

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

**CrI. M.P. NO. \_\_\_\_\_ OF 2019**  
**IN**  
**SPECIAL LEAVE PETITION (CRL.) NO. 19-20 OF 2019**

**IN THE MATTER OF:**

SATISH UKEY ... PETITIONER

VERSUS

DEVENDRA GANGADHARRAO FADNAVIS  
& ANR ... RESPONDENTS

**AND IN THE MATTER OF:**

ASSOCIATION FOR DEMOCRATIC REFORMS  
Through Its Founder-Trustee  
Prof. Jagdeep S. Chhokar  
T-95, Second Floor, C.L House  
Gautam Nagar,  
New Delhi-110049

... INTERVINOR/  
APPLICANT

**AND IN MATTER OF:**

1. SATISH UKEY  
S/D/W/Thru:- MAHADEORAO UKEY  
ADVOCATE PARVATI NAGAR, NAGPUR ,  
MAHARASHTRA ... PETITIONER

VERSUS

1. DEVENDRA GANGADHARRAO FADNAVIS  
SOCIAL WORKER PRESENTLY CHIEF MINISTER OF  
STATE OF MAHARASHTRA VARSHA,  
MALABAR HILLS, MUMBAI,  
MAHARASHTRA

2. THE STATE OF MAHARASHTRA SECRETARY  
SECRETARY VIDHAN SADAN,  
MANTRALAYA , DISTRICT: MUMBAI,  
MUMBAI , MAHARASHTRA ... RESPONDENTS

**APPLICATION FOR IMPLEADMENT OF THE  
APPLICANT ASSOCIATION AS PARTY  
RESPONDENT**

To  
The Hon'ble Chief Justice of India  
And his Hon'ble Companion Judges of the  
Supreme Court of India,  
New Delhi.

The Humble Petition of the Applicant Association named  
above:

**MOST RESPECTFULLY SHOWETH:**

1. That the Applicant Association is an independent association of public spirited citizens who have been actively crusading for the democratic rights of the people of this country and also to ensure free and fair elections in the country. The Applicant association was set up in the year 1999 by a group of professors and alumni of the Indian Institute of Management, Ahmadabad (IIMA) as a non-profit, non-political, non-partisan, non-government organization, committed to the task of improving democracy and governance in India. The Organization was later registered under the Society Registration Act. A true copy of the Certificate of Registration of the Applicant is annexed herewith and marked as **ANNEXURE A-1 (Pages Nos. \_\_\_ to \_\_\_)**.

2. That the Applicant Association along with National Election Watch (a conglomeration of more than 1200 organizations across the country), started to hold Election Watches for all Parliamentary and Assembly elections since 1999. The Association has also been conducting, various

projects aimed at increasing transparency and accountability in the political and electoral system of the country.

3. That the Applicant Association has also successfully mobilized and networked with a large number of civil society organizations all over the country. This in turn has helped in taking the campaign to grass-roots while strengthening the network of civil society across the country. The information is disseminated through various media including Press Conferences, toll free help lines, SMS campaigns, websites ([www.myneta.info](http://www.myneta.info) and [www.adrindia.org](http://www.adrindia.org)) and outbound calls using recorded voice messages.

4. That the Applicant Association, has support of about 1200 NGOs from all over the country and the Association in partnership with its partners has been organizing Citizen Election Watch for all major elections. The Applicant Association's goal is to improve governance and strengthen democracy by continuous work in the area of Electoral and Political Reforms. The ambit and scope of work in this field is enormous, hence, Applicant Association has chosen to concentrate its efforts in the following areas pertaining to the political system of the country:

- I. Corruption and criminalization in the political process.
- II. Empowerment of the electorate through greater dissemination of information relating to the

candidates and the parties, for a better and informed choice.

III. Need for greater accountability of Political Parties.

IV. Need for inner-party democracy and transparency in party-functioning and gaps in the disclosure of candidate's profile.

5. That the Association for Democratic Reforms (ADR) has been collecting data regarding criminal offences by MPs and Members of various State Assemblies, as declared by them in the affidavit before the Election Commission of India. It is noticeable that involvement of MPs and MLAs in criminal cases and serious criminal cases is increasing over the years. As per ADR, the percentage of MPs in 2004 Lok Sabha involved in criminal cases was 24%. It increased to 30% in 2009 Lok Sabha and further increased to 34% in 2014 Lok Sabha. The same trend, it is noticeable, in the involvement of MPs in 'serious criminal cases'. 12% MPs of Lok Sabha constituted in 2004 were involved in serious criminal cases. This percentage increased to 15% in respect of MPs of 2009 Lok Sabha and further increased to 22% in 2014 Lok Sabha. Increasing criminalization of the MLAs is also noticeable as per state-wise data collected by ADR. This data is being reproduced herein below:

<b>REPORT OF INCREASING CRIMINAL CASES OF MP'S</b>									
<b>S. No.</b>	<b>Election</b>	<b>Total Seat</b>	<b>Total MPs analyzed</b>	<b>MPs with declared criminal cases</b>	<b>National N</b>	<b>MPs with declared serious criminal cases</b>	<b>% of MPs with declared serious criminal cases</b>	<b>% of Increase in Criminal Cases</b>	<b>% of Increase in Serious Criminal Cases</b>
1	Lok Sabha 2014	543	542	185	34%	119	22%	<b>48%</b>	<b>98%</b>
2	Lok Sabha 2009	543	520	158	30%	78	15%		
3	Lok Sabha 2004	543	513	125	24%	60	12%		

**REPORT OF INCREASING CRIMINAL CASES OF MLA'S**

<b>S.No.</b>	<b>State</b>	<b>Total Seat</b>	<b>Total MLAs analyzed</b>	<b>MLAs with declared criminal cases</b>	<b>% of MLAs with declared criminal cases</b>	<b>MLAs with declared serious criminal cases</b>	<b>% of MLAs with declared serious criminal cases</b>	<b>% of Increase in Criminal Cases</b>	<b>% of Increase in Serious Criminal Cases</b>	<b>of in</b>
<b>BIHAR</b>										
1	Bihar Assembly 2015	243	243	142	58%	98	40%	45%	66%	
2	Bihar Assembly 2010	243	228	130	57%	76	33%			
3	Bihar Assembly 2005	243	204	98	48%	59	29%			
<b>ANDHRA PRADESH</b>										
4	Andhra Pradesh Assembly 2014	175	174	85	49%	39	22%	15%	44%	
5	Andhra Pradesh Assembly 2009	294	284	74	26%	27	10%			

<b>JHARKHAND</b>									
6	Jharkhand Assembly 2014	81	81	55	68%	43	53%	90%	153%
7	Jharkhand Assembly 2009	81	75	55	73%	35	47%		
8	Jharkhand Assembly 2005	81	69	29	42%	17	25%		
<b>MAHARASHTRA</b>									
9	Maharashtra Assembly 2014	288	283	162	57%	113	40%	23%	109%
10	Maharashtra Assembly 2009	288	262	136	52%	86	33%		
11	Maharashtra Assembly 2004	288	288	132	46%	54	19%		

<b>ODISHA</b>										
12	Odisha Assembly 2014	147	147	52	35%	41	28%	11%	71%	
13	Odisha Assembly 2009	147	134	42	31%	28	21%			
14	Odisha Assembly 2004	147	144	47	33%	24	17%			
<b>CHHATTISGARH</b>										
15	Chhattisgarh Assembly 2013	90	90	15	17%	8	9%	36%	0%	
16	Chhattisgarh Assembly 2008	90	85	11	13%	8	9%			
<b>KARNATAKA</b>										
17	Karnataka Assembly 2018	224	220	77	35%	54	25%	75%	200%	



18	Karnataka Assembly 2013	224	216	74	34%	39	18%		
19	Karnataka Assembly 2008	224	218	44	20%	18	8%		
<b>MADHYA PRADESH</b>									
20	Madhya Pradesh Assembly 2013	230	230	72	31%	45	20%		
21	Madhya Pradesh Assembly 2008	230	219	58	26%	27	12%	24%	67%
<b>RAJASTHAN</b>									
22	Rajasthan Assembly 2013	200	200	37	19%	21	11%		
23	Rajasthan Assembly 2008	200	197	31	16%	8	4%	19%	163%

A true and correct copy of the analysis of criminal background of the MPs/MLAs is annexed herewith and marked as **ANNEXURE A-2 (Pages Nos. \_\_\_ to \_\_\_)**.

6. That the Applicant Association has through News Paper Reports come to be aware that this Hon'ble Court has taken up the matter arising out of the impugned judgment & final order dated 03.05.2018 passed by the High Court of Judicator at Bombay, Nagpur Bench in Criminal Revision Application. No. 94 of 2016 and Criminal Revision Application. No. 101 of 2018 in the matter of Devendra Gangadharrao Fadnavis vs. Satish Ukey and others. That after considering all the relevant facts and material, notices were issued to the respondents by this Hon'ble Court on 13.12.2018.

7. That the said matter deals with the non-disclosure of criminal antecedents on part of Chief Minister of the State of Maharashtra Mr. Devendra Gangadharrao Fadnavis in his affidavit filed with the nomination form for contesting the 2014 Election. That the general elections to the State Legislative assembly were held in the State of Maharashtra in the year 2014 and Mr. Devendra Gangadharrao Fadnavis was one of the candidates who contested elections.

8. That there were two such cases being RCC No. 343 of 2003 (Madanlal Parate v. Shashikant Hastak & ors) involving offences punishable under Sections 217, 218, 425, 466, 467, 468, 470, 474, 506, 109 read with Section 34 of IPC and RCC No. 231 of 1996 (Madanlal Parate v. Devendra Fadnavis) involving an offence punishable under Section 500 IPC in both of which though charge was not framed, the concerned Court of Judicial Magistrate, First Class, Nagpur had taken cognizance of the offence and this fact had not been disclosed by the respondent.

9. That the Hon'ble High Court of Judicator at Bombay, apart from quashing and setting aside the order dated 30.5.2016 passed by the Sessions Judge Nagpur in Criminal Revision No. 250 of 2015 and upholding the order passed by the Judicial Magistrate, First Class (Court No. 6), Nagpur on 7.9.2015 in Misc. Criminal Application No. 3550 of 2014, had further held that the purpose of filing affidavit under Rule 4 of the Conduct of Election Rules is to only verify information specified under Section 33A and since Section 33A does not mandate disclosure of information in which cognizance has been taken, there is no need to verify the same in the affidavit.

10. That the order dated 30.5.2016 rendered in Criminal Revision No. 250 of 2015 by the Principal District and Sessions Judge, Nagpur had quashed and set aside the order passed on 7.9.2015, and remanded the matter back to the Court of Judicial Magistrate, First Class for its fresh consideration in accordance with law. In addition, the learned Sessions Judge was also of the opinion that the learned Magistrate had passed a cryptic and nonspeaking order and did not consider the other relevant provisions of law and, thus, committed perversity.

11. That the said judgment of the Bombay High Court which deals with the non-disclosure of criminal antecedents on part of Chief Minister of the State of Maharashtra Mr. Devendra Gangadharrao Fadnavis in his 2014 poll affidavit. This Hon'ble Court in the exercise of its power under Article 142 of the Constitution for doing complete justice and in order to preserve the sanctity of elections and voter's fundamental 'Right to Know' would take into consideration the law as laid down in 2002 (5) SCC 294 and AIR 2003 SC 2363.

12. That it is also urged before this Hon'ble Court that it is a case of clear non-compliance of the requirement of information contained in Column (5)(ii) in the affidavit in Form No. 26 which require furnishing of information of cases pending against the respondent No.1 in which cognizance has been taken by the Court of Competent jurisdiction [other than the cases mentioned in Column (5)(i)]. That Column (5)(ii) is the part and parcel of Section 33-A(1)(i) and (2) of the Representation of People Act, 1951 and therefore every information related to criminal cases where a) cognizance is taken by the court b) charges framed by the court and c) upon conviction is required to be disclosed in Column (5)(ii) in Form No.26 of the affidavit.

13. That it was the Applicant Association who had first filed a Public Interest Litigation in December 1999 in the Hon'ble High Court of Delhi in order to make the electoral process of our country more fair, transparent and accountable. The Applicant Association subsequently in the year 2000 and 2002 had determinedly fought to compel implementation of the recommendations of the 170<sup>th</sup> Law Commission Report on Electoral Reforms and requested this Hon'ble Court to direct the Election Commission to collect information about criminal, financial and educational backgrounds of candidates contesting elections to Parliament and the State Assemblies, and to make this information available to voters in order to enable them to make an informed choice while voting and therefore, the Applicant is of the humble view that the Applicant should become a participant in the present Appeal so that its views are correctly put forward and so that a comprehensive decision can be arrived at by this Hon'ble Court.

14. That for the effective implementation of the directions issued by this Hon'ble Court in *Union of India v. Association for Democratic Reforms and Anr.*, (2002) 5 SCC 294, wherein

this Hon'ble Court while upholding the Judgment and Order passed by the Hon'ble High Court of Delhi in Association of Democratic Reforms Vs. Union of India & Ors. AIR 2001 Delhi 126, was pleased to direct the Election Commission of India to call for information on affidavit by issuing necessary Order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or State Legislature as a necessary part of his nomination paper, furnishing therein, information on the criminal, financial and educational qualification in relation to his/her candidature.

15. That the respondent has failed to disclose all information about the criminal cases pending against him as required by him under the detailed and explicit directions given by this Hon'ble Court in Association for Democratic Reforms and Others vs. Union Of India and Others;(2002) 5 SCC 294 and AIR 2003 SC 2363 and also a mandatory requirement Rules 4A of Conduct of Election Rules which has in corporate in the said direction in FORM 26 required to be filed by all candidates. That this Hon'ble Court had categorically given directions through its judgments dated 13<sup>th</sup> March, 2003 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. The relevant Paragraphs of the judgment are reproduced below:

“The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or State Legislature as a necessary part of his nomination paper, furnishing

therein, information on the following aspects in relation to his/her candidature:-

1. Whether the candidate is convicted/ acquitted/ discharged of any criminal offence in the past - if any, whether he is punished with imprisonment or fine?
2. Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the Court of law. If so, the details thereof.”

“VI. (1) Criminal background and pending criminal cases against candidates--Section 33A of the R.P. (3rd Amendment) Act: As regards the first aspect, namely criminal record, the directives in Association for Democratic Reforms case are twofold: "(i) whether the candidate is convicted/acquitted/discharged or any criminal case in the past--if any, whether he is punished with imprisonment or fine and (ii) prior to six months of filling of nomination, whether the candidate is an accused in any pending case of any offence punishable with imprisonment for two years or more and in which charge is framed or cognizance is taken by the Court of law." As regards the second directive, the Parliament has substantially proceeded on the same lines and made it obligatory to the candidate to furnish information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the competent Court. However, the case in which cognizance has been taken but charge has not been framed is not covered by Clause (i) of Section 33A(I). The Parliament having taken the right step of compelling

disclosure of the pendency of cases relating to major offences, there is no good reason why it failed to provide for the disclosure of the cases of the same nature of which cognizance has been taken by the Court. It is common knowledge that on account of variety of reasons such as the delaying tactics of one or the other accused and inadequacies of prosecuting machinery, framing of formal charges get delayed considerably, especially in serious cases where committal procedure has to be gone through. On that account the voter/citizen shall not be denied information regarding cognizance taken by the Court of an offence punishable with imprisonment for two years or more. The citizen's right to information, when once it is recognized to be part of the fundamental right under Article 19(1)(a), cannot be truncated in the manner in which it has been done. Clause (i) of Section 33(A)(I) therefore falls short of the avowed goal to effectuate the right of information on a vital aspect. Cases in which cognizance has been taken should therefore be comprehended within the area of information accessible to the voters/citizens, in addition to what is provided for in Clause (i) of Section 33A.”

“Coming to Clause (ii) of Section 33A(I), the Parliament broadly followed the pattern shown by the Court itself. This Court thought it fit to draw a line between major/serious offences and minor/non-serious offences while giving direction No.2 (vide Para 48). If so, the legislative thinking that this distinction should also hold good in regard to past cases cannot be faulted on the ground that the said clause fails to provide adequate information about the candidate. If the Parliament felt that the convictions and sentences of the long past related to petty/non serious offences need not be made available to electorate, it cannot be definitely said that

the valuable right to information becomes a causality. Very often, such offences by and large may not involve moral turpitude. It is not uncommon, as one of the learned senior counsel pointed out that the political personalities are prosecuted for politically related activities such as holding demonstrations and visited with the punishment of fine or short imprisonment. Information regarding such instances may not be of real importance to the electorate in judging the worth of the relative merits of the candidates. At any rate, it is a matter of perception and balancing of various factors, as observed supra. The legislative judgment cannot be faulted merely for the reason that the pro tempore directions of this Court have not been scrupulously followed. As regards acquittals, it is reasonable to take the view that such information will not be of much relevance in as much as acquittal prima facie implies that the accused is not connected with the crime or the prosecution has no legs to stand. It is not reasonable to expect that from the factum of prosecution resulting in the acquittal, the voters/citizens would be able to judge the candidate better. On the other hand, such information in general has the potential to send misleading signals about the honesty and integrity of the candidate.”

16. That as per Supreme Court's orders dated 2<sup>nd</sup> May, 2002 and 13<sup>th</sup> March, 2003 relating to right to information of electors regarding criminal antecedents, assets and liabilities and educational qualifications of candidates, the Election Commission had made a detailed orders on 28<sup>th</sup> June, 2002 and 27<sup>th</sup> March, 2003 respectively, under Article 324 of the Constitution, containing norms and modalities to carry out and give effect to the directions of the Hon'ble Supreme Court. That the Election Commission's order unambiguously stated that “in pursuance of the above referred order dated 13<sup>th</sup>



March, 2003, of the Hon'ble Supreme Court and in exercise of the powers, conferred on it by Article 324 of the Constitution, of superintendence, direction and control, inter alia, 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 furnish full and complete information in regard to the matters specified by the Hon'ble Supreme Court and quoted that "there is no good reason for excluding the pending cases in which cognizance has been taken by the court from the ambit of disclosure." A true and correct copy of the Election Commission's detailed order/guidelines dated 28<sup>th</sup> June, 2002 is annexed herewith and marked as **ANNEXURE A-3 (Pages Nos. \_\_\_ to \_\_\_)** and A true copy of the revised order/guidelines 27<sup>th</sup> March, 2003 is annexed herewith and marked as **ANNEXURE A-4 (Pages Nos. \_\_\_ to \_\_\_)**

17. That as a result of aforesaid dictum of this Hon'ble Court in (2002) 5 SCC 294 and AIR 2003 SC 2363, a candidate to any National or State Assembly elections is now required under Section 33A of the RPA, read with Rule 4A of Conduct of Election Rules, 1961, an affidavit in Form 26 appended to the Conduct of Election Rules, giving information regarding their assets, liabilities, and criminal proceedings against them, if any. Specifically, the following information is required under Form 26 read with Rule 4A of the Conduct of Election Rules:

- i. In case the candidate is accused of any offence punishable with two years or more, and charges have been framed by the Court, information such as the FIR No., Case No. and the date of framing of charges;

- ii. In case the candidate is accused of any offence punishable with two years or more, and cognizance has been taken by the Court, information such as the FIR No., Case No. and the date of framing of charges
- iii. Details of conviction in any case not included in Section 8 of the RPA, where the sentence was for one year or more;
- iv. PAN Number and status of filing of Income Tax Return for the candidate, spouse and dependents;
- v. Details of movable and immovable assets the candidate, spouse and all dependents;
- vi. Details of liabilities of the candidate to public financial institutions or to the government; and
- vii. Details of profession or occupation and of educational qualifications.

18. That Point 1 (i to iv) of the affidavit form furnished by candidate along with nomination paper related to “cognizance taken” and requires following information to be furnished by the candidates at the time of elections:

- (i) Section of the Act and description of the offence for which cognizance taken:
- (ii) The Court which has taken cognizance:
- (iii) Case No.
- (iv) Date of order of the Court taking cognizance.

19. That it is also pertinent to take into account the excerpts of ECI’s letter dated 26<sup>th</sup> September, 2012 vide letter

no. 3/4/2012/SDR issued to The Chief Electoral Officer Of all State and Union Territories which stated the following:

“Item 5 of Part A and Part B of the revised Form 26 relates to information regarding criminal antecedents to be furnished by the candidates. It is clarified that in item (5)(ii) of the said Part A & Part B of Form-26 the details of all pending cases in which cognizance has been taken by the Court, irrespective of the quantum of punishment or framing of charges will have to be disclosed by the candidate.”

These instructions were also issued to the President/ General Secretary Of all Recognized National and State Parties. A true and correct copy of the Election Commission’s letter dated 26<sup>th</sup> September, 2012 is annexed herewith and marked as **ANNEXURE A-5** **(Pages Nos. \_\_\_ to \_\_\_)**.

20. That the Election Commission’s orders dated 28<sup>th</sup> June, 2002 and 27<sup>th</sup> March, 2003 along with the time to time instructions issued to the CEOs of the States and Union Territories as well as the President/General Secretary of the political parties makes it mandatory for the candidates to disclose all information concerning the offences in which cognizance has been taken by any court against any candidate. That ECI’s orders are in pursuance to the judgment of this Hon’ble court in (2002) 5 SCC 294 and AIR 2003 SC 2363 and therefore must be complied with while filling up Form 26.

21. That it won’t be out of place to mention the recent judgments of this Hon’ble Court in Lok Prahari. Vs. Union of India and others; W.P (C) No. 784/2015 and Public Interest Foundation and Ors vs. Union of India and others; W.P (C) No. 536/2011 pertaining to the candidate with criminal antecedents contesting elections and amendments made in

Form 26. Based on the aforesaid judgments, the Election Commission of India has amended the format of the affidavit (Form 26) to be submitted by candidates at the time of elections. The revised affidavit has changed the format of the section for criminal cases. The revised affidavit now comprises of only two sub-sections; Pending criminal cases comprising of information related to charges framed and cognizance taken) and cases of conviction. Apart from giving information regarding criminal antecedents, a declaration has been added in the affidavit as 6A stating, *“I have given full and up-to-date information to my political party about all pending criminal cases against me and about all cases of conviction as given in paragraphs (5) and (6).* It also needs to be pointed out that in the revised affidavit form, the Election Commission has not left out the information where cognizance has been taken by the court. Such deterrent measures further demonstrate the seriousness of the issue of criminality and continuous efforts in curbing this menace in our electoral and political process. A true and correct copy of the revised affidavit is annexed herewith and marked as **ANNEXURE A-6 (Pages Nos. \_\_\_ to \_\_\_)**.

22. That the High Court of Andhra Pradesh and Telangana in *Dubbaka Narsimha Reddy v. Election Commission of India* (WP No. 12066 of 2014) while dealing with the circular issued by the Election Commission of India with regard to false affidavits in Form-26, stated that “When the guidelines have been issued that have got statutory force also, have to be followed by all the concerned officials.....”

23. That the Applicant Association most humbly submits that the judgment dated 13<sup>th</sup> March, 2003 of this Hon’ble court in *Association for Democratic Reforms and Others vs. Union Of India and Others*; (2002) 5 SCC 294 and AIR 2003 SC 2363 along with the detailed order dated 27<sup>th</sup> March, 2003 of the Election Commission of India must be read in entirety

and should be construed as a part of Section 33A having statutory force.

24. That non implementation of the directions of this Hon'ble Court in Association for Democratic Reforms and Others vs. Union of India and Others; (2002) 5 SCC 294 and AIR 2003 SC 2363 would violate citizen's 'Right to Know' as well as the basic principles of 'Rule of Law' and therefore would amount to contempt of the binding directions given by this Hon'ble court and undeniably threatens the very foundation of the basic structure of the Constitution and undermines it to a point of collapse.

25. That there was a purpose behind the directions issued by this Hon'ble court in (2002) 5 SCC 294 and AIR 2003 SC 2363. That right of the citizens to make a right choice of its elected representatives who are the law makers must be preceded by complete and full information regarding pendency of criminal cases that may be pending against the said candidate at the time of election. Because lack of such information would result in misleading the electorate and the choice could not be said to be free and fair.

26. That right to be informed and right to know is not just a judicial rhetoric. It is a fundamental right which flows from available fundamental right of free speech and expression and this right to know is a distinct and self-contained right.

27. That even though Section 33A of the Representation of People Act, 1951 only mandates information in which the candidate is a) convicted and where b) charges have been framed, however the directions of this Hon'ble Court in Association for Democratic Reforms and Others vs. Union Of India and Others; (2002) 5 SCC 294 and AIR 2003 SC 2363 cannot be overlooked and disregarded since the directions issued by this Hon'ble court were binding in nature in view of

the inherent powers given under Article 141, Article 142 read with Article 32 of the Constitution of India.

28. That the meaning and scope of the aforesaid guidelines came up for discussion before the Apex Court in the case of *Resurgence India v. Election Commission of India and another*, reported in AIR 2014 SC 344, which is a judgment rendered in a petition under Article 32 of the Constitution of India for issuance of specific directions to effectuate meaningful implementation of the judgment in *Association of Democratic Reforms*;

“In the said decision, it is held that the candidate, who has filed an affidavit with false information, as well as the candidate, who has filed an affidavit with the particulars left blank, should be treated at par, and it results in breach of fundamental right guaranteed under Act 19(1)(a) of the Constitution, viz. "right to know", which is inclusive of freedom of speech and expression. It is further held that if a candidate files an affidavit having blank particulars, it renders the affidavit nugatory. It is further held that if a candidate fails to furnish such information, then he is obviously avoiding a statutory enquiry being conducted by the Returning Officer under Section 36(2) of the said Act relating to his being not qualified or disqualified in the light of Section 8 of the said Act and it is bound to result in a defect of a substantial character in the nomination.”

29. That it won't be out of place to highlight the observations made by this Hon'ble Court in *Krishnamoorthy v. Sivakumar and others* reported in (2015) 3 SCC 467 where this Hon'ble court had held that the requirement of a disclosure especially the criminal antecedents, enables a voter

to have an informed and instructed choice. If a voter is denied of the acquaintance to the information and deprived of the condition to be apprised of the entire gamut of criminal antecedents relating to heinous or serious offences or offences of corruption or moral turpitude, the exercise of electoral right would not be an advised one. He will be exercising his franchise with the misinformed mind and his fundamental right to know also gets nullified. The Hon'ble Court has held that while filing the nomination form, if the requisite information, as has been highlighted by us, relating to criminal antecedents, is not given, indubitably, there is an attempt to suppress, effort to misguide, and keep the people in dark. It is further held that this attempt undeniably and undisputedly is undue influence and, therefore, amounts to corrupt practice and the election is liable to be declared as null and void under Section 100(1)(b) of the said Act.

30. That again in *Krishnamoorthy v. Sivakumar and others* reported in (2015) 3 SCC 467 this Hon'ble Court had held that when the FIR is filed, a person filing a nomination paper may not be aware of lodgment of the FIR, but when the cognizance is taken or charge is framed, he is definitely aware of the said situation. It is held that it is within his special knowledge and if the offences are not disclosed in entirety, the electorate remain in total darkness about such information. It is further held that it can be stated with certitude that this can definitely be called antecedents for the limited purpose, that is, disclosure of information to be chosen as a representative to an elected body. In para 82 of the said judgment, the Apex Court has held as under:

"82. A candidate filing his nomination paper while giving information swears an affidavit and produces before the Returning Officer stating that he has been involved in a case under Section 354 IPC and does not say anything else though

cognizance has been taken or charges have been framed for the offences under the Prevention of Corruption Act, 1988 or offences pertaining to rape, murder, dacoity, smuggling, land grabbing, local enactments like the Maharashtra Control of Organised Crime Act, 1999, U.P. Control of Goondas Act, 1970, embezzlement, attempt to murder or any other offence which may come within the compartment of serious or heinous offences or corruption or moral turpitude. It is apt to note here that when an FIR is filed a person filing a nomination paper may not be aware of lodgment of the FIR but when cognizance is taken or charge is framed, he is definitely aware of the said situation. It is within his special knowledge. If the offences are not disclosed in entirety, the electorate remain in total darkness about such information. It can be stated with certitude that this can definitely be called antecedents for the limited purpose, that is, disclosure of information to be chosen as a representative to an elected body."

31. That in *Manoj Narula vs. Union of India and others*, W.P (C) No. 289/2005, the five-member bench dealt with the qualifications of our Parliamentarians and observed in Para Nos. 9 and 37;

"9. Good governance is only in the hands of good men. No doubt, what is good or bad is not for the court to decide: but the court can always indicate the constitutional ethos on goodness, good governance and purity in administration and remind the constitutional functionaries to preserve, protect and promote the same. Those



ethos are the unwritten words in our Constitution.”

“37. In addition to the above, how long a Minister should continue in office is best answered by the response to a question put to the British Prime Minister John Major who was asked to “list the circumstances which render Ministers unsuitable to retain office.” His written reply given to the House of Commons on 25th January, 1994 was: “There can be a variety of circumstances but the main criterion should be whether the Minister can continue to perform the duties of office effectively<sup>1</sup>.”

32. That owing to the pendency of cases against MPs/ MLAs, this Hon’ble Court on 1<sup>st</sup> November, 2017 had in fact asked the Centre about the status of 1,581 cases involving MPs and MLAs as declared at the time of filing of the nomination papers to the 2014 elections and if these cases have been disposed of within the time frame of one year as envisaged by this Hon’ble court by order dated March 10, 2014 in Public Interest Foundation and Ors vs. Union of India and Others. In pursuance to this Hon’ble Court’s directions, 11 states have set up 12 special courts. They are two in Delhi and one each in Andhra Pradesh, Telangana, Karnataka, Kerala, Tamil Nadu, Uttar Pradesh, Bihar West Bengal, Maharashtra and Madhya Pradesh. In addition, this Hon’ble Court has decided to monitor the compliance of court orders to ensure that these 12 special courts work effectively. A true copy of the order dated 10.03.2014 passed by this Hon’ble Court in W.P. (C) no. 536 of 2011 is annexed herewith and marked as **ANNEXURE A-7 (Pages Nos. \_\_\_ to \_\_\_)** and A true copy of the Order dated 01.11.2017 passed by this Hon’ble Court in W.P. (C) No. 699 of 2016 is annexed

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herewith and marked as **ANNEXURE A-8 (Pages Nos. \_\_\_\_\_ to \_\_\_\_\_)**

33. That the Applicant Association is filing the present application seeking impleadment as co- respondent in the aforesaid Writ Petition. The Applicant Association seeks to assist this Hon'ble Court for proper adjudication of the aforesaid Writ Petition.

34. That the Applicant Association seeks to espouse the fundamental right of millions of voters across India to have free and fair elections and to ensure a clean democratic polity, which is not infested with criminals. It is the electorate, which has to suffer on account of "criminalization of politics" and often can do little but helplessly participate in the election of the mighty and moneyed criminal elements of society to Parliament and the State Legislatures.

35. That free and fair elections, voter's right to choose and total absence of discrimination as enunciated in Article 14 read with Article 324 and Article 19(1)(a) of the Constitution clearly indicate a resilient need for election reforms to check the growing menace of criminalization of politics which is corroding the foremost democratic institutions of the nation.

36. That it is most humbly submitted that the criminal elements are increasingly entering into the political arena. This close nexus between money power and muscle power has got so engrained in our electoral system that the citizens are left hostage to the current situation.

37. That it is entirely conceivable that a candidate can also deliberately omit disclosure of substantial information in his/her affidavit for the sole purpose of winning. The solemnity of affidavit and the judgment of this Hon'ble Court in *Union of India v. Association for Democratic Reforms and Anr.*, (2002) 5 SCC 294 cannot be allowed to be subverted by

the candidates by offering incorrect information or suppressing material information, resulting in disinformation or misinformation to the voters.

38. That it is trite that elected representatives of the people should be capable and men of character and integrity so as to be able to make the best of the Constitution. If they are lacking in these qualities, the Constitution cannot help the country. Dr. Rajendra Prasad, President, Constituent Assembly of India in his speech on 26<sup>th</sup> November, 1949, before putting the motion for passing of the Constitution made the following observations:

“If the people who are elected are capable and men of character and integrity, then 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..... 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<sup>2</sup>.”

39. That the ground reality, however, is drastically different in as much as involvement of criminals in politics has been progressively increasing over the years with disastrous consequences to the democratic polity of our country. Needless to say, ‘criminalization of politics, with its concomitant of politicization of crime and criminals, negates

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the very intent of Article 326 and corrodes the very foundation of democracy. In *Anukul Chandra Pradhan, Advocate, Supreme Court Vs. Union of India and Ors. (1997) 6 SCC 1*, the Supreme Court observed:

“5. Criminalization of politics is the bane of society and negation of democracy. It is subversive of free and fair elections which is a basic feature of the Constitution...”

40. That holding of free and fair election by adult franchise in a periodical manner as has been held in *Mohinder Singh Gill and another v. Chief Election Commissioner, New Delhi and others (1978)1 SCC 405*, for it is the heart and soul of the parliamentary system. In the said case, Krishna Iyer, J. quoted with approval the statement of Sir Winston Churchill which is as follows: -

“At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper – no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point.”

41. That the instant Special Leave Petition is predominantly centered around the judgment given by the Hon’ble Court in *Union of India v. Association for Democratic Reforms and Anr., (2002) 5 SCC 294* which was initially filed by the Applicant Association. The Applicant having learnt about the aforesaid Writ Petition, the Applicant Association by way of the Present Application seeks this Hon’ble Court’s leave to be impleaded as a Co-Respondent in the aforesaid Writ Petition and also seek permission to place on record relevant and necessary material, input and suggestion as this Hon’ble Court deems

fit for the proper adjudication of the issues raised in the Writ Petition.

42. That the application is made bonafide and in the interest of justice.

**PRAYER**

In view of the aforesaid facts and circumstances, it is prayed before this Hon'ble Court that this Hon'ble Tribunal may be graciously pleased to: -

- a) Permit the Applicant to be impleaded as Respondent in the aforesaid Civil Appeal; and/or
- b) Permit the Applicant to file additional pleadings/ documents to assist this Hon'ble Court, for the proper adjudication of the issue raised in the Writ Petition; and/or
- c) Pass any such/further order(s) as this Hon'ble Tribunal may deem fit and proper in the interests of justice.

**AND FOR THIS ACT OF KINDNESS THE APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.**

**FILED BY**

**Ms. KAMINI JAISWAL**  
ADVOCATE FOR THE APPLICANT

Filed on: