbol for the political party, it would tantamount to adding a new ground for disqualification which is beyond the pale of the judicial arm of the State. Any attempt to the contrary will be a colourable exercise of judicial power for it is axiomatic that "what cannot be done directly ought not to be done indirectly" which is a well-accepted principle in the Indian judiciary.

99. Here we may profit to refer to some authorities wherein the said principle has been discussed elaborately.

100. In ***Allied Motors Limited v. Bharat Petroleum Corporation Limited***[27]**,** reference was made to the celebrated judgment of the Privy Council in ***Nazir Ahmad v. King Emperor***[28] wherein the principle has been enunciated "*that where a power is given to do a certain thing in a certain way, the thing must be done in that way, or not at all.*" Other methods of performance are necessarily forbidden. This principle has been reiterated and expanded by the Supreme Court in several decisions.

101. In ***D.R. Venkatachalam and others v. Dy. Transport Commissioner and others***[29], it was observed:-

> "In ultimate analysis, the rule of construction relied upon by Mr. Chitaley to make the last-mentioned submission is: "Expression unius est exclusio alterius." This maxim, which has been described as "a valuable servant but a dangerous master" (per Lopes J., in Court of Appeal in Colquhoun v. Brooks, (1888) 21 QBD 52 finds expression also in a rule formulated in Taylor v. Taylor (1875) 1 Ch D 426 applied by the Privy Council in Nazir Ahmad v. King Emperor which has been repeatedly adopted by this Court. That rule says that an expressly laid down mode of doing something

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[27] (2012) 2 SCC 1
[28] AIR 1936 PC 253
[29] AIR 1977 SC 842

necessarily implies a prohibition of doing it in any other way."

102. Similarly, in ***State through. P.S. Lodhi Colony New Delhi v. Sanjeev Nanda***[30], this Court observed thus:-

> "It is a settled principle of law that if something is required to be done in a particular manner, then that has to be done only in that way or not, at all. In AIR 1936 PC 253 (2) Nazir Ahmad v. King Emperor, it has been held as follows:
>
> ".... The rule which applies is a different and not less well recognized rule, namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all...."

103. Another judgment where this principle has been reiterated is ***Rashmi Rekha Thatoi and another v. State of Orissa and others***[31] wherein it was observed thus:-

> "In this regard it is to be borne in mind that a court of law has to act within the statutory command and not deviate from it. It is a well-settled proposition of law what cannot be done directly, cannot be done indirectly. While exercising a statutory power a court is bound to act within the four corners thereof. The statutory exercise of power stands on a different footing than exercise of power of judicial review."

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[30] AIR 2012 SC 3104
[31] (2012) 5 SCC 690

104. That apart, any direction to the Election Commission in the nature as sought by the petitioners may lead to an anomalous situation and has the effect potentiality to do something indirectly which is not permissible to do directly. A candidate bereft of party symbol is, in a way, disqualified from contesting under the banner of a political party. It is contended that the person concerned can contest the election as an independent candidate but, as we perceive, the impact would be the same. That apart, without a legislation, it may be difficult to proscribe the same. Additionally, democracy that is based on multi-party system is likely to be dented. In ***Shailesh Manubhai Parmar v. Election Commission of India***[32], while dealing with the issue of introduction of NOTA to the election process for electing members of the Council of States, this Court observed thus:-

> "...introduction of NOTA to the election process for electing members of the Council of States will be an anathema to the fundamental criterion of democracy which is a basic feature of the Constitution. It can be

[32] 2018 (10) SCALE 52

> stated without any fear of contradiction that the provisions for introduction of NOTA as conceived by the Election Commission, the first respondent herein, on the basis of the PUCL judgment is absolutely erroneous, for the said judgment does not say so. We are disposed to think that the decision could not have also said so having regard to the constitutional provisions contained in Article 80 and the stipulations provided under the Tenth Schedule to the Constitution. The introduction of NOTA in such an election will not only run counter to the discipline that is expected from an elector under the Tenth Schedule to the Constitution but also be counterproductive to the basic grammar of the law of disqualification of a member on the ground of defection. It is a well settled principle that what cannot be done directly, cannot be done indirectly. To elaborate, if NOTA is allowed in the election of the members to the Council of States, the prohibited aspect of defection would indirectly usher in with immense vigour.
>
> (Emphasis is ours)

105. Here it is apt to note that this Court refused to allow the introduction of NOTA for election of members of the Council of States, for the Court was of the view that if the availibilty of NOTA option in elections for Rajya Sabha would be allowed, the same would amount to colourable exercise of power by attempting to introduce or modify a disqualification for being or becoming a member, which power falls completely within the domain of the legislature. Ruling so, the Court further observed:-

> "The introduction of NOTA in indirect elections may on a first glance tempt the intellect but on a keen scrutiny, it falls to the ground, for it completely ignores the role of an elector in such an election and fully destroys the democratic value. It may be stated with profit that the idea may look attractive but its practical application defeats the fairness ingrained in an indirect election. More so where the elector's vote has value and the value of the vote is transferrable. It is an abstraction which does not withstand the scrutiny of, to borrow an expression from Krishna Iyer, J., the —cosmos of concreteness. We may immediately add that the option of NOTA may serve as an elixir in direct elections but in respect of the election to the Council of States which is a different one as discussed above, it would not only undermine the purity of democracy but also serve the Satan of defection and corruption."

106. Thus analyzed, the directions to the Election Commission as sought by the petitioners runs counter to what has been stated hereinabove. Though criminalization in politics is a bitter manifest truth, which is a termite to the citadel of democracy, be that as it may, the Court cannot make the law.

107. Directions to the Election Commission, of the nature as sought in the case at hand, may in an idealist world seem to be, at a cursory glance, an antidote to the malignancy of criminalization in politics but such directions, on a closer scrutiny, clearly reveal that it is not constitutionally permissible. The judicial arm of the State being laden

with the duty of being the final arbiter of the Constitution and protector of constitutional ethos cannot usurp the power which it does not have.

108. In a multi-party democracy, where members are elected on party lines and are subject to party discipline, we recommend to the Parliament to bring out a strong law whereby it is mandatory for the political parties to revoke membership of persons against whom charges are framed in heinous and grievous offences and not to set up such persons in elections, both for the Parliament and the State Assemblies. This, in our attentive and plausible view, would go a long way in achieving decriminalisation of politics and usher in an era of immaculate, spotless, unsullied and virtuous constitutional democracy.

109. In spite of what we have stated above, we do not intend to remain oblivious to the issue of criminalization of politics. This Court has focused on various aspects of the said criminalization and given directions from time to time which are meant to make the voters aware about the antecedents of the candidates who contest in the election. In ***Association for Democratic Reforms*** (supra), this Court held:-

> *"*38. If right to telecast and right to view sport games and the right to impart such information is considered to be part and parcel of Article 19(1)(*a*), we fail to understand why the right of a citizen/voter — a little man — to know about the antecedents of his candidate cannot be held to be a fundamental right under Article 19(1)(*a*). In our view, democracy cannot survive without free and fair election, without free and fairly informed voters. Votes cast by uninformed voters in favour of *X* or *Y* candidate would be meaningless. As stated in the aforesaid passage, one-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Therefore, casting of a vote by a misinformed and non-informed voter or a voter having one-sided information only is bound to affect the democracy seriously. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions. Entertainment is implied in freedom of 'speech and expression' and there is no reason to hold that freedom of speech and expression would not cover right to get material information with regard to a candidate who is contesting election for a post which is of utmost importance in the democracy."

110. After the said judgment was delivered, the Representation of the People (Amendment) Ordinance, 2002 (4 of 2002) was promulgated and the validity of the same was called in question under Article 32 of the Constitution of India. The three Judge Bench in ***People's Union for Civil Liberties (PUCL)*** (supra) held that Section 33-B which provided the candidate to furnish information only

under the Act and the rules is unconstitutional. The said provision read as follows:-

> "**33-B. Candidate to furnish information only under the Act and the rules**.—Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made thereunder."

111. P. Venkata Reddy, J. expressed his view as follows:-

> "(1) Securing information on the basic details concerning the candidates contesting for elections to Parliament or the State Legislature promotes freedom of expression and therefore the right to information forms an integral part of Article 19(1)(*a*). This right to information is, however, qualitatively different from the right to get information about public affairs or the right to receive information through the press and electronic media, though, to a certain extent, there may be overlapping.
>
> * * *
>
> (3) The directives given by this Court in *Union of India* v. *Assn. for Democratic Reforms* were intended to operate only till the law was made by the legislature and in that sense 'pro tempore' in nature. Once legislation is made, the Court has to make an independent assessment in order to evaluate whether the items of information statutorily ordained are reasonably adequate to secure the right of information available to the voter/citizen. In embarking on this exercise, the points of disclosure indicated by this Court, even if they be tentative or ad hoc in nature, should be given due weight and

substantial departure therefrom cannot be countenanced.

* * *

(5) Section 33-B inserted by the Representation of the People (Third Amendment) Act, 2002 does not pass the test of constitutionality, firstly, for the reason that it imposes a blanket ban on dissemination of information other than that spelt out in the enactment irrespective of the need of the hour and the future exigencies and expedients and secondly, for the reason that the ban operates despite the fact that the disclosure of information now provided for is deficient and inadequate.

(6) The right to information provided for by Parliament under Section 33-A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by the Court from the ambit of disclosure."

112. Dharmadhikari, J., in his supplementing opinion, held thus:-

"127. The reports of the advisory commissions set up one after the other by the Government to which a reference has been made by Brother Shah, J., highlight the present political scenario where money power and muscle power have substantially polluted and perverted the democratic processes in India. To control the ill-effects of money power and muscle power the commissions recommend that election system should be overhauled and drastically changed lest democracy would become a teasing illusion to common citizens of this country. Not only a half-hearted attempt in the direction of reform of the election system is to be taken, as has been done by the present legislation by amending some provisions of the Act here and there,

> but a much improved election system is required to be evolved to make the election process both transparent and accountable so that influence of tainted money and physical force of criminals do not make democracy a farce — the citizen's fundamental 'right to information' should be recognised and fully effectuated. This freedom of a citizen to participate and choose a candidate at an election is distinct from exercise of his right as a voter which is to be regulated by statutory law on the election like the RP Act."

113. In ***Resurgence India v. Election Commission of India***[33], referring to the precedents, this Court ruled thus:-

> "20. Thus, this Court held that a voter has the elementary right to know full particulars of a candidate who is to represent him in Parliament and such right to get information is universally recognised natural right flowing from the concept of democracy and is an integral part of Article 19(1)(*a*) of the Constitution. It was further held that the voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is a must. Thus, in unequivocal terms, it is recognised that the citizen's right to know of the candidate who represents him in Parliament will constitute an integral part of Article 19(1)(*a*) of the Constitution of India and any act, which is derogative of the fundamental rights is at the very outset ultra vires."

And again:-

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[33] (2014) 14 SCC 189

"27. If we accept the contention raised by the Union of India viz. the candidate who has filed an affidavit with false information as well as the candidate who has filed an affidavit with particulars left blank should be treated on a par, it will result in breach of fundamental right guaranteed under Article 19(1)(*a*) of the Constitution viz. 'right to know', which is inclusive of freedom of speech and expression as interpreted in *Assn. for Democratic Reforms*."

114. The Court summarized the directions as under:-

"29.1. The voter has the elementary right to know full particulars of a candidate who is to represent him in Parliament/Assemblies and such right to get information is universally recognised. Thus, it is held that right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of Article 19(1)(*a*) of the Constitution.

29.2. The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizens under Article 19(1)(*a*) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.

29.3. Filing of affidavit with blank particulars will render the affidavit nugatory.

29.4. It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the 'right to know' of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of Returning Officer to reject

> the nomination paper must be exercised very sparingly but the bar should not be laid so high that justice itself is prejudiced.
>
> 29.5. We clarify to the extent that para 73 of *People's Union for Civil Liberties case* will not come in the way of the Returning Officer to reject the nomination paper when affidavit is filed with blank particulars.
>
> 29.6. The candidate must take the minimum effort to explicitly remark as 'NIL' or 'Not Applicable' or 'Not known' in the columns and not to leave the particulars blank.
>
> 29.7. Filing of affidavit with blanks will be directly hit by Section 125-A(*i*) of the RP Act. However, as the nomination paper itself is rejected by the Returning Officer, we find no reason why the candidate must be again penalised for the same act by prosecuting him/her."

115. In ***People's Union for Civil Liberties v. Union of India***[34], the Court held that the universal adult suffrage conferred on the citizens of India by the Constitution has made it possible for these millions of individual voters to go to the polls and thereby participate in the governance of our country. It has been further ruled that for democracy to survive, it is essential that the best available men should be chosen as the people's representatives for the proper governance of the country. The best available people, as is expected by the democratic system, should not have criminal antecedents and

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[34] (2013) 10 SCC 1

the voters have a right to know about their antecedents, assets and other aspects. We are inclined to say so, for in a constitutional democracy, criminalization of politics is an extremely disastrous and lamentable situation. The citizens in a democracy cannot be compelled to stand as silent, deaf and mute spectators to corruption by projecting themselves as helpless. The voters cannot be allowed to resign to their fate. The information given by a candidate must express everything that is warranted by the Election Commission as per law. Disclosure of antecedents makes the election a fair one and the exercise of the right of voting by the electorate also gets sanctified. It has to be remembered that such a right is paramount for a democracy. A voter is entitled to have an informed choice. If his right to get proper information is scuttled, in the ultimate eventuate, it may lead to destruction of democracy because he will not be an informed voter having been kept in the dark about the candidates who are accused of heinous offences. In the present scenario, the information given by the candidates is not widely known in the constituency and the multitude of voters really do not come to know about the antecedents. Their right to have information suffers.

116. Keeping the aforesaid in view, we think it appropriate to issue the following directions which are in accord with the decisions of this Court :-

(i) Each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein.

(ii) It shall state, in bold letters, with regard to the criminal cases pending against the candidate.

(iii) If a candidate is contesting an election on the ticket of a particular party, he/she is required to inform the party about the criminal cases pending against him/her.

(iv) The concerned political party shall be obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents.

(v) The candidate as well as the concerned political party shall issue a declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. When we say wide publicity, we mean that the

same shall be done at least thrice after filing of the nomination papers.

117. These directions ought to be implemented in true spirit and right earnestness in a bid to strengthen the democratic set-up. There may be certain gaps or lacunae in a law or legislative enactment which can definitely be addressed by the legislature if it is backed by the proper intent, strong resolve and determined will of right-thinking minds to ameliorate the situation. It must also be borne in mind that the law cannot always be found fault with for the lack of its stringent implementation by the concerned authorities. Therefore, it is the solemn responsibility of all concerned to enforce the law as well as the directions laid down by this Court from time to time in order to infuse the culture of purity in politics and in democracy and foster and nurture an informed citizenry, for ultimately it is the citizenry which decides the fate and course of politics in a nation and thereby ensures that “we shall be governed no better than we deserve”, and thus, complete information about the criminal antecedents of the candidates forms the bedrock of wise decision-making and informed

choice by the citizenry. Be it clearly stated that informed choice is the cornerstone to have a pure and strong democracy.

118. We have issued the aforesaid directions with immense anguish, for the Election Commission cannot deny a candidate to contest on the symbol of a party. A time has come that the Parliament must make law to ensure that persons facing serious criminal cases do not enter into the political stream. It is one thing to take cover under the presumption of innocence of the accused but it is equally imperative that persons who enter public life and participate in law making should be above any kind of serious criminal allegation. It is true that false cases are foisted on prospective candidates, but the same can be addressed by the Parliament through appropriate legislation. The nation eagerly waits for such legislation, for the society has a legitimate expectation to be governed by proper constitutional governance. The voters cry for systematic sustenance of constitutionalism. The country feels agonized when money and muscle power become the supreme power. Substantial efforts have to be undertaken to cleanse the polluted stream of politics by prohibiting people with criminal antecedents so that they do not even

conceive of the idea of entering into politics. They should be kept at bay.

119. We are sure, the law making wing of the democracy of this country will take it upon itself to cure the malignancy. We say so as such a malignancy is not incurable. It only depends upon the time and stage when one starts treating it; the sooner the better, before it becomes fatal to democracy. Thus, we part.

120. The writ petitions and the criminal appeals are disposed of accordingly.

…….CJI.
(Dipak Misra)

…….J.
(Rohinton Fali Nariman)

…….J.
(A.M. Khanwilkar)

..……..J.
(Dr. D.Y. Chandrachud)

...……..J.
(Indu Malhotra)

New Delhi;
September 25, 2018