IN THE HIGH COURT OF JUDICATURE AT MADRAS

HCP. NO. 90 OF 2020

Jamuna

… Petitioner

Versus

1. The Secretary to the Government
   Government of India,
   Ministry of Home Affairs,
   Department of Internal Security,
   North Block, New Delhi – 110 001 … 1st Respondent

2. The Lieutenant Governor,
   Rajnivas, Puducherry. … 2nd Respondent

3. The District Magistrate-cum-Authorised Officer,
   Office of the District Magistrate,
   1st Floor, Vazhadhavoor Road,
   Kavundanpalayam,
   Puducherry – 605 009. … 3rd Respondent

4. The Director General of Police,
   Puducherry. … 4th Respondent

5. Ministry of Parliamentary Affairs … 5th Respondent
   India

6. Ministry of Law and Justice … 6th Respondent
   India

7. Association for Democratic Reforms
   T-95, 2nd Floor, C.L House
   Gautam Nagar, New Delhi-110 049
   Represented by its Founder-Trustee
   Prof. Jagdeep S Chhokar … 7th Respondent

(Respondent Nos. 5, 6 and 7 were suo-moto impleaded by this Honb'le Court vide its Order dated 30.09.2020)

WRITTEN SUBMISSIONS BY RESPONDENT NO. 7

The 7th Respondent herein, Association of Democratic Reforms humbly submits the following:

1. It is submitted that the 7th Respondent 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 7th Respondent was set up in the year 1999 by a group of professors and alumni of the Indian Institute of Management, Ahmedabad (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 Societies Registration Act. It is submitted that the Organization

works in the area of electoral and political reforms. The objective of the Association is to improve governance by increasing transparency and accountability, and reducing corruption in the political process. In furtherance of this objective, the Association has engaged in producing reports and legal advocacy for 21 years. The Reports of this Respondent have become the single data point for information and analysis on the background details of politicians and the financial details of political parties.

2. It is submitted that it has come to the knowledge of this Respondent that this Hon'ble Court has taken up a subject writ petition, calling for the records relating to the detention order in No.7/DM/RO/D2/PPASAA/2019, dated November 5, 2019 passed by the 3rd Respondent herein, under the Puducherry Prevention of Anti-Social Activities Act, 2008 (Act 10 of 2010) and to set aside the same and to direct the 1st to 3rd Respondents to produce the Petitioner's husband.

3. It is submitted that this Hon'ble Court vide its Order dated 29.07.2020 had not only questioned the 1st to 3rd Respondents about the lack of a proper investigation and no charge sheet being filed for the case pending since 2009 but had also directed said Respondents to file a report regarding the stages of investigation in the cases registered against the detenu as well as the details of pending trial cases.

4. It is submitted that through the said petition, this Hon'ble Court has also taken serious note of the close and an alarming nexus between criminals, police and political parties. That this Hon'ble court in its order dated 13.08.2020 had firmly observed in Para No. 4, 7 and 8 as follows;

"4….This Court is justified to observe that three years delay in granting sanction for the case registered in the year 2017 is only due to political support enjoyed by the accused. In 2015 case, not even investigation is over for the past 5 years. This would speak about his clout with political parties, especially ruling parties and Police. But for political interference, Police would have filed charge sheets.

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7. It is appearing in the Media that rowdy gangs are operated by many politicians, communal and religious leaders throughout the Country. There seems to be a syndicate between the police force, political leaders and rowdy gangs and hence, the safety and security of the people are jeopardised.

8. Further, it is reported that persons with criminal background are becoming policy makers in many parts of the country and the same has to be prevented and the system has to be cleansed. This is possible, only if the top leaders of our political parties are firm in not admitting the criminals in their political parties. The leaders should have a vision for decriminalization of politics. If criminals are accommodated in political parties and given tickets to contest elections and elected as M.L.A.s, M.P.s, and made as Ministers, wrong message would be sent to the people."

5. It is submitted that on 30.09.2020, this Hon'ble Court had *suo moto* impleaded the 7th Respondent as a Co-Respondent in the subject writ petition. It is submitted that it was the 7th Respondent herein who had first filed a Public Interest Litigation in December 1999 in the Hon'ble High Court of Delhi in its effort to de-criminalize the electoral and political process of our country by making it fair, transparent and accountable. The 7th Respondent subsequently in the years 2000 and 2002 had determinedly fought to compel implementation of the recommendations of the 170th Law Commission Report on Electoral Reforms and requested the Hon'ble Supreme 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.

6. It is submitted that for the effective implementation of the directions issued by Hon'ble Supreme Court in *Union of India v. Association for Democratic Reforms and Anr., (2002) 5 SCC 294,* wherein the Supreme 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.

7. It is submitted that as a result of the aforesaid dictum of the Hon'ble Supreme Court, 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. Details of conviction in any case not included in Section 8 of the RPA, where the sentence was for one year or more;
    iii. PAN Number and status of filing of Income Tax Return for the candidate, spouse and dependents;
    iv. Details of movable and immovable assets the candidate, spouse and all dependents;
    v. Details of liabilities of the candidate to public financial institutions or to the government; and

vi. Details of profession or occupation and of educational qualifications.

A true copy of the Affidavit filed by the candidates at the time of elections is annexed herewith and marked as **ANNEXURE A**

8. It is submitted that at this juncture it would be pertinent to mention that this Hon'ble Court while taking note of the report titled ***'Lok Sabha Elections 2019 - Analysis of Background, Financial, Education, Gender and other details of the winners***" released by the Respondent's organization on 25.05.2019 had also asked the Central Government to come out with a comprehensive legislation to prohibit persons with criminal background from contesting elections to Parliament, State Legislatures and local bodies as held by the Constitution Bench of Hon'ble Supreme Court in ***Public Interest Foundation and others vs. Union of India and another;*** **2019 (3) SCC 224**. The relevant Paragraph No. 9 of the order is reproduced below;

"9.Persons with criminal background should not become policy makers. Association for Democratic Reforms (ADR) released a report "Lok Sabha Elections 2019 - Analysis of Background, Financial, Education, Gender and other details of the winners" and it revealed that 43% (233 out of 539) elected M.P.s have declared their criminal cases. Out of that, 29% (159 M.P.s) have serious criminal cases pending against them. Therefore, the Central Government has to come out with a comprehensive legislation to prohibit persons with criminal background from contesting elections to Parliament, State Legislatures and local bodies as observed by the Constitution Bench of Hon'ble Supreme Court in ***Public Interest Foundation and others vs. Union of India and another*** *on 25th September 2018."*

9. It is submitted that this Hon'ble Court, *Suo Motu,* to eliminate tainted leaders and police-bureaucratic-muscle-mafia nexus from our electoral and political process and reprimand the reluctant political parties, vide its interim order dated 13.08.2020 had asked the Central Government to file response on the below-mentioned questions rightly raised through the aforementioned petition;

(ii)How many persons with criminal background are accommodated by various political parties as top office bearers and District Secretaries and the details of the criminal cases registered against those persons and their position in the respective political party?

(xi)Why not the Central Government enact a law to prohibit candidates with criminal background contesting the elections to the Parliament as well as State legislatures as suggested by the Constitution Bench of the Hon'ble Supreme Court on 25.09.2018 in ***Public Interest Foundation and others vs. Union of India and another*** *reported in 2019 (3) SCC 224?"*

10. It is submitted that it would not be out of place to mention the Vohra Committee appointed by the Ministry of Home Affairs, Government of India that had caused

an enquiry into the criminal-political-bureaucratic nexus in 1993 and had pointed towards increasing nexus between the politicians and the criminals ("the Report"). In para 6.2 of the Report, the Committee observed:

"6.2 Like the Director CBI, the DIB has also stated that there has been a rapid spread and growth of criminal gangs, armed senas, drug mafias, smuggling gang, drug peddlers and economic lobbies in the country which have, over the years, developed an extensive network of contacts with the bureaucrats/Government functionaries at the local levels, politicians, media persons and strategically located individuals in the non State sector. Some of these Syndicates also have international linkages, including the foreign intelligence agencies. In this context the DIB has given the following examples-

(i) In certain States like Bihar, Haryana and U.P., these gangs enjoy the patronage of local level politicians, cutting across party lines and the protection of Governmental functionaries. Some political leaders become the leaders of these gangs, armed senas and over the years get themselves elected to local bodies, State Assemblies and the national Parliament. Resultantly, such elements have acquired considerable political clout seriously jeopardizing the smooth functioning of the administration and the safety of life and property of the common man causing a sense of despair and alienations among the people;

(ii) The big smuggling Syndicates having international linkages have spread into and infected the various economic and financial activities, including havala transactions, circulation of black money and operations of a vicious parallel economy causing serious damage to the economic fibre of the country. These Syndicates have acquired substantial financial and muscle power and social respectability and have successfully corrupted the Government machinery at all levels and yield enough influence to make the task of Investigating and Prosecuting agencies extremely difficult; even the members of Judicial system have not escaped the embrace of the Mafia;

(iii) Certain elements of the mafia have shifted to narcotics, drugs and weapon smuggling and established narco-terrorism networks especially in the States of J&K, Punjab, Gujarat and Maharashtra. The cost of contesting elections has thrown the politician into the lap of these elements and led to a grave compromise by officials of the preventive – detective systems. The virus has spread to almost all the centers in the country, the coastal and the border States have been particularly affected.

(iv) The Bombay bomb blast case and the communal riots in Surat and Ahmedabad have demonstrated how the India underworld has been exploited by the Pak ISI and the latter's network in UAE to cause sabotage subversion and communal tension in various parts of country. The investigations into the Bombay bomb blast cases have revealed expensive linkages of the underworld in the various governmental agencies, political circle, business sector and the film world".

11. It is submitted that the effect of criminalization of politics has been examined by several committees and authorities which have repeatedly emphasized the need to weed out criminal elements from politics. ***The Department Related***

Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice (2007) **stated**;

"There have been several instances of persons charged with serious and heinous crimes, like murder, rape, dacoity, etc. contesting elections during pendency of their trial and even getting elected in a large number of cases. This leads to a very undesirable and embarrassing situation wherein law breakers become law makers and move around under police protection. Once an accused is elected during the trial period, he allegedly gets the advantage of twisting the arms of police/prosecution to dilute the case, or of pressurizing the government to withdraw the prosecution against him. This is the chief reason why political office is very attractive to persons with criminal antecedents."

Further, the ***Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its 18th Report on "Electoral Reforms (Disqualification of Persons) from contesting Elections on framing of charges against them for certain offences"*** recognized the virus of criminalization of politics and observed:

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

12. It is submitted that the ***Law Commission of India in its 170th Report on "Reforms of the Electoral Laws (1999)*** considered the issue of disqualifications of persons on the ground of charges framed against them by the court and recommended that such persons should be disqualified from contesting elections as Member of Parliament or Member of State Legislative Assembly. The Commission recommended in Para No. 5.4 insertion of a new section 8 B in the Representation of the People Act, 1951, in the following words.

"5.4. ***8-B Disqualification on framing of charge for certain*** *offences-A person against whom charge has been framed under:-*

a. *Section 153A, Section 171E, Section 171F, Section 171G, Section 171H, Section 171-I, Sub-Section (1) of Sub Section (2) of Section 376, sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860); or*

b. *Sections 10 to 12 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or*

c. *The penal provisions of the Narotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) except Section 27 thereof; or*

d. *Section 125, Section 135, section 135A or sub-section (2) of section 136 of this Act; or*

e. *Any other offence punishable with imprisonment for life or death under any law.*

Shall be disqualified for a period of five years from the date of framing the charge, provided he is not acquitted of the said charge before the date of scrutiny notified under Section 36 of this Act."

13. It is submitted that the ***National Commission to Review the Working of the Constitution dated 22nd February, 2000*** also examined this issue and recommended that a person should be disqualified from contesting election if charges have been framed against him in an offence punishable with imprisonment for a maximum period of five years or more. The relevant paras of the Report are extracted below:

"4.12.2. The Commission recommends that the Representation of the People Act be amended to provide that any person charged with any offence punishable with imprisonment for a maximum term of five years or more, should be disqualified for being chosen as, or for being, a member of Parliament of Legislature of a State on the expiry of a period of one year from the date the charges were framed against him by the Court in that offence and unless cleared during that one year period, he shall continue to remain so disqualified till the conclusion of the trial for that offence. In case a person is convicted of any offence by a court of Law and sentenced to imprisonment for six months or more the bar should apply during the period which the convicted person is undergoing the sentence and for a further period of six years after the completion of the period of the sentence. If any candidate violates this provision, he should be disqualified. Also, if a party puts up such a candidate with knowledge of his antecedents, it should be derecognized and deregistered."

The Commission also emphasized on the need to permanently disqualify candidates who are convicted of heinous crimes. The relevant paras of the Report are extracted below:

"4.12.3. Any person convicted for any heinous crime like murder, rape, smuggling, dacoity, etc. should be permanently debarred from contesting for any political office."

"4.12.4. Criminal cases against politicians pending before Courts either for trial or in appeal must be disposed off speedily, if necessary, by appointing Special Courts."

"4.12.5. A potential candidate against whom the police have framed charges may take the matter to the Special Court. This Court should be obliged to enquire into and take a decision in a strictly time bound manner. Basically, this Court may decide whether there is indeed a prima facie case justifying the framing of charges."

"4.12.6. The Special Courts should be constituted at the level of High Courts and their decisions should be appeal able to the Supreme Court only (in similar way as the decisions of the National Environment Tribunal). The Special Courts should decide the cases within a period of six months. For deciding the cases, these courts should take evidence."

14. It is submitted that the ***"Ethics in Governance Report: Second Administrative Reforms Commission", 2007*** also examined this issue and recommended that a person should be disqualified from contesting election if facing grave criminal charges framed by the court. The relevant para of the Report are extracted below:

"2.1.3.3 There are candidates who face grave criminal charges like murder, abduction, rape and dacoity, unrelated to political agitations. In such cases, there is need for a fair reconciliation between the candidate's right to contest and the community's right to good representation. As a rule, it would be rash and undemocratic to disqualify candidates on some pretext or other. An election outcome must be decided by the people who are the ultimate sovereigns through the ballot box. Election by indiscriminate disqualification is a stratagem sometimes resorted to by dictatorships to pervert the democratic process. However, in the present situation, on balance, in cases of persons facing grave criminal charges framed by a trial court after a preliminary enquiry, disallowing them to represent the people in legislatures until they are cleared of charges seems to be a fair and prudent course. But care must by exercised to ensure that no political vendetta is involved in such charges and people facing charges related to political agitations are not victimized. The draft Ordinance of July 2002 relating to disclosure of candidate details following a Supreme Court judgment provided for disqualification of candidates facing charges related to grave and heinous offences. The heinous offences listed were murder, abduction, rape, dacoity, waging war against India, organised crime and narcotics offences. It also seems reasonable to disqualify persons facing corruption charges, provided the charges have been framed by a judge/ magistrate after prima facie evidence."

15. It is submitted that the ***20th Law Commission of India in its 244th Report on Electoral Disqualification,*** on the basis of intensive studies conducted by the Association for Democratic Reforms (ADR), had also pointed towards

the disturbing trend of a large percentage of persons with criminal records being elected as Members of Parliament or Members of State Legislative Assemblies/Legislative Councils. The relevant paras of the Report are reproduced below:

"From this data it is clear that about one-third of elected candidates at the Parliament and State Assembly levels in India have some form of criminal taint. Data elsewhere suggests that one-fifth of MLAs have pending cases which have proceeded to the stage of charges being framed against them by a court at the time of their election. Even more disturbing is the finding that the percentage of winners with criminal cases pending is higher than the percentage of candidates without such backgrounds. While only 12% of candidates with a "clean" record win on average, 23% of candidates with some kind of criminal record win. This means that candidates charged with a crime actually fare better at elections than 'clean' candidates. Probably as a result, candidates with criminal cases against them tend to be given tickets a second time. Not only do political parties select candidates with criminal backgrounds, there is evidence to suggest that untainted representatives later become involved in criminal activities. The incidence of criminalization of politics is thus pervasive making its remediation an urgent need".

16. It is further submitted that it is to be underlined that in its ***244th Report, the 20th Law Commission*** has emphatically reiterated its earlier recommendation in 170th Report regarding framing of charges to attract disqualification under section 8 of the Representation of People Act. After nation-wide consultation with the various cross sections of the society including distinguished jurists and intellectuals, the Commission has observed that the present disqualification requiring conviction has not proved effective and that framing of charges should attract disqualification. The recommendation of the 20th Law Commission is extracted below :

"1. Disqualification upon conviction has proved to be incapable of curbing the growing criminalisation of politics, owing to long delays in trials and rare convictions. The law needs to evolve to pose an effective deterrence, and to prevent subversion of the process of justice.

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

3. The stage of framing of charges is based on adequate levels of judicial scrutiny, and disqualification at the stage of charging, if accompanied by substantial attendant legal

safeguards to prevent misuse, has significant potential in curbing the spread of criminalisation of politics.

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

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

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

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

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

17. It is submitted that the Executive and the Legislature are most reluctant to undertake any kind of electoral or political reform because of the obvious bias and prejudice. It is only persons of strong character and vision that should foray into the electoral process. Sadly, in Indian Political System, such stipulation, resolve and intent hold no ground. As a matter of fact, the political establishments have completely disregarded or intentionally side-lined the reforms suggested by various committees, citizens and civil societies. It is on record that various recommendations given by several committees dated as back as 1999 are lying in the back burner. *Vohra Committee Report, 1993;* The *170th Report of Law Commission of India on Reforms of the Electoral Laws (1999*); *National Commission to Review the Working of the Constitution, 2000; The Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice (2007); Ethics in Governance Report: Second Administrative Reforms Commission,2007; The 244th Law Commission of India Report on Electoral Disqualification*; *Justice J.S Verma Committee Report on Criminal Law Amendment;* are few of these Commissions which had repeatedly emphasized the need to weed out criminal elements from politics by giving various remarkable recommendations but have been quiet conveniently overlooked by various governments in the last 20 years.

The true copies of the aforementioned Committee Reports/Recommendations can be submitted by this Respondent as and when this Hon'ble Court requires the said Reports/Recommendations.

18. It is submitted that this Respondent 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.

19. It is submitted that the free and fair elections, voter's right to select a credible candidate 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.

20. 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. That the present circumstances demand an extensive deliberation by this Hon'ble Court in order to deal with this menace so that sanctity of elections is not ridiculed by tenacious entry of tainted candidates and brazen and unabashed attitude of the political parties.

21. It is submitted that the fundamental reason why candidates with criminal background are able to dominate politics is because no political party has seriously pursued electoral and political party reforms. It is a known fact that office bearers like President, General Secretary, Vice- President etc. of political parties have a major say in the allocation of tickets to candidates to contest elections. They are the main decision makers in a party. Therefore, under the 'Guidelines and Application Format for Registration of political parties' under Section 29A of the Representation of the People Act, 1951 and 'Registration of Political Parties (Furnishing of Additional Particulars) Order, 1992' Election Commission of India should not only ask for the information regarding criminal antecedents of the Office Bearers only at the time of registration but also ask each political party to annually file information on criminal antecedents of their Office Bearers. This information should also be made available to the public and should be displayed outside each polling booth during elections.

22. It is submitted that after a bare reading of the "The Election Symbols (Reservation and Allotment) Order, 1968", it can be seen that Paragraph 13 of the order prescribes the conditions to be followed for treating a candidate as a candidate set up by a political party. As per the provisions set out in Paragraph 13 of the order, Office Bearers like President/General Secretary, etc of every political party have to sign Form A and B to officially give ticket to a candidate. The relevant Paragraph of

the "The Election Symbols (Reservation and Allotment) Order, 1968" reads as follows;

"13. When A Candidate Shall Be Deemed To Be Set Up By A Political Party:

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

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

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

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

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

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

e) Forms A and B are signed, in ink only, by the said office bearer or person authorised by the party: Provided that no facsimile signature or signature by means of rubber stamp, etc., of any such office bearer or authorised person shall be accepted and no form transmitted by fax shall be accepted."

A true copy of Form A and B of the "The Election Symbols (Reservation and Allotment) Order, 1968 is annexed herewith and marked as **ANNEXURE B.**

23. It is submitted that in our country we have laws for temples, schools, colleges, institutions, hospitals, societies, clubs but there is no law that directly deals with the regulation and functioning of the political parties. In its effort to regularize the functioning of political parties and to bring inner party democracy, the Central Information Commission had on 3rd June, 2013 declared six national political parties namely INC, BJP, CPI, CPI(M), NCP and BSP as *'public authorities'* in pursuant to a complaint filed by the Respondent Association. However, none of the parties complied with the order of the full bench of CIC which is a quasi-judicial constitutional body. Therefore in 2015, this Respondent Association was left with no choice but to file a PIL in the Hon'ble Supreme Court requesting the Court to bring the political parties under the RTI Act.

24. It is submitted that because of the absence of any law, there is no well-defined process in the selection of candidates by the political parties. Tickets are given to the candidates for contesting elections on the sole basis of winnability factor. Historically, it has been observed that muscle power and money power make a

winning combination. Therefore, candidates with criminal background quiet conveniently make their foray into the Lok Sabha and State Assembly elections as political parties do not hesitate in giving tickets to such candidates. The crime-money-politics nexus demands careful legal insight into the functioning of the political parties and regulating the internal affairs of parties. The political parties and their office bearers should be held accountable for fielding such candidates with tainted background.

25. It is submitted that the doors of the Hon'ble Supreme Court have been knocked innumerable times in the past so that the Indian Government, political parties and politicians seriously conscientiously start pursuing electoral reforms by complete ban giving tickets to the candidates with tainted background. The incessant failure of the Governments for the past 20 years to cure this malignancy by legislating a comprehensive law for an absolute ban on the entry of candidates with tainted background is not only sad but appalling. The Constitutional bench of the Hon'ble Supreme Court in ***Public Interest Foundation and others vs. Union of India and another;*** 2019 (3) SCC 224 had categorically asked the Government to implement the aforementioned directions in true spirit and with right earnestness in a bid to strengthen democracy. The Hon'ble Supreme Court had observed in Para No. 118 and119 had observed;

"118. The nation eagerly waits for such legislation, for the society has a legitimate expectation to be governed by proper constitutional governance. The voters cry for systematic sustenance of constitutionalism. The country feels agonized when money and muscle power become the supreme power. Substantial efforts have to be undertaken to cleanse the polluted stream of politics by prohibiting people with criminal antecedents so that they do not even 100 conceive of the idea of entering into politics. They should be kept at bay."

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

26. It is submitted that even in relation to the recent order of the Hon'ble Supreme Court on publication of criminal cases, political parties have not taken these orders very seriously. On 13.02.2020, the Hon'ble Supreme Court in a contempt petition had reprimanded political parties for failing to publish the details of criminal cases pending against the candidates selected by them with reasons for selection of such individuals.

A true copy of the order dated 13.02.2020 passed by the Hon'ble Supreme Court in *Rambabu Singh Thakur vs. Sunil Arora and others*; Contempt Petition (C) No. 2192/2018 is annexed herewith and marked as **ANNEXURE C.**

27. It is submitted that the hallmark of a vibrant democracy is the conduct of free and fair elections with all candidates and political parties having a level playing field. This fundamental principal, however, has become skewed with the deteriorating standards of ethical and moral propriety of India's parliamentary democracy. Criminal elements have been playing a major role in the electoral process in India both as candidates for elections and as party workers. Having Parliamentarians with tainted background in our electoral and political process is against the principle of free and fair elections as is embodied in our Constitution. The Constitution of India unmistakably expounds that mass democracy can only function in the form of a representative democracy. Having a Parliamentarian who is charged with a serious criminal case is immoral and unethical. This Hon'ble Court has sufficient powers to curb this present menace. Therefore, it is the mandate of this Hon'ble Court to safeguard the basic structure of the Constitution and also to ensure that the people of India enjoy their fundamental rights.

28. It is submitted 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 26th 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."

29. It is submitted 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 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 Hon'ble Supreme Court had 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…"

30. It is further submitted that this Respondent has been collecting data regarding criminal offences by MPs and MLAs, as declared by them through affidavit to 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, 34% in 2014 Lok Sabha and further increased to 43% in 2019 Lok Sabha. Increasing criminalization of the MLAs is also noticeable as per state-wise data collected by ADR. There are MPs and MLAs who have declared cases related to murder, attempt to murder, rape, dacoity and kidnapping. Detailed data as analysed by the Respondent Association is reproduced herein the tables below:

Report of increasing criminal cases of MLA's									
S.No.	State	Total Seat	Total MLAs analyzed	MLAs with declared criminal cases	% of MLAs with declared criminal cases	MLAs with declared serious criminal cases	% of MLAs with declared serious criminal cases	% of Increase in Criminal Cases	% of Increase in Serious Criminal Cases
Bihar									
1	Bihar Assembly 2015	243	243	137	56%	94	39%	17%	38%
2	Bihar Assembly 2010	243	242	141	58%	85	35%		
3	Bihar Assembly 2005	243	233	117	50%	68	29%		
Andhra Pradesh									
4	Andhra Pradesh Assembly 2019	175	174	96	55%	55	32%	35%	112%
5	Andhra Pradesh Assembly 2014	175	174	85	49%	39	22%		
6	Andhra Pradesh Assembly 2009	294	275	71	26%	26	9%		
Jharkhand									
7	Jharkhand Assembly 2019	81	81	44	54%	34	42%		

8	Jharkhand Assembly 2014	81	81	55	68%	43	53%	52%	100%
9	Jharkhand Assembly 2009	81	81	59	73%	26	32%		
10	Jharkhand Assembly 2005	81	69	29	42%	17	25%		
Maharashtra									
11	Maharashtra Assembly 2019	288	285	176	62%	113	40%	33%	105%
12	Maharashtra Assembly 2014	288	288	165	57%	115	40%		
13	Maharashtra Assembly 2009	288	287	146	51%	56	20%		
14	Maharashtra Assembly 2004	288	288	132	46%	55	19%		
Odisha									
15	Odisha Assembly 2019	147	146	67	46%	49	34%	43%	104%
16	Odisha Assembly 2014	147	147	52	35%	41	28%		
17	Odisha Assembly 2009	147	147	48	33%	31	21%		
18	Odisha Assembly 2004	147	144	47	33%	24	17%		
Chhattisgarh									
19	Chhattisgarh Assembly 2018	90	90	24	27%	13	14%	118%	63%
20	Chhattisgarh Assembly 2013	90	90	15	17%	8	9%		
21	Chhattisgarh Assembly 2008	90	85	11	13%	8	9%		
Karnataka									
22	Karnataka Assembly 2018	224	221	77	35%	54	24%	75%	200%

23	Karnataka Assembly 2013	224	218	74	34%	39	18%		
24	Karnataka Assembly 2008	224	218	44	20%	18	8%		
Madhya Pradesh									
25	Madhya Pradesh Assembly 2018	230	230	94	41%	47	20%	62%	74%
26	Madhya Pradesh Assembly 2013	230	230	73	32%	45	20%		
27	Madhya Pradesh Assembly 2008	230	220	58	26%	27	12%		
Rajasthan									
28	Rajasthan Assembly 2018	200	199	46	23%	28	14%	53%	250%
29	Rajasthan Assembly 2013	200	199	36	18%	19	10%		
30	Rajasthan Assembly 2008	200	199	30	15%	8	4%		
Gujarat									
31	Gujarat Assembly 2017	182	182	47	26%	33	18%	7%	136%
32	Gujarat Assembly 2012	182	182	57	31%	24	13%		
33	Gujarat Assembly 2007	182	182	44	24%	14	8%		
Uttar Pradesh									
34	Uttar Pradesh Assembly 2017	403	402	143	36%	107	26%	3%	47%
35	Uttar Pradesh Assembly 2012	403	403	189	47%	98	24%		

36	Uttar Pradesh Assembly 2007	403	395	139	35%	73	18%		
Tamil Nadu(11 affidavits of current MLAs were not available)									
37	Tamil Nadu Assembly 2016	234	223	75	34%	42	19%	-3%	68%
38	Tamil Nadu Assembly 2011	234	234	70	30%	37	16%		
39	Tamil Nadu Assembly 2006	234	234	77	33%	25	11%		

	No. of MPs/MLAs Analyzed	No. of MPs/MLAs with criminal cases	% MPs/MLAs with Criminal Case	No. of MPs/MLAs with Serious Cases	% MPs/MLAs with Serious Criminal Cases	No. of MPs/MLAs with Murder
MLAs – All India	3969	1454	37%	949	24%	45
MPs – Lok Sabha /Rajya Sabha	770	288	37%	187	24%	11
Total	**4739**	**1742**	**37%**	**1136**	**24%**	**56**

	%. of MPs/MLAs with Murder	No. of MPs/MLAs with Attempt to Murder	% of MPs/MLAs with Attempt to Murder	No. of MPs/MLAs Analyzed
MLAs – All India	1%	181	5%	3969
MPs – Lok Sabha /Rajya Sabha	1%	33	4%	770
Total	**1%**	**214**	**5%**	**4739**

	No. of MPs/MLAs with Kidnapping	% of MPs/MLAs with Kidnapping	No. of MPs/MLAs with Robbery	% of MPs/MLAs with Robbery	No. of MPs/MLAs with Crime Against Women	% of MPs/MLAs with Crime Against Women
MLAs – All India	49	1%	49	1%	80	2%
MPs – Lok	8	1%	13	2%	22	3%

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Sabha /Rajya Sabha						
Total	**57**	**1%**	**62**	**1%**	**102**	**2%**

17. It is further submitted that the protection given to a sitting Member of Parliament or the Legislature of a State in sub-section (4) of Section 8 of the Representation of People Act, 1951 was declared ultra vires the constitution by t**he Supreme Court in *Lily Thomas Vs Union of India;* (2013) 7 SCC 653** by holding that enactment of this provision is beyond the legislative competence of the Parliament. The operative para of the said order is extracted below :

"The result of our aforesaid discussion is that the affirmative words used in Articles 102(1)(e) and 191(1)(e) confer power on Parliament to make one law laying down the same disqualifications for a person who is to be chosen as member of either House of Parliament or as a member of the Legislative Assembly or Legislative Council of a State 34 and for a person who is a sitting member of a House of Parliament or a House of the State Legislature and the words in Articles 101(3)(a) and 190(3)(a) of the Constitution put express limitations on such powers of the Parliament to defer the date on which the disqualifications would have effect. Accordingly, sub-section (4) of Section 8 of the Act which carves out a saving in the case of sitting members of Parliament or State Legislature from the disqualifications under sub-sections (1), (2) and (3) of Section 8 of the Act or which defers the date on which the disqualification will take effect in the case of a sitting member of Parliament or a State Legislature is beyond the powers conferred on Parliament by the Constitution."

"Looking at the affirmative terms of Articles 102(1)(e) and 191(1)(e) of the Constitution, we hold that Parliament has been vested with the powers to make law laying down the same disqualifications for person to be chosen as a member of Parliament or a State Legislature and for a sitting member of a House of Parliament or a House of a State Legislature. We also hold that the provisions of Article 101(3)(a) and 190(3)(a) of the Constitution expressly prohibit the Parliament to defer the date from which the disqualification will come into effect in case of a sitting member of Parliament or a State Legislature. Parliament, therefore, has exceeded its powers conferred by the Constitution in enacting sub-section (4) of Section 8 of the Act and accordingly sub-section (4) of Section 8 of the Act is ultra vires the Constitution."

18. It is submitted that at the judiciary has sought to curb this menace of criminalization of politics through several landmark judgments and issued

various directions to the Government and the Election Commission of India. Some of the judgments are being referred to hereinafter:

- *In the **Dinesh Trivedi, MP and Ors Vs Union of India and Ors (1997 4 SCC 306)**,* while dealing with Vohra Committee Report and its implementation, the Hon'ble Supreme Court of India observed :

"27. We may now turn our focus to the Report and the follow up measures that need to be implemented. The Report reveals several alarming and deeply disturbing trends that are prevalent in our present society. For some time now, it has been generally perceived that the nexus between politicians, bureaucrats and criminal elements in our society has been on the rise, the adverse affects of which are increasingly being felt on various aspects of social life in India. Indeed, the situation has worsened to such an extent that the President of our country felt constrained to make references to the phenomenon in his Addresses to the Nation on the eve of the Republic day in 1996 as well as in 1997. The matter is, therefore, one that needs to be handled with extreme care and circumspection..."

- In ***K. Prabhakaran Vs P. Jayarajan (2005 1 SCC 754),*** the Supreme Court of India underlined the need for keeping the political stream pure by observing :

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

- 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 the opening lines:

"A democratic polity, as understood in its quintessential purity, is conceptually abhorrent to corruption and, especially corruption at high places, and repulsive to the idea of criminalization of politics as it corrodes the legitimacy of the collective ethos, frustrates the hopes and aspirations of the citizens and has the potentiality to obstruct, if not derail, the rule of law. Democracy, which has been best defined as the Government of the People, by the People and for the People, expects prevalence of genuine orderliness, positive propriety,

dedicated discipline and sanguine sanctity by constant affirmance of constitutional morality which is the pillar stone of good governance. While dealing with the concept of democracy, the majority in Indira Nehru Gandhi v. Raj Narain, stated that 'democracy' as an essential feature of the Constitution is unassailable. The said principle was reiterated in T.N. Seshan, CEC of India v. Union of India and ors. and Kuldip Nayar v. Union of India & Ors. It was pronounced with asseveration that democracy is the basic and fundamental structure of the Constitution. There is no shadow of doubt that democracy in India is a product of the rule of law and aspires to establish an egalitarian social order. It is not only a political philosophy but also an embodiment of constitutional philosophy. In People's Union for Civil Liberties and another v. Union of India and another, while holding the voters' rights not to vote for any of the candidates, the Court observed that democracy and free elections are a part of the basic structure of the Constitution and, thereafter, proceeded to lay down that democracy being the basic feature of our constitutional set-up, there can be no two opinions that free and fair elections would alone guarantee the growth of a healthy democracy in the country. The term "fair" denotes equal opportunity to all people. Universal adult suffrage conferred on the citizens of India by the Constitution has made it possible for millions of individual voters to participate in the governance of our country. For democracy to survive, it is fundamental that the best available men should be chosen as the people's representatives for the proper governance of the country and the same can be best achieved through men of high moral and ethical values who win the elections on a positive vote. Emphasizing on a vibrant democracy, the Court observed that 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. Accordingly, the principle of the dire need of negative voting was emphasized. The significance of free and fair election and the necessity of the electorate to have candidates of high moral and ethical values was re-asserted. In this regard, it may be stated that the health of democracy, a cherished constitutional value, has to be protected, preserved and sustained, and for that purpose, instilment of certain norms in the marrows of the collective is absolutely necessitous."

Further, in Para Nos. 9 and 37, it was underlined:

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

"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[1]."

- Again in **Manoj Narula vs. Union of India and others, W.P (C) No. 289/2005,** the concluding remarks by Justice Kurian J. in Para Nos. 3, 6, 7, 8, 9 & 10 would be pertinent to note:

"3. Court is the conscience of the Constitution of India. Conscience is the moral sense of right and wrong of a person (Ref.: Oxford English Dictionary). Right or wrong, for court, not in the ethical sense of morality but in the constitutional sense. Conscience does not speak to endorse one's good conduct; but when things go wrong, it always speaks; whether you listen or not. It is a gentle and sweet reminder for rectitude. That is the function of conscience. When things go wrong constitutionally, unless the conscience speaks, it is not good conscience; it will be accused of as numb conscience."

"6. Allegiance to the Constitution of India, faithful and conscientious discharge of the duties, doing right to people and all these without fear or favour, affection or ill-will, carry heavy weight. 'Conscientious' means "wishing to do what is right, relating to a person's conscience" (Ref.: Concise Oxford English Dictionary). The simple question is, whether a person who has come in conflict with law and, in particular, in conflict with law on offences involving moral turpitude and laws specified by the Parliament under Chapter III of The Representation of the People Act, 1951, would be in a position to conscientiously and faithfully discharge his duties as Minister and that too, without any fear or favour?"

"7. When does a person come in conflict with law? No quarrel, under criminal jurisprudence, a person is presumed to be innocent until he is convicted. But is there not a stage when a person is presumed to be culpable and hence called upon to face trial, on the court framing charges?"

"8. Under Section 228 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.PC'), charge is framed by the court only if the Judge (the Magistrate – under Section

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240 Cr.PC) is of the opinion that there is ground for presumption that the accused has committed an offence, after consideration of opinion given by the police under Section 173(2) Cr.PC (challan/police charge-sheet) and the record of the case and documents. It may be noted that the prosecutor and the accused person are heard by the court in the process. Is there not a cloud on his innocence at that stage? Is it not a stage where his integrity is questioned? If so, is it not a stage where the person has come in conflict with law, and if so, is it desirable in a country governed by rule of law to entrust the executive power with such a person who is already in conflict with law? Will any reasonably prudent master leave the keys of his chest with a servant whose integrity is doubted? It may not be altogether irrelevant to note that a person even of doubtful integrity is not appointed in the important organ of the State which interprets law and administers justice; then why to speak of questioned integrity! What to say more, a candidate involved in any criminal case and facing trial, is not appointed in any civil service because of the alleged criminal antecedents, until acquitted."

"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."

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

- In ***Krishnamoorthy vs. Shivkumar and Ors, C.A No. 1478/2015***, this Hon'ble court was called upon to decide the case of non-disclosure of the criminal antecedents of the candidate at the time of filing of the nomination papers and its eventual impact on the democracy, it was observed by this Hon'ble court with the opening lines:

"In a respectable and elevated constitutional democracy purity of election, probity in governance, sanctity of individual dignity, sacrosanctity of rule of law, certainty and sustenance of independence of judiciary, efficiency and acceptability of bureaucracy, credibility of institutions, integrity and respectability of those who run the institutions and prevalence of mutual deference among all the wings of the State are absolutely significant, in a way, imperative. They are not only to be treated as essential concepts and remembered as glorious precepts but also to be practised so that in the conduct of every individual they are concretely and fruitfully manifested. The crucial recognised ideal which is required to be realised is eradication of criminalisation of politics and corruption in public life. When criminality enters into the grass-root level as well as at the higher levels there is a feeling that 'monstrosity' is likely to wither away the multitude and eventually usher in a dreadful fear that would rule supreme creating an incurable chasm in the spine of the whole citizenry. In such a situation the generation of today, in its effervescent ambition and volcanic fury, smothers the hopes, aspirations and values of tomorrow's generation and contaminate them with the idea to pave the path of the past, possibly thinking, that is the noble tradition and corruption can be a way of life and one can get away with it by a well decorated exterior. But, an intervening and pregnant one, there is a great protector, and an unforgiving one, on certain occasions and some situations, to interdict – "The law', the mightiest sovereign in a civilised society."

"75. The sanctity of the electoral process imperatively commands that each candidate owes and is under an obligation that a fair election is held."

19. It is submitted 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."

20. It is submitted that the present law i.e. section 8 of the Representation of People Act, 1951 and the orders issued by this Hon'ble Court have not been able to deter criminal elements from occupying high elective offices as MPs and MLAs. The result is that the law breakers have become law makers. Needless to say, this state of affair has corroded the vitals of democracy in India. The Indian people are increasingly becoming cynical and contemptuous about the shell of a democracy presently obtaining in the country, with the soul missing.
21. It is submitted that in **Rajasthan v. Union of India AIR 1977 SC 1361,** Justice P.N Bhaagwati while dealing with powers and functions of this court, it was observed:

"149…It is necessary to assert in the clearest terms particularly in the context of recent history, that the constitution is supreme lex, the permanent law of land, and there is no department or branch of government above or beyond it. Every organ of the government, be it the executive or the legislature or the judiciary, derives its authority from the constitution and it has to act within the limits of its authority. No one however highly placed and no authority howsoever lofty can claim that it shall be the sole judge of the extent of its power under the constitution or whether its action is within the confines of such power laid down by the constitution. This court is the ultimate interpreter of the constitution and to this Court is assigned the delicate task of determining what is the power conferred on each branch of government, whether it is limited, and if so, what the limits are and whether any action of that branch transgresses such limits. It is for this court to uphold constitutional values and to enforce constitutional limitations. That is the essence of the Rule of Law."

"149….To quote the words of Mr. Justice Brennan in Baker v. Carr, "Deciding whether a matter has in any measure been committed by the Constitution to another branch of government or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation and is a responsibility of this Court as ultimate interpreter of the Constitution". Where there is manifestly unauthorised exercise of power under the Constitution, it is the duty of the Court to intervene. Let it not be forgotten, that to this Court as much as to other branches of government, is committed the conservation and furtherance of democratic values. The Court's task is to identify those values in the constitutional plan and to work them into life in the cases that reach the Court. "Tact and wise restraint ought to tamper any power but courage and the acceptance of responsibility have their place too". The Court cannot and should not shirk this responsibility, because it has sworn the oath of allegiance to the Constitution and is also accountable to the people of this Country. There are indeed

numerous decisions of this Court where constitutional issues have been adjudicated upon though enmeshed in questions of religious tenets, social practices, economic doctrines or educational policies. The Court has in these cases adjudicated not upon the social, religious, economic, or other issues, but solely on the constitutional questions brought before it and in doing so, the Court has not been deterred by the fact that these constitutional questions may have such other overtones or facets."

22. It is apparent from a bare reading of the above that Indian Judiciary has virtually legislated upon electoral reforms and had compelled the legislature to incorporate these reforms in law. The Applicant humbly appeals that there is nothing under the Constitution which prevents this court from compelling the performance of constitutional obligations on the constitutional organs, be it the Legislature or the Executive. As the facts indicated hereinafter would demonstrate the Executive and the Legislature are most reluctant to undertake electoral reforms because of the obvious bias and prejudice.

23. It is further submitted that from a cumulative reading of plethora of decisions of the Hon'ble Supreme Court it is clear that if the field meant for legislature and executive is left unoccupied and such a void in law is detrimental to the public interest, this Hon'ble Court can issue necessary directions to the executive in larger public interest. To maintain the purity of elections and to weed out criminals from the electoral process, this Hon'ble Court has the authority to issue directions to the Election Commission of India to disqualify persons from contesting elections or occupying elective offices against whom charges have been framed in the offences enumerated under sub-sections (1) and (2) of Section 8 of the Representation of People Act, 1951 and to permanently disqualify those who are convicted of heinous crimes.

24. It is submitted that the 'separation of powers' doctrine has a concomitant doctrine called 'checks and balances'. The Encyclopaedia Britannica describes this doctrine as follows:

"Checks and balances, principle of government under which separate branches are empowered to prevent actions by other branches and are induced to share power. Checks and balances are applied primarily in constitutional governments. They are of fundamental importance in tripartite governments,…..which separate powers among legislative, executive, and judicial branches" (Italics added).

"The framers of the U.S. Constitution, who were influenced by Montesquieu and William Blackstone among others, saw checks and balances as essential for the security of liberty under the Constitution: 'It is by balancing each of these powers against the other two, that the efforts in human nature toward tyranny can alone be checked and restrained, and any degree of freedom preserved in the constitution' (John Adams)."

25. It is submitted that while each pillar is indeed independent in the exercise of its functions, if any one pillar does not do what it is supposed to do or does something wrong, the other two pillars are expected to step in to correct the distortions arising out of the inability or unwillingness of the one pillar to perform its responsibility as indicated in the constitution. The implication is that while the authority of each pillar is independent, it is not absolute. It is subject to be 'checked' and 'balanced' by the other two pillars. This has given rise to a principle in law which can be called "filling in the gap or vacuum in legislation", which lays down three conditions under which the judiciary can, actually should, perform a legislative function. The principle can be enunciated thus: *If (a) there is a gap, vacuum, void, or infirmity in legislation, (b) the Legislature and the Executive have not had the time or inclination to fill the gap or correct the infirmity, and most importantly, (c) public interest is suffering, then the Judiciary has a right, nay a duty, to fill the gap or correct the infirmity, till such time as the Legislature or the Executive decide to take appropriate action.*

26. It is submitted that in Common Cause (A registered society) Vs. Union of India, AIR 1996,SC 3081, it was observed by Hon'ble Supreme Court:

"39. Even so, situations may arise which enacted law has not provided for. Legislators are not prophets but pragmatists. So it is that the Constitution has made comprehensive provision in Article 324 to take care of surprise situations- that power itself has to be exercised, not mindlessly nor mala fide, not arbitrarily nor with partiality but in keeping with the guidelines of the rule of law and not stultifying the Presidential notification nor existing legislation. More is not necessary to specify: less is insufficient to leave unsaid. Article 324, in our view, operates in areas left unoccupied by legislation and the words 'superintendence, direction and control, as well as 'conduct of all elections' are the broadest terms. Myriad maybes, too mystic to be precisely presaged, may call for prompt action to reach the goal of free and fair election. It has been argued

that this will create a constitutional despot beyond the pale of accountability; a Frankenstein's monster who may system into elected despotism - instances of such phenomena are the tears of history. To that the retort may be that the judicial branch, at the appropriate stage, with the potency of its benignant power and within the leading strings of 'legal guidelines, can call the bluff, quash the action and bring order into the process. Whether we make a triumph or travesty of democracy depends on the man as much as on the Great National Parchment. Secondly, when a high functionary like the Commissioner is vested with wide powers the law expects him to act fairly and legally. Article 324 is geared to the accomplishment of free and fair elections expeditiously."

27. It is submitted that in *Union of India vs Association for Democratic Reforms* **(2002) 5 SCC 294, it was observed by the Hon'ble Supreme Court;**

"The powers conferred on this Court by the Constitution are ample to remedy this defect and to ensure enforcement of the concept of equality. 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 mandate to all authorities to act in aid of the orders of this Court 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 role." [Emphasis supplied]

"Thus, an exercise of this kind by the court is now a well-settled practice which has taken firm roots in our constitutional jurisprudence. This exercise is essential to fill the void in the absence of suitable legislation to cover the field."

"For deciding the aforesaid questions, we would proceed on the following accepted legal position."

"At the outset we would say that it is not possible for this Court to give any directions for amending the Act or the statutory Rules. It is for the Parliament to amend the Act and the Rules. It is also established law that no direction can be given, which would be contrary to the Act and the Rules. However, it is equally settled 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."

"Cumulative reading of plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles 141 and 142 of the Constitution to issue necessary directions to the Executive to sub-serve public interest."

28. It is submitted that this Respondent 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.

29. It is submitted that this Respondent 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 and www.adrindia.org) and outbound calls using recorded voice messages.

30. It is submitted that this Respondent 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 Respondent 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, the Respondent Association has chosen to concentrate its efforts in the following areas pertaining to the political system of the country:
    1. Corruption and criminalization in the political process.
    2. Empowerment of the electorate through greater dissemination of information relating to the candidates and the parties, for a better and informed choice.
    3. Need for greater accountability of Political Parties.
    4. Need for inner-party democracy and transparency in party-functioning and gaps in the disclosure of candidate's profile.

31. It is submitted that the Respondent had filed various Public Interest Litigation under Article 32 of the Constitution of India before the Hon'ble Supreme Court to effectuate electoral reforms. A few notable mentions may be in *Union of India v. Association for Democratic Reforms and Anr., (2002) 5 SCC 294 and People's Union for Civil Liberties & Anr., Lok Satta and Ors. and Association for Democratic Reforms v. Union of India (UOI) and Anr., (2003) 4 SCC 399.*

32. It is submitted that this Respondent does not have any personal interest or any personal gain or private motive or any other oblique reason in being impleaded as a Respondent in the subject Writ Petition.

In view of the aforesaid facts and circumstances, it is prayed before this Hon'ble Court that this Hon'ble Court may be graciously pleased to take this written submission on record and in interest of justice, it is the humble prayer of the Petitioners above named that this Hon'ble Court may graciously be pleased to:

(A) Issue appropriate Writ/Order/Direction issuing necessary guidelines disqualifying any person from contesting any of the elections to the public offices against whom charges have been framed for having committed serious criminal offences punishable by imprisonment of at least 5 years, and the case is filed at least 6 months prior to the election in question; and/or

(B) Issue appropriate Writ/Order/Direction issuing necessary guidelines permanently disqualifying any person convicted of heinous crimes from contesting for or holding any of the public offices; and/or

(C) Issue appropriate Writ/Order/Direction to ensure trial of cases in which the politicians are accused to be concluded in a time bound manner; and/or

(D) Issue appropriate Writ/Order/Direction Directing the Election Commission of India to exercise powers under Article 324 of the Constitution to de-register and de-recognise any political party if it knowingly puts up a candidate with a tainted background;

(E) Issue appropriate Writ/Order/Direction directing the Election Commission of India to exercise powers under Article 324 of the Constitution seeking each political party to annually file the information on criminal antecedents of their Office Bearers and make such records available to the public, including NIL records;

(F) Pass any further orders, as may be deemed fit and proper.

Dated at Chennai on this the 1st day of October 2020.

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COUNSEL FOR 7TH RESPONDENT