

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

PIL Writ Petition (Civil) No. 784 of 2015

(Under Article 32 of the Constitution of India)

IN THE MATTER OF:

LOK PRAHARI, through its General Secretary
S.N. Shukla, I.A.S.(retd.), Advocate, having its
Registered office at B-7, Nirala Nagar, Lucknow. Petitioner.

Vs.

1. Union of India, through the Secretary
Legislative Department,
Ministry of Law and Justice,
Shastri Bhawan, New Delhi
2. The Election Commission of India,
through its Secretary,
Nirvachan Sadan, Ashok Road,
New Delhi.
3. The Secretary, Ministry of Home Affairs,
Government of India
North Block, New Delhi
4. Chairperson, Central Board of Direct Taxes,
Ministry of Finance, North Block, New Delhi
5. Director, Central Bureau of Investigation
Plot No. 5-8, 6th Floor, CGO Complex,
Lodi Road New Delhi-11003. Respondents.

WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION

To

The Hon'ble Chief Justice of India and his Companion
Justices of the Supreme Court of India.

The humble Petition of the petitioner above named
Most respectfully showeth as follows-

1. That the instant writ petition is being filed for enforcement of Article 19(1)(a) of the Constitution and to effectuate meaningful implementation of the judgments of this Hon'ble Court in Association for Democratic Reforms (AIR 2002 SC 2112), People's Union for Civil Liberties (PUCL) (AIR 2003 SC 2363), Resurgence India Vs. Election Commission of India and Another (AIR 2014 SC 344) and Krishnamoorthy Vs. Sivakumar (AIR 2015 SC 1921) in this regard for restoring and maintaining the purity of our highest legislative bodies in accordance with the intentions of the founding fathers of the Constitution and the concern expressed by the framers of the Representation of the People Act, 1951.
2. That the instant writ petition is the first writ petition for the relief claimed in this writ petition and no other writ petition has been filed by the petitioner for this purpose earlier either in this Hon'ble Court or in any High Court.
3. That the petitioner has also not received in this matter notice, information or copy of any caveat application by

registered post or otherwise from any of the opposite parties or from any other source.

4. That the petitioner is a society registered under Societies Registration Act. A true and correct copy of the Renewal Certificate dated 14.8.2013 along with its English translation of the petitioner Society is annexed as **Annexure P-1** (page .) to this WP. The Society is committed to upholding of the Constitution and enforcement of Rule of Law. Most of the members of the petitioner society are retired senior civil servants having deep interest and concern in the governance in general and administration in particular. Former CEC and former Governor of Gujarat Shri R.K.Trivedi is the Chief Patron of the Society. Hence, the petitioner society has the locus to maintain the instant PIL in terms of the law laid down by the Constitution Bench in (1981) 1 SCC 568.
5. That the petitioners firmly believe that since the Executive and the Legislature have been failing the country, top judiciary is the only hope for the Nation under our present Constitution. With this in view the Petitioner has been seeking judicial intervention in matters of great national or state level importance.
6. That it may not be out of place to mention here that the Hon'ble Supreme Court was pleased to issue *rule nisi* in the two PILs relating to illegal allotment of bungalows to ex-chief ministers and trusts in UP and validity of Section 8 (4) of the Representation of the People Act, 1951 filed earlier

by the petitioner society. While the PIL WP No. (C) 231 of 2005 was allowed by historic judgment in July 2013 declaring Section 8(4) of the RP Act ultra vires the Constitution, the judgment in WP (C) No. 657/2004 is awaited.

7. That the Executive Committee of the petitioner organisation in its meeting held on 30.5.2015 decided that a writ petition may be filed on the subject through the General Secretary. A copy of the minutes dated 30.5.2015 of the said meeting is annexed as **Annexure P-2** (page) to this WP.
8. That in his address to the Constituent Assembly on November 26, 1949 Dr. Rajendra Prasad had said, “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. *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.*”
9. That as Lord Krishna said in Bhagavat Gita -
*“Yad Yad Acharti Sresthas, Tade Tad Eva Tarojanah,
 Sa Yat Pramanam Kurute, Lokas Tad Anuvartate.”*

(meaning whatsoever a highly placed person does, the same is done by others as well. Whatever standards he sets, people follow.). Therefore, it is imperative that our legislators, like Caesar's wife, must be above suspicion. This is necessary because not only they make laws for governance but also, and more importantly, because they control the entire administrative system. The sharp deterioration in the civil services and even in judiciary due to consequent erosion of basic values of integrity, neutrality, and devotion to duty has been largely due to sharp fall in integrity and character of the ruling class over the years. The present day sad spectacle of even Central Ministers, Chief Ministers and top civil servants being sent to jail for corruption, and even judges of Superior Judiciary being accused of corruption, which was unheard of earlier, is the direct fall out of lacunae in our electoral system which permits the corrupt and criminals to grab political power. *Unless this is checked, it is futile to expect any improvement in governance and administration.* As pointed out by our Hon'ble present President "If the Gangotri gets polluted, neither Ganga nor any of its tributaries can stay unpolluted". A true and correct copy of the news report in the Pioneer is annexed as **Annexure P-3** (Page) to this writ petition.

10. That during the debate in Lok Sabha on the Representation of the People Bill Shri Krishna Chandra Sharma emphasized, "*It is of great importance that altars of*

democracy in our land should be kept pure and unblemished". (Parliamentary debates, Lok Sabha, Volume 11 Part II, page 8458)

Likewise, Shri Munishwar Datt Upadhyay had cautioned as follows-

"But so far as this Bill is concerned, it has an intimate relation with our life and everyone among us who is present here thinks that *if any defect or any other thing is left out* then we may not be able to set up this House and the States' Legislatures and Councils *properly, and such a thing may cause a grave harm to the Country.*" (ibid page 8566).

11. That in this connection it is very pertinent that in the resolution entitled 'Agenda for India' adopted by the Parliament at the time of Golden Jubilee of Independence, *the very first resolve* ran as follows-

"That meaningful electoral reforms be carried out so that our Parliament and other Legislative bodies be balanced and effective instruments of democracy; and further that political life and process be free of the *adverse impact on governance of undesirable extraneous factors including criminalization.*"

However, nothing significant has been done by the successive governments in the last 18 years to restore and maintain purity of the highest democratic institutions of Parliament and State Legislatures by preventing entry of

the corrupt or persons with criminal background in these August bodies.

12. That the purity of election process is the prerequisite for success of parliamentary democracy which is supposed to reflect the will and aspirations of the people. However, over the years undisputedly increasing role of money power during elections has converted electoral arena into a market place where the moneyed candidates, political parties and corporate lobbies are often able to reduce election process to a farce by buying votes. The money power has captured the electoral landscape of the country to the extent that it has become almost impossible to contest an election without spending crores, not lacs of rupees. Consequently, political parties willy nilly seek the support of one industrial group or another. The use of financial or other allurements to manipulate the choice of voters reduces the electoral process to a sham exercise. It also affects the sanctity of the election by distorting level playing field due to candidates having black money being in a distinctly advantageous position compared to other candidates.
13. That the role and influence of money power is no longer indirect confined simply to over spending and purchasing of votes by candidates/political parties. Corporate interests and the multimillionaires have now become wiser. Instead of financing other candidates/political parties to influence public from outside they jump in the election fray

themselves to become legislators and part of the political process so that they may direct the state action to suit their own interests rather than the public good. As a result, the present electoral system not only does not reflect the true choice of the voters but also prevents from entering legislatures those genuinely concerned about the Welfare of the People and who want to genuinely serve the country rather than their own self interest. As a result of growing stranglehold of money power on electoral process self interest of the ruling class rather than public interest determines government policies in disregard of the resolve of We the People enshrined in the Preamble of our Constitution.

14. That, consequently, a large number of moneyed people are entering the electoral arena and even succeeding in entering our Parliament/State Legislatures. Once inside the legislature they are in a position to earn money through corrupt means and by influencing government policies to suit their own vested and corporate interest. They hardly have any respect for democratic values and public morality, the ideals which inspired the people who sacrificed their lives for the country's freedom and the socio political vision of the framers of the Constitution as for them their own self interest is uppermost. For them the sole objective is to make as much money as possible before the next election. In the process, the people whom these 'public representatives' are meant to serve suffer.

15. That Article 326 of the Constitution provides as follows-

“326 Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage- The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature *and is not otherwise disqualified* under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, *crime or corrupt or illegal practice*, shall be entitled to be registered as a voter at any such election”.

16. That Sections 33A and 33B of the Representation of the People Act inserted by Act 72 of 2002 provide as follows-

"33-A. Right to information.-(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of Section 33, also furnish the information as to whether-

(i) 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 court of competent jurisdiction;

(ii) he has been convicted of an offence other than any offence referred to in sub-section (1) or sub-section (2), or

covered in sub-section (3), of Section 8 and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the Returning Officer the nomination paper under sub-section (1) of Section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The Returning Officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.

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."

17. That Rule 4A of the Conduct of Election Rules provides as follows-

"[4A. Form of affidavit to be filed at the time of delivering nomination paper.—The candidate or his

proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under subsection (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26.”

A copy of the Form 26 prescribed under Rule 4A is annexed as **Annexure P- 4** (page) to this WP.

18. That the background and history of the issue of disclosure, declaration and filing of the affidavit in this regard has been detailed in a very lucid and erudite judgment in the case of Krishnamoorthy vs. V, Sivakumar and others (AIR 2015 SC 1921).

19. That in Association for Democratic Reforms (AIR 2002 SC 2112), this Hon’ble Court posed the following important question:-

“...In a nation wedded to republican and democratic form of government, where election as a Member of Parliament or as a Member of Legislative Assembly is of utmost importance for governance of the country, whether, before casting votes, voters have a right to know *relevant particulars* of their candidates? Further connected question is - whether the High Court had jurisdiction to issue directions, as stated below, in a writ petition filed under Article 226 of the Constitution of India?”

20. That after referring to the authorities in Vineet Narain V. Union of India[3], Kihoto Hollohan V. Zachillhu[4] the Hon’ble Court opined that in case when the Act or Rules

are silent on a particular subject and the authority implementing the same has constitutional or statutory power to implement it, the Court can necessarily issue directions or orders on the said subject to fill the vacuum or void till the suitable law is enacted; that one of the basic structures of our Constitution is "republican and democratic form of government and, therefore, the superintendence, direction and control of the "conduct of all elections" to Parliament and to the legislature of every State vests in the Election Commission; and 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."

21. That on the question whether the Election Commission was empowered to issue directions as ordered by the High Court of Delhi the Hon'ble Court opined as follows:-

"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 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."

22. That ultimately this Hon'ble Court issued the following directions:

"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 a 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.
- (3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.
- (4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.
- (5) The educational qualifications of the candidate."

23. That after the said decision the Representation of the People (Amendment) Ordinance, 2002, 4 of 2002 was promulgated by the President of India on 24.8.2002 the validity of which was challenged in the case of People's Union for Civil Liberties (PUCL) (AIR 2003 SC 2363) wherein this Hon'ble Court posed the following questions:-

"Should we not have such a situation in selecting a candidate contesting elections? In a vibrant democracy - is it not required that a little voter should know the biodata of his/her would-be rulers, law-makers or destiny-makers of the nation?"

And thereafter,

"Is there any necessity of keeping in the dark the voters that their candidate was involved in criminal cases of murder, dacoity or rape or has acquired the wealth by

unjustified means? Maybe, that he is acquitted because the investigating officer failed to unearth the truth or because the witnesses turned hostile. In some cases, apprehending danger to their life, witnesses fail to reveal what was seen by them."

And again

"Is there any necessity of permitting candidates or their supporters to use unaccounted money during elections? If assets are declared, would it not amount to having some control on unaccounted elections expenditure?"

24. That Hon'ble Mr. Justice M.B. Shah, in his judgment held as follows:-

"What emerges from the above discussion can be summarised thus:

(A) x x x

(B) Section 33-B which provides that notwithstanding anything contained in the judgment of any court or directions 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 the Act or the rules made thereunder, is on the face of it beyond the legislative competence, as this Court has held that the voter has a fundamental right under Article 19(1)(a) to know the antecedents of a candidate for various reasons recorded in the earlier judgment as well as in this judgment.

The Amended Act does not wholly cover the directions issued by this Court. On the contrary, it provides that a candidate would not be bound to furnish certain information as directed by this Court.

(C) x x x

(D) The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to know the antecedents of a candidate, the directions given by this Court are against the statutory provisions is, on the face of it, without any substance. In an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties.

However, voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures.

(E) It is established that fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the Court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. During the last more than half a decade, it has been so done by this Court consistently. There cannot be any distinction between the fundamental rights mentioned in Chapter III of the Constitution and the declaration of such rights on the basis of the judgments rendered by this Court." Being of this view, he declared Section 33-B as illegal, null and void.

25. That adverting to freedom of expression and right to information in the context of voters' right to know the details of contesting candidates and right of the media and others to enlighten the voter Hon'ble Mr. Justice P. Venkatarama Reddi held 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).

xxx xxx xxx

(3) 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.

xxx xxx xxx

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.*

26. That Hon'ble Mr. Justice Dharmadhikari, in his supplementing opinion, observed thus: "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 elections 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."

Accordingly, Section 33B of the Representation of the People Act, 1951 was declared null and void this Hon'ble Court.

27. That the above authorities show how this Court has given emphasis on the rights of a voter to know about the antecedents of a candidate. This Hon'ble Court in subsequent decisions has elaborated the right to know in the context of election, as holding a free and fair election is necessary to stabilise the democratic process required for

good governance. In *Resurgence India Vs. Election Commission of India & Anr.*[9]. A writ petition was filed under Article 32 of the Constitution of India to issue specific directions to effectuate the meaningful implementation of the judgments rendered by this Hon'ble Court in *Association for Democratic Reforms* (supra).

People's Union for Civil Liberties (PUCL) (supra) and also to direct the respondents therein to make it compulsory for the Returning Officers to ensure that the affidavits filed by the contestants are complete in all respects and to reject the affidavits having blank particulars. Culling out the principle from the earlier precedents, the three-Judge Bench opined:

"Thus, this Court held that a voter has the elementary right to know *full particulars* of a candidate who is to represent him in the Parliament and such right to get information is universally recognized 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 recognized that the citizen's right to know of the candidate who represents him in the 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".

28. That in the aforesaid case, the Hon'ble Court summarized its directions in the following manner:

"(i) The voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament/Assemblies and such right to get information is universally recognized. 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.

(ii) 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.

(iii) Filing of affidavit with blank particulars will render the affidavit nugatory.

(iv) 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 the justice itself is prejudiced.

(v) We clarify to the extent that Para 73 of People's Union for Civil Liberties case (supra) will not come in the way of the Returning Officer to reject the nomination paper when affidavit is filed with blank particulars.

(vi) 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.

(vii) Filing of affidavit with blanks will be directly hit by Section 125A(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 penalized for the same act by prosecuting him/her."

29. That in People's Union for Civil Liberties and Another Vs. Union of India and Another (AIR 2014 SC 188) testing the validity of the Rules 41 and 49-O of the Conduct of Election Rules, 1961, a three-Judges Bench of this Hon'ble Court has observed as follows-

"For democracy to survive, it is essential that the best available men should be chosen as people's representatives for proper governance of the country. *This can be best achieved through men of high moral and ethical values, who win the elections on a positive vote.*

Thus in a vibrant democracy, the voter must be given an opportunity to choose none of the above (NOTA) button,

which will indeed compel the political parties to nominate a sound candidate. This situation palpably tells us the dire need of negative voting” (emphasis supplied).

30. That the Hon’ble Court declared Rules 41(2) and (3) and Rule 49-O of the Rules as ultra vires the Section 128 of the 1951 Act and Article 19(1)(a) of the Constitution to the extent they violate the secrecy of voting and accordingly directed the Election Commission to provide necessary provision in the ballot papers/EVMs and another button called "None of the Above" (NOTA).

31. That in *Krishnamoorthy vs. Shivkumar* (supra) this Hon’ble Court has held as follows-

“The aforesaid decisions pronounce beyond any trace of doubt that a voter has a fundamental right to know about the candidates contesting the elections as that is essential and a necessary concomitant for a free and fair election. In a way, it is the first step. The voter is entitled to make a choice after coming to know the antecedents of a candidate a requisite for making informed choice. It has been held by Shah, J. in *People's Union of Civil Liberties* (supra) that the voter's fundamental right to know the antecedents of a candidate is independent of statutory requirement under the election law, for a voter is first a citizen of this country and apart from statutory rights, he has the fundamental right to know and be informed. Such a right to know is conferred by the Constitution”. (Para 27)

32. That in the aforesaid case this Hon'ble Court has held that non disclosure of criminal antecedents by a candidate would amount to undue influence and thereby corrupt influence and the election of such candidate can be declared null and void under Section 100(1)(b). The Hon'ble Court observed as follows-

“From the aforesaid, it is luculent that free exercise of any electoral right is paramount. If there is any direct or indirect interference or attempt to interfere on the part of the candidate, it amounts to undue influence. Free exercise of the electoral right after the recent pronouncements of this Court and the amendment of the provisions are to be perceived regard being had to the purity of election and probity in public life which have their hallowedness. A voter is entitled to have an informed choice.....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 offence of corruption or moral turpitude, the exercise of electoral right would not be an advised one. He will be exercising his franchisee with the misinformed mind. That apart, his fundamental right to know also gets nullified. The attempt has to be perceived as creating an impediment in the mind of a voter, who is expected to vote to make a free, informed and advised choice. The same is

sought to be scuttled at the very commencement.” (para 78).

33. That after referring to the instructions of the Election Commission in this regard the Hon'ble Court observed as follows (para 83)-

“The purpose of referring to the instructions of the Election Commission is that the affidavit sworn by the candidate has to be put in public domain so that the electorate can know. If they know the half truth, as submits Mr. Salve, it is more dangerous, for the electorate are denied of the information which is within the special knowledge of the candidate. When something within special knowledge is not disclosed, it tantamounts to fraud, as has been held in *S.P. Chengalvaraya Naidu (Dead) By LRs V. Jagannath (Dead) By LRs & Others*”.

34. That finally the Hon'ble Court has ruled as follows-

“86. In view of the above, we would like to sum up our conclusions:

- (a) Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative.
- (b) When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.

- (c) Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.
- (d) As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(b) of the 1951 Act.
- (e) The question whether it materially affects the election or not will not arise in a case of this nature.”
35. That the main reasons for the unbridled use of money power for winning election to make more money are the lacuna in the Form 26 prescribed under Rule 4A of the Conduct of Election Rules, 1961; the absence of any mechanism to make out and check apparent disproportionate increase in the assets of the law makers as per their own declarations; and the absence of provisions for termination of his membership in case the information given by him/her about the assets is found to be false or incomplete.
36. That in this connection it is noteworthy that often information about assets declared by candidates in Form

26 is incomplete and understated since there is no provision for checking its veracity. Moreover, *the existing form 26 does not give any information about sources of income of the candidate, his/her spouse and dependents to enable the voters to form an informed opinion as to whether the increase in his/her assets over the earlier declaration is reasonable or prima facie suspect through dubious means. This crucial lacuna in Form 26 does not serve fully the purpose of seeking information about assets.* Consequently, even with the introduction of this provision the number of crorepati legislators whose assets have been increasing by leaps and bounds with successive elections has been increasing. Therefore, there is a dire need to plug the existing loopholes in the present system which permits corrupt politicians to thrive in the name of public service.

37. That according to information compiled by Association for Democratic Reforms assets of 320 MPs re-elected to Lok Sabha in 2014 increased by more than 100%. Assets of 26 of them increased by more than **500%** and assets of 4 MPs by more than **1000%** and 2 MPs by more than **2000%**. Likewise, assets of several MLAs in various states increased by more than 500% and even 1000% and 2000%. Such increase apparently appears to be prima facie disproportionate and suspect.

38. That the general secretary of the petitioner organisation sent a representation along with a copy of a statement

containing aforesaid information to the Chief Election Commissioner of India stressing the need regarding changes required in Form 26 prescribed under Rule 4A of Conduct of Election Rules 1961 for inclusion of sources of income of the candidate, his/her spouse, and dependents. This is necessary in view of the fact that a large number of MPs/MLAs declare 'Social Service' as their profession or occupation which obviously is not, and should not be, a source of livelihood. A true and correct copy of the representation dated 27.6.2015 to the Chief Election Commissioner of India is annexed as **Annexure P-5** (page .) to this writ petition.

39. That the general secretary of the petitioner organisation also sent a representation dated 30.6.2015 along with a list of re-elected MPs/MLAs whose assets have increase by more than 500% over the previous election to the Chairperson of the Central Board of Direct Taxes, Ministry of Finance, Government of India for inquiry into any disproportionate increase in their assets. A true and correct copy of the representation dated 30.6.2015 to the Chairperson of the CBDT is annexed as **Annexure P-6** (page) to this writ petition.

40. That however, there has been no response from the Election Commission of India and the Chairperson of the Central Board of Direct Taxes to the aforesaid representations despite RTI applications dated 25.8.2015. True and correct copies of the RTI applications dated

25.8.2015 to the Central Public Information Officers of Election Commission of India and the CBDT are annexed as **Annexures P-7 (page) and P-8 (page)** to this writ petition.

41. That it goes without says that cleansing of our political system has to start from the top and probity, like charity, has to begin at home. A true and correct copy of the news report dated 22.6.2015 in Hindustan Times is annexed as **Annexure P- 9 (page)** to this writ petition.

42. That in view of the reluctance of the Parliament to act on their 18 year old resolution referred to above and the failure of the respondents to even respond, leave alone meaningfully effectuate implementation of the judgments of this Hon'ble Court in Association for Democratic Reforms (AIR 202 SC 2112), People's Union for Civil Liberties (PUCL) (AIR 2003 SC 2363), Resurgence India Vs. Election Commission of India and Another (AIR 2014 SC 344) and Krishnamoorthy Vs. Sivakumar (AIR 2015 SC 1921) in this regard for restoring and maintaining the purity of our highest legislative bodies in accordance with the intentions of the founding fathers of the Constitution and the concern expressed by the framers of the Representation of the People Act, 1951 intervention of this Hon'ble Court has become necessary in terms of the following observation of this Hon'ble Court in the case of Vineet Narain, (1998) 1 SCC 226 (para 49)-

“There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mended to all authorities to act in aid of the orders of this Courts as provided in Article 144 of the Constitution. In a catena of decisions of this Court this power has been recognised and exercised if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its roll”. The same view has been reiterated in several other cases e.g. AIR 2008 SC 2118 (paras 7 and 8) wherein it was held that if there is a buffer zone unoccupied by Legislature or Executive, *which is detrimental to public interest*, judiciary must occupy the field to sub-serve public interest.

43. That there being no other equally efficacious remedy this Writ Petition is being filed for proper enforcement of Article 19(1)(e) of the Constitution in accordance with the law laid down by this Hon’ble court in this regard and the to save We the People from the clutches of corrupt legislators on, inter alia, the following grounds-

GROUND

- A.** Because, the relief prayed for in the instant writ petition is necessary for-
- (i) enforcement of Article 19(1)(a) of the Constitution,
 - (ii) effectuating meaningful implementation of the judgments of this Hon’ble Court in Association for Democratic Reforms (AIR 202 SC 2112), People’s Union for Civil

Liberties (PUCL) (AIR 2003 SC 2363), Resurgence of India Vs. Election Commission of India and Another (AIR 2014 SC 344) and Krishnamoorthy Vs. Sivakumar (AIR 2015 SC 1921) in this regard,

(iii) restoring and maintaining the purity of our highest legislative bodies in accordance with the intentions of the founding fathers of the Constitution the concern expressed by the framers of the Representation of the People Act, 1951

- B. Because, information regarding resources of income of the self, spouse and dependents sought to be included in the Form 26 is evidently necessary and as such is fully covered by the expression “relevant particulars” of the candidate mandated to be provided as per the judgment in the case of Association for Democratic Reforms.
- C. Because, information about sources of income of the candidate and his/her spouse/dependent is also obviously squarely part of the “bio data” of the candidate by the judgment in the case of People’s Union for Civil Liberty (PUCL).
- D. Because, non disclosure of sources of income being integral part of the “bio data” and “relevant particulars” of candidate does not fulfil the objective behind filing information about assets and is not in consonance with the law laid down by this Hon’ble Court in the case of Resurgence India.

- E.** Because, non disclosure of sources of income of the self, spouse and dependents by a candidate is indirect/attempted interference by the candidate amounting to undue influence as held in AIR 2015 SC 1921 in respect of non-disclosure of criminal antecedents.
- F.** Because, despite introduction of provision for declaration of assets of the candidate and his family members, the assets of several MPs/MLAs/MLCs have been increasing manifold with each successive election.
- G.** Because, apparently the said provision has not had the desired effect and has not served the purpose it was intended to achieve- namely to inform the electorate about the financial integrity of the candidates.
- H.** Because, the main reason for the provision about declaration of assets being not an effective deterrent against amassing wealth is the lacuna in the Form 26 prescribed under Rule 4A of Conduct of Election Rules, 1961. It only asks for information about the assets and not the source(s) of their acquisition and income of the candidate and his family members.
- I.** Because, the root cause of all the malaise in the present system and governance is that politics has become the most lucrative profession for the scum of the society. In their eagerness to collect as much as money possible for themselves, for their family, and the party some politicians have no qualms in compromising even the national interest.

- J.** Because, in the absence of any check on the acquisition of wealth by so called public representatives their assets have been growing by leaps and bounds at the expense of 'We the People'.
- K.** Because, according the information complied by the Association for Democratic Reforms wealth of a large number of MPs and MLAs increased by more than even five times (500%) as per the list at Annexure P- ___ to the WP.
- L.** Because, evidently, no improvement in system and governance is possible unless the role of money power in winning elections is curbed and the public representatives who misuse their position for amassing wealth are brought to book.
- M.** Because, under the circumstances it is necessary that, to begin with, at least in their cases an inquiry is conducted to see whether the increase in their assets is proportionate to the increase in their income from the known sources in the intervening period.
- N.** Because, the changes suggested in Annexure P- ___ to the WP prescribed under Rule 4A of the Conduct of Election Rules, 1961 are evidently absolutely necessary so that the voters may form an intelligent opinion as to whether the increase in assets of a candidate and his/her dependents is justified by their known sources of income. Giving information only about assets without disclosing the source(s) of income only gives half the requisite information for judging the integrity of the candidate which is, and must

be, the basic prerequisite for his suitability to be elected as indicated by the President of the Constituent Assembly in his concluding speech quoted in para ___ of the WP.

- O.** Because, the respondent no. ___ has not only failed to act under Article 324 of the Constitution but even to respond on the representation at Annexure P ___ to the WP despite query under the RTI Act, even though it is their duty to ensure that the voters get full and complete information about the integrity of the candidates.
- P.** Because, likewise the respondent no. ___ has also failed in her duty to check leakage of revenue and related offences and to ensure probity in public life by not even responding, leave alone acting, on the prima facie disproportionate increase in assets of the MPs/MLAs in the list in Annexure P ___ to the WP.
- Q.** Because, it has been held in a catena of cases like (1998) 1 SCC 226 (Para 49) that where there is failure on the part of Legislature and Executive, this Hon'ble Court can issue necessary directions to fill in the gap to sub-serve public good.
- R.** Because, inaction on the part of the respondents has necessitated intervention by this Hon'ble Court to enforce rule of law and maintain purity of our democratic institutions.
- S.** Because, in view of the importance of this matter for restoring and maintaining purity of legislatures in the country the instant writ petition clearly deserves to be allowed in the facts and circumstances of the case with cost to the petitioner organisation.

PRAYER

For the reasons stated above, it is most respectfully prayed that in the interest restoring and maintaining the purity and sanctity of our highest legislative bodies to safeguard the future of democracy in the country, this Hon'ble Court may graciously be pleased to –

1. issue a writ, order or direction, in the nature of Mandamus -
 - (1) to respondents no. 1 and 2 to make necessary changes in the Form 26 prescribed under Rule 4A of the Conduct of Election Rules, 1961 keeping in view the suggestion in para ___ of the WP,
 - (2) to respondent no. 1 to consider suitable amendment in the Representation of the People Act 1951 to provide for rejection of nomination papers of the candidates and disqualification of MPs/MLAs/MLCs deliberately furnishing wrong information about their assets in the affidavit in Form 26 at the time of filing of the nomination,
 - (3) to respondents no. 3 to 5 to-
 - (i) conduct inquiry/investigation into disproportionate increase in the assets of MPs/MLAs/MLCs included in list in Annexure P___ to the WP,
 - (ii) have a permanent mechanism to take similar action in respect of MPs/MLAs/MLCs whose assets increase by more than 100% by the next election,

- (iii) fast track corruption cases against MPs/MLAs/MLCs to ensure their disposal within one year,
2. declare that non disclosure of assets and sources of income of self, spouse and dependents by a candidate would amount to undue influence and thereby, corruption and as such election of such a candidate can be declared null and void under Section 100(1)(b) of the RP Act, 1951 in terms of the judgment reported in AIR 2015 SC 1921.
 3. award the cost of this petition in favour of the Petitioner organisation,
 4. pass such other order or direction as may be deemed fit and proper in the circumstances of the case.

AND FOR WHICH ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

New Delhi.

Filed on 23.9.2015

(S. N. Shukla)

General Secretary, LOK PRAHARI

Petitioner in Person.