

To,

Chief Election Commissioner
Election Commission of India
Nirvachan Sadan, Ashoka Road,
New Delhi 110001

Date: 23 March 2023

Dear Sir,

Subject: Request to improve and take appropriate action in affidavits (Form 26) dealing with declaration of criminal case against candidates contesting elections.

- 1) Association for Democratic Reforms is a non-partisan non-governmental organization which works in the area of electoral and political reforms. The objective of ADR is to improve governance and strengthen democracy. It aims at decriminalization of politics, empowerment of the electorate and bringing transparency, accountability and inner-party democracy in the functioning of political parties.
- 2) DAKSH is a leading think-tank and research institution focused on the accountability of public institutions and judicial reforms. DAKSH has done pioneering work on democratic participation through surveys on the performance of elected representatives.
- 3) Bangalore Political Action Committee (B.PAC) is a non-partisan citizen's group that aims to improve governance in Bengaluru and to enhance the quality of life of every Bangalorean. B.PAC is specifically targeting good governance practices, integrity and transparency in all arms of the government, improving the quality of infrastructure in the city and encouraging citizen participation in the electoral process, thereby strengthening democracy.
- 4) As you are aware, the details of criminal cases in the affidavits of candidates are important information for voters to make their decisions. During our research into such affidavits filed in the Karnataka elections of May 2018, we noticed that in several of the nominations, points 5 and 6 which refer to the candidate's declaration of pending cases and convictions (where applicable) of Part A of the Form 26 did not have the complete information about such cases. Such incomplete information makes it difficult for organisations like us and other researchers to analyse such cases and provide such data to voters.

- 5) To facilitate the transparency of information to the voters regarding the details of the criminal cases and convictions in the candidates' affidavits during the upcoming state elections in 2023, we urge you to consider amending the tables in points 5 and 6 in the Form 26 in the following manner (the text in bold has been suggested by us):

Table under point 5

FIR No. with name and address of Police Station concerned with village/town, district and state	
Case No.	
Name of the Court Establishment (E.g. C.C. 23/2022, IV Addl. District and Sessions Judge, Guntur, Andhra Pradesh)	
CNR no. of the case	
Section(s) of concerned Acts/Codes involved (give no. of the Section, e.g. Section.....of IPC, etc.).	
Brief description of offence	
Whether charges have been framed (mention YES or NO)	
If answer against (e) above is YES, then give the date on which charges were framed	
Whether any Appeal/Application for revision has been filed against the proceedings (Mention YES or NO)	

Table under point 6

Case No.	
Name of the Court Establishment (E.g. C.C. 23/2022, IV Addl. District and Sessions Judge, Guntur, Andhra Pradesh)	
CNR no. of the case	

Section(s) of concerned Acts/Codes involved (give no. of the Section, e.g. Section.....of IPC, etc.).	
Brief description of offence	
Date of order of conviction	
Punishment imposed	
Whether any appeal has been filed against conviction order (Mention Yes or No)	
If answer to (g) above is YES, give details and present status of appeal	

- 6) The right of the citizens to make an informed choice of its elected representatives must be proceeded by complete and full information provided under Form 26. Prior to the year 2019 columns in affidavits (Form 26) dealing with **pending criminal cases** had two segments; a) ***Where cognizance has been taken***, b) ***where charges have been framed***. **However, it is seen that in the current format, column dealing with "cognizance taken" has been removed by the Commission.** As a result, a candidate now either fills details of cases where cognizance is taken in the 'charges framed section' or they may choose to not add required information or may give half-baked information. **Consequently, this amendment in Form 26 has given rise to a propensity for disinformation/misinformation/no information and in some cases such information would result in misleading the electorate and the choice therefore cannot be termed as 'free and fair'.** We request you to restore the format of the affidavit as it existed before 2019
- 7) Through this letter we would like to bring the kind attention of this Commission to the 13th March, 2003 judgment of the Hon'ble Supreme Court where the Apex court had categorically given directions in ***Association for Democratic Reforms & Ors. Vs. Union of India & Anr.; (2002) 5 SCC 29*** where it had stated that a candidate while contesting for an election has to furnish details not only of the information relating to pending criminal cases involving offences prescribing punishment of imprisonment of two years or more in which charge was framed, **but also such cases in which cognizance was taken by the Court of competent jurisdiction.**
- 8) At this juncture, we would also like to underline that the Hon'ble Supreme Court had not only reprimanded the Legislature for purposely excluding of words "Cognizance taken" from the purview of Section 33A but the court had also

reaffirmed its earlier decision and had made it mandatory for the candidates to furnish information with respect to cases where cognizance has been taken by the court in offences punishable with imprisonment of two years and above.

- 9) It is therefore, submitted that in pursuance of Article 19(1) (a) of the Constitution and in exercise of the powers conferred on the Election Commission under Article 324 of the Constitution, of superintendence, direction and control of conduct of elections to Parliament and State Legislatures, **every candidate at the time of filing his nomination paper for any election to the Council of States, House of the People, Legislative Assembly of a State or the Legislative Council of a State having such a council, shall be required to furnish full and complete information in regard to his/her criminal background as specified by the Hon'ble Supreme Court in Association for Democratic Reforms and Others vs. Union Of India and Others: (2002) 5 SCC 294 and AIR 2003 SC 2363.**
- 10) We believe that including the above information in Form 26 of the candidate's affidavit will enable deep analysis and will help voters make informed decisions. We request your good office to ensure that the information mentioned above is captured comprehensively on all the candidates' affidavits.


Looking forward to a positive response from your office in this regard.



Harish Narasappa
Co-Founder
DAKSH



Revathy Ashok
CEO
B.PAC



Maj. Gen. Anil Verma (Retd.)
Head
Association for Democratic Reforms