

IN THE SUPREME COURT OF INDIA
EXTRAORDINARY ORIGINAL JURISDICTION
CIVIL WRIT PETITION (PIL) NO. 536 OF 2011

IN THE MATTER OF:

1. Public Interest Foundation
B-32, Greater Kailash-I,
New Delhi through its
Representative/Director,
Shri Nripendra Misra
2. Common Cause,
B-34, Ground Floor,
Geetanjali Enclave,
New Delhi through its
Director, Shri Kamal Kant Jaiswal
3. Transparency International India,
Quarter No. 4, Lajpat Bhawan,
Lajpat Nagar-IV, New Delhi
Through its authorised representative
/Director Shri S.K. Aggarwal,
4. Gandhian Seva & Satyagraha Brigade
Quarter No. 4, Lajpat Bhawan,
Lajpat Nagar-IV, New Delhi
Through its authorised representative
/Director Shri S.K. Aggarwal, . . . Petitioner

VERSUS

1. Union of India, Through the Secretary,
Ministry of Home Affairs, North Block,
Government of India New Delhi
2. The Election Commission of India,
Through the Secretary, Nirvachan Sadan,
Ashoka Road, New Delhi ... RESPONDENTS

**PUBLIC INTEREST LITIGATION UNDER ART. 32
OF THE CONSTITUTION OF INDIA SEEKING
ISSUANCE OF APPROPRIATE WRIT/ DIRECTIONS
FOR THE ERADICATION OF THE
“CRIMINALIZATION OF POLITICS”**

To

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

The humble petition of the Petitioners above named

MOST RESPECTFULLY SHOWETH:

1. That the Petitioners are filing the present Public Interest Litigation under Art. 32 of the Constitution of India to take the election reforms to the next higher level as visualized by this Hon'ble Court in *Union of India (UOI) v. Association for Democratic Reforms and Anr.*, (2002) 5 SCC 294 and *People's Union for Civil Liberties (PUCL) and Anr., Lok Satta and Ors. and Association for Democratic Reforms v. Union of India (UOI) and Anr.*, (2003) 4 SCC 399. In the above judgments this court has equated voters' right to choose in the elections as one falling from Art. 19(1)(a) of the Constitution of India as his 'expression'. In the earlier judgment this court had issued certain directions for the enforcement of the above right of voters which directions had not been fully complied; consequently, the Hon'ble Supreme Court in the later decision struck down the law and enforced the decision. The petitioners have not approached any other Forum in India for seeking similar relief.

It is apparent from the above that this court has virtually legislated election reforms and had compelled the legislature to incorporate those reforms in law. To some it may appear to be heretic and an anathema to the traditional view of judicial review. The Petitioners clearly state that "judicial review is a dynamic concept" and with the changing times and needs it has to acquire newer dimensions. There is nothing under the Constitution which prevents this court from compelling the performance of constitutional obligations on the constitutional organs, be it Legislature or the Executive. As the facts indicated hereinafter would demonstrate, election reforms are an agenda which the Executive and the Legislature are most reluctant to undertake because of obvious bias and needs. It has

been an accepted fact for the last 20 years through the work of various committees and experts, that decriminalization of politics is the most important and urgent requirement; yet the legislators have for one frivolous reason or the other rejected the above urgent need. It is because of this bias of the politicians forming part of the Legislature and the Executive which has led the Petitioners to approach this Hon'ble Court to perform its constitutional obligation of "upholding the constitution". (Oath prescribed in the Third Schedule of the Constitution).

Free and fair election, voters' right to choose and total absence of discrimination as enunciated in Art. 14 read with Art. 326 and Art. 19(1)(a) clearly indicate a crying need for election reforms to check the growing menace of criminalization of politics which is corroding the foremost democratic institutions of the nation.

2. The petitioner No. 1 to 3 are registered with Registrar of Societies Government of NCT Delhi as non Non-Government Organizations comprising of public spirited individuals and have taken up various public causes in the past. The Registration No. of petitioner No. 1 is S/60918 of 2008. The Registration Number of Petitioner No. 2 is S/11017 of 1980 and Registration Number of petitioner No. 3 is S-39570 of 1998. The Petitioner No. 4 is registered with Registrar of News Papers for India and its Registration No. DEBII /2011 /37938. Petitioner No. 1 is represented by its Director, Shri Nirpindra Misra, Petitioner No. 2 by its Director, Shri Kamal Kant Jaiswal, Petitioner No. 3 by its Director, Shri S.K. Aggarwal and Petitioner No. 4 by its Director, Shri S.K. Aggarwal, who are all authorized to file the present Petition on behalf of their respective organization. Registration Certificates are enclosed with original set.

3. That the Petitioners seek 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.
4. That this Hon’ble Court has been seized of various facets of ‘criminalization of politics’ over the last two decades and has noticed the all pervading influence of criminals and their nexus with politics and bureaucrats, particularly in the context of elections. In *Dinesh Trivedi, M.P. and Ors. Vs. Union of India (UOI) and Ors.*, (1997) 4 SCC 306, while dealing with the Vohra Committee report and its implementation, this Hon’ble Court noticing this alarming nexus observed as under:

“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...”

Considering the issue to be one of tremendous moment, this Hon’ble Court was pleased to pass directions in the following terms:

“... We are, therefore, of the view that the matter needs to be addressed by a body which can function with the highest degree of independence, being completely free from every conceivable influence and pressure. Such a body must possess the necessary powers to be able to direct investigation of all charge thoroughly before it decides, if at all, to launch prosecutions. To this end the facilities and services of trained investigators with distinguished records and impeccable credentials must be made available to it. The Report, the supporting material upon which it is based and the unequivocal assistance of all existing intelligence agencies, must be forwarded to this body. In time if the need is so felt, the body may even consider the feasibility of designating Special Courts to try those who are identified by it, which proposal may then be considered by the Union Government. To this end, and in the absence of any existing suitable institution or till its creation, we recommend that a high level committee be appointed by the President of India on the advice or the Prime Minister, and after consultation with the Speaker of the Lok Sabha. The Committee shall monitor investigations involving the kind

of nexus referred to in the Vohra Committee Report and carry out the objectives described earlier.”

5. That despite the aforesaid directions, little has been done to weed out the criminal elements and their influence in national politics. Rather, if anything, their influence has grown manifold over the years and their participation has become more and more active. From having a nexus with politicians, criminals today have themselves taken on the role of becoming politicians themselves. This is evidenced by the declarations made by candidates in the 2009 general elections, which indicate that there were 275 serious criminal cases pending against 76 of the successful candidates in the elections to the XV Lok Sabha.
6. The dynamics of politics and elections has taken a serious and dangerous turn where law-breakers are now becoming law-makers and there is absolutely nothing that Parliament has done to stop this disquieting trend. Strangely enough, when this Hon’ble Court was considering the issue of disclosure of antecedents by candidates contesting elections, including their assets and liabilities, the Government seriously contested the litigation in *People's Union for civil Liberties (PUCL) and Ors. Vs. Union of India (UOI) and Anr.*, (2003) 4 SCC 399 and sought to contend that citizens of India did not even have the right to such information and that even if such a fundamental right existed, deprivation of such information constituted a reasonable restriction and it is open to the Legislature to nullify it by appropriate legislation. It was only the interference of this Hon’ble Court that resulted in the limited electoral reforms whereby information concerning the antecedents of candidates are required to be divulged to enable voters to exercise their right to vote with an informed

mind. This Hon'ble Court in PUCL (supra) was pleased to observe as under:

“From the aforesaid reports of the Law Commission, National Commission to Review the Working of the Constitution, Conclusion drawn in the report of Shri Indrajit Gupta and Ethics Manual applicable in an advance democratic country, it is apparent that for saving the democracy from the evil influence of criminalization of politics, for saving the election from muscle and money power, for having true democracy and for controlling corruption in politics, the candidate contesting the election should be asked to disclose his antecedents including assets and liabilities. Thereafter, it is for the voters to decide in whose favour he should cast his vote...

...Hence, in our view, right of a voter to know bio-data of a candidate is the foundation of democracy. The old dictum-- let the people have the truth and the freedom to discuss it and all will go well with the Government--should prevail.”

In conclusion, it was held that:

“Voters fundamental right to know 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.”

7. That in the above manner, this Hon’ble Court has substantially contributed to the establishment of a system of enlightening the electorate about the criminal antecedents of candidates in the electoral fray with a view to ensuring free and fair elections. Unfortunately however, the infiltration of politics by criminals has continued unabated. Might and money power have managed to prevail in elections in India and the common man is unable to exercise his right to vote based on adult suffrage freely and without fear or favour. This right is enshrined in Art. 325 and 326 of the Constitution of India, which in the submission of the Petitioners are facets of the right to equality, which is a fundamental right guaranteed to every citizen under Art. 14 of the Constitution of India. As observed by this Hon’ble Court in *Common Cause v. Union of India and Ors.*, (1996) 2 SCC 752:

"18. ...Flags go up, walls are painted and hundreds of thousands of loudspeakers play out the loud exhortations and extravagant promises. VIPs and VVIPs come and go, some of them in helicopters and air-taxies. The political parties in their quest for power spend more than one thousand crore of rupees on the General Election (Parliament alone), yet nobody accounts for the bulk of the

money so spent and there is no accountability anywhere. Nobody discloses the source of the money. There are no proper accounts and no audit. From where does the money come nobody knows. In a democracy where rule of law prevails this type of naked display of black money, by violating the mandatory provisions of law, cannot be permitted."

The money used in elections as aforesaid evidently comes from criminals and is therefore never accounted for.

8. The hope that the electoral process would be reformed and criminal elements weeded out has been belied. There is now a realization that there is no inclination on the part of the elected representatives to make appropriate legislation to achieve this laudable purpose. Experience over the last 60 years has shown that the provisions of the Representation of the People Act, 1951 are grossly inadequate in this respect.
9. That the purpose of filing the present petition is four fold:
 - i) To seek initiation of steps to check/ curb/ obliterate the presence of criminal elements in Parliament/ State Legislatures: To this end, the Petitioners herein pray that this Hon'ble Court may lay down appropriate guidelines/ framework to ensure that those charged with serious criminal offences are unable to enter the political arena by contesting elections **and also** lay down a time frame during which trial of such persons are concluded in a time bound manner which itself would serve as a deterrent for criminals to enter politics as they would face an expedited trial that may result in a conviction;

- ii) To seek a framework under which the nexus between criminals, politicians and bureaucrats can be negated and implementation of the directions passed by this Hon'ble Court in *Dinesh Trivedi, M.P. and Ors. Vs. Union of India (UOI) and Ors.*, (1997) 4 SCC 306 is ensured in letter and spirit.
- iii) To seek appropriate directions to the Government to consider the feasibility of enacting legislation to deal with the menace of criminalization of politics and debar those charged with serious offences from contesting elections of any sort.
- iv) The Petitioners lastly seek to challenge the constitutional validity of Sec. 8(4) of the Representation of People Act, 1951, which provides that in the case of a sitting legislator, the mere filing of an appeal would operate as a stay of the disqualification, even if bail was refused and the sitting member obtained neither stay of conviction, nor a stay of sentence.

10. OBLITERATING THE PRESENCE OF CRIMINAL ELEMENTS IN PARLIAMENT/ STATE LEGISLATURES

- a) The Preamble proclaims that “we, the people, have given to ourselves this Constitution.” This clearly establishes that sovereignty vests in the people, who, apart from other things, gave to themselves, through the Constitution of India, “political justice” and “equality of status”. The Preamble places sovereignty in the people through the system of parliamentary democracy. Therefore, all features that contribute to the reinforcement of the sovereignty of the people form the core of the Constitution, i.e. its basic

structure. The provisions embodying parliamentary democracy are one such basic feature.

- b) This Hon'ble Court has in various decisions held Parliamentary democracy to be a basic feature of our Constitution. [**Ref.** *Indira Nehru Gandhi v. Raj Narain*, (1975) Suppl. SCC 1, Para 198, 202–6, 212-13, *Kihoto Hollohan v. Zachillhu and Ors.*, 1992 Suppl.(2) SCC 651, Para179, *P.V. Narasimha Rao v. State*, (1998) 4 SCC 626, Para 47.]
- c) It is through this system of democracy that the Constitution seeks to assure all its citizens, “justice... political and the equality of status”. These two assurances are therefore the core objectives of our polity. In other words, all the provisions of the Constitution that seek to achieve these objectives, or help to achieve them, form part of the same basic structure called “Parliamentary democracy”.
- d) In order to secure sovereignty to the people, the Constitution provides for elections to Parliament and State Legislatures through the principle of “adult suffrage”, giving to all citizens equal right to vote. This right is given irrespective of caste, religion, race, etc. Therefore, Article 326, which enshrines this principle of “one man one vote” is the key to establishment of parliamentary democracy. It is the key to securing to citizens equality of the most basic status as voters and further securing political justice to them.
- e) That along with parliamentary democracy, the principle of “one man one vote” forms part of the same core. It is this principle that mandates “free and fair elections”. This Writ Petition is being filed

to achieve this objective. The principles of “one man one vote” and “free and fair election” clearly imply that every citizen must get a right to choose without fear or favour and at his own free will and volition. There cannot be any freedom greater than this, because this secures true democracy and sovereignty of the People. This ensures political justice and equality of the most basic status, i.e. of every voter having an equal say in the formation of Government and running of democracy.

- f) In a number of judgments, the Supreme Court has held that democracy is part of the basic structure of the Constitution and free and fair election is its basic foundation. [**Ref.** *Kihoto Hollohan v. Zachillhu and Ors.*, 1992 Suppl.(2) SCC 651, Para 179; *Rampakavi Rayappa Belagali v. B.D. Jatti and Ors.*, AIR 1971 SC 1348, Para 27; *Mohinder Singh Gill And Another v. The Chief Election Commissioner New Delhi And Others*, (1978) 1 SCC 405, Para 2, 3, 12, 24, 92; *People's Union for Civil Liberties (PUCL) and Anr.*, (2003) 4 SCC 399, Para 48-54,62; *Indira Nehru Gandhi v. Raj Narain*, (1975) Suppl. SCC 1, Para 198, 202–6, 212–3 (CB); *P. V. Narasimha Rao v. State*, (1998) 4 SCC 626, Para 47.]
- g) That from Article 326 and Article 327, the following important principles emerge:
- (i) “Every Citizen” shall have a right to get himself registered as voter irrespective of his race, caste, sex of religion. This is an extension of the principle of equality included in Article

14 and 15. Therefore, it would not be incorrect to say that Article 326 is also an incident of Article 14 and 15;

- (ii) “Every Citizen” must have equal say in the formation and running of democracy and this is also what follows from the principle of “Adult Suffrage” or “one man one vote”. In other words, the entire Parliamentary system functions on this principle;
 - (iii) “Every citizen” must have complete freedom to vote or participate in elections to the legislatures. The freedom can be exercised only if there are “free and fair elections”, where each voter gets to choose his representative as per his volition fearlessly. Without this, the principle of ‘one man one vote’ would become illusory.
- h) That Article 326 is the foundation on which rests the entire structure of Parliamentary democracy. Article 326 enshrines the important principles of “one man one vote” as well as “free and fair elections”.
- i) That the “right to vote” as envisaged by Article 326 is no ordinary right. It is not conferred by the Representation of the People Act, 1951 (RP Act). This right to vote stems from Article 326 directly and implies the “right of choice” without fear as per one’s free will. The RP Act merely provides a regulatory mechanism to effectuate this right to chose fearlessly, without any let or hindrance and with equality. The Act intends to secure the above two principles of “one man one vote” and “free and fair elections”.

- j) That this “right to vote” is inherently different from the “right given to vote” in the election under the RP Act . It means “right to chose” with free will in the same manner and to the same extent, as any other citizen. It is not statutory but a constitutional right. It is a right, which is conferred on every citizen. It is not statutory but a constitutional right. It is a right which confers on every citizen “Political Justice” and “Equality of status” in democratic functioning. It gives equal weight to the vote of every citizen irrespective of his financial and social status, and makes him master of his vote.
- k) This right, therefore, is an incident of the “Right to Equality” and Article 14. It is also regarded as “Freedom of expression” as guaranteed by Article 19 (i) [**Ref.** *People's Union for Civil Liberties (PUCL) and Anr.*, (2003) 4 SCC 399, Para 96-7]. There cannot be any higher Expression than reflected by this “right to vote” whereby one exercises one’s sovereignty. That is the object of the right to vote given by the Constitution. It is a reaffirmation of political sovereignty resting with people. Without this, democracy would be rudderless and ineffectual.
- l) That “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 by directly targeting the principles of “one man one vote” as well as “free and fair elections”, whereby a citizen can express his choice

freely. It denies the ideal of equality of status and seriously impairs “voters’ right of self expression.”

- m) Art. 326, which provides for the right to vote based on adult suffrage, is most certainly the edifice upon which rests the entire system of Parliamentary democracy. The principles of ‘one man one vote’ and ‘free and fair elections’ imply that every citizen has the ‘right to choose’ a candidate of his own free will. If citizens are deprived of this right and are unable to exercise their vote freely and independently, without fear or favour, the entire system would implode and those with might and money would dictate terms. This is precisely what criminalization of politics does. It is worth mentioning herein that the importance of the right to vote has been recognized and reiterated by this Hon’ble Court recently in *People's Union for Civil Liberties and Anr. v. Union of India and Anr.*, (2009) 3 SCC 200 wherein the question as to whether the Right to vote constitutes a fundamental right or a constitutional right has been referred to a larger bench in the following terms:

“We have carefully read paragraphs 349 to 364 of the aforesaid judgment, which are found under the head Right to Vote - A Constitutional/Fundamental Right and find that even though the Constitution Bench did not overrule or discard the ratio of the two three-Judges Bench judgments in **Union of India v. Association for Democratic Reforms** (supra) and **People's Union for Civil Liberties v. Union of India**(supra), the opening line of para 362 tend to create a doubt whether the right of voter to exercise his

choice for the candidate is a necessary concomitant of the voter's freedom of expression guaranteed under Article 19(1)(a) of the Constitution. Therefore, this issue needs a clear exposition of law by a larger Bench. We are further of the view that width and amplitude of the power of the Commission under Article 324 needs further consideration by a larger Bench in the light of the judgments of this Court whereby the elector's right to be informed about the assets and antecedents of the persons seeking election to the legislature has been duly recognized.”

- n) That from a bare perusal of Art. 325-327 of the Constitution of India, the following significant aspects immediately come to light:
- Every citizen has the right to get himself registered as a voter irrespective of his race, caste or religion. Art. 325 thus removes all discrimination in this respect and is a facet/extension of Art. 14 and 15 of the Constitution.
 - Every citizen must have an equal say in the formation and running of democracy and elections to the House of the People and the Legislative Assembly of every State shall be on the basis of adult suffrage, i.e. every citizen of India over the age of 18 and not otherwise disqualified by the provisions of the Constitution of India or any law made by the appropriate legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practices shall be entitled to vote. Thus, even as regards the right to

vote, but for the restrictions as stipulated in Art 326, all persons equally have the right and are entitled to vote. The right to vote to this extent is therefore traceable to Art. 14 of the Constitution of India as Art. 326 is but an incident of Art. 14 and 15 of the Constitution.

- Every citizen has the freedom to vote and participate in elections. Elections must be free and fair, where voters can choose their representatives freely and independently. In the absence of this, the right to vote would be illusory. By exercising his right to vote, a voter expresses his choice of representative. In this sense, there cannot be any higher “Expression” than the right to vote.
- o) It is most respectfully submitted that the right to vote is a fundamental right and flows from Art. 14 and 19(1)(a) read with Art. 326 of the Constitution of India. Any other interpretation would render the entire tenet of Parliamentary democracy, which is a part of the basic structure of the Constitution of India, illusory. Without it, democracy would be rudderless and ineffective. As noticed in *Anukul Chandra Pradhan, Advocate, Supreme Court Vs. Union of India and others*, (1997) 6 SCC 1:

“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...”

- p) That “criminalization of politics”, which implies a nexus between politicians, bureaucrats, police and criminals, negates and hits at the very root of the right to vote freely and without fear or favour. It directly targets the independent right to choose and debilitates democracy by denying equality of status and impairing the voter’s right of expression. Criminals, who contest elections use their might and money power to influence the outcome of elections, thereby rendering the rights of voters nugatory. Judicial notice may be taken of the numerous cases of booth capturing, bribery and use of money power in elections, which have a direct bearing on the outcome of the elections. As stated herein above, this has also been recognized by this Hon’ble Court in *Common Cause v. Union of India and Ors.*, (1996) 2 SCC 752.
- q) It is worth mentioning herein that the effect of criminalization of politics has been examined by several committees and authorities, which have repeatedly emphasized the need to bring about reforms to weed out criminal elements from politics. Some of these studies and their recommendations are summarized herein under:
- The Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice (2007) states:

“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.”

- The Department Related Parliamentary Standing Committee on Personnel, Public Grievances, and 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)’ recognizes the virus of the criminalization of our polity and notes:

“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” (Para 23)

A true and correct copy of the 18th Report on `Electoral Reforms (Disqualification of Persons from contesting Elections on framing of charges against them for certain offences)' is annexed herewith and marked as **Annexure P – 1.**

- The Law Commission of India in its 170th Report on `Reforms of the Electoral Laws (1999)' considered the issue of disqualification of persons on the ground of charges framed against them by the Court. After taking into account different views, for and against, the Law Commission recommended insertion of a new section 8B in the Representation of the People Act, 1951 in the following words:

“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 Narcotic 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.”}

A true and correct copy of the 170th Report of the Law Commission of India on ‘Reforms of the Electoral Laws (1999)’ is annexed herewith and marked as **Annexure P – 2.**

- The National Commission to Review the Working of the Constitution also examined this issue and recommended in its ‘Review of the Working of the Constitution’ as under:

“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 under 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.”

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

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

“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.”

“The Special Courts should be constituted at the level of High Courts and their decisions should be appealable 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.

The relevant portion of the report of the National Commission to Review the Working of the Constitution (Chapter 4, Vol. I) is annexed herewith and marked as **Annexure P – 3**.

- The Election Commission of India, in its ‘Proposals on Electoral Reforms (July 2004)’, observed as follows:

“The Commission had proposed that the law should be amended to provide that any person who is accused of an offence punishable by imprisonment for five years or more should be disqualified from contesting election even when trial is pending, provided charges have been framed against him by the competent Court. The Commission reiterates that such a step would go a long way in cleansing the political establishment from the influence of criminal elements and protecting the sanctity of the Legislative Houses”.

A true and correct copy of the report of the Election Commission of India titled `Proposals on Electoral Reforms (July 2004)' is annexed herewith and marked as **Annexure P – 4.**

- The 18th Report of the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, and Law and justice on `Electoral Reforms (Disqualification of persons from contesting Elections on framing of charges against them for certain offences)' refers to the following suggestion made by individual members of the Committee:

“If a charge sheet in a criminal case is framed in a Court of law against a political person the case should stand transferred to a Fast Track Court with the mandate that the case be decided at the earliest but within a period of six months. For that sittings of the said Fast Track Court should be held on day –to –day basis till the case is finally disposed off. In order to give effect to the said provision the Code of Criminal Procedure may be amended suitably.”

- r) However, in spite of the plethora of research and information on the subject which cries out for corrective action, nothing has been done by Legislatures. In the Petitioners' submission, this is due to selfish and self serving motives at the cost of democracy and citizen's rights. Thereby, the Legislatures have failed to exercise their constitutional duty and obligation to frame appropriate legislation

to effectively secure the exercise of fundamental rights as guaranteed under Part III of the Constitution of India.

- s) In today's times of coalition governments, where every vote in legislature counts, criminal elements pervade every political party and exercise enough influence to ensure that no effective steps/ action is taken by the law makers to bar their entry into legislatures . In other words, since they have muscle power and money, not only are they considered 'winnable' in their own right, they also increase the chances of victory of those whom they support. In such circumstances, the political parties are not at all inclined to adopt necessary reforms to keep out such criminals elements from electoral politics, despite the crying need for it. This conclusion is further reaffirmed by the increasing participation of criminals in legislatures as demonstrated in the results of successive elections. The extent of distortion can be gauged by the facts and figures herein below stated.

In the XVth Lok Sabha constituted in May, 2009, a large number of MPs belonging to various political parties had criminal cases pending against them. The following table gives the party-wise break-up of MPs with pending criminal cases.

Party	Party Strength- No of MPs in Lok Sabha	MPs with Criminal Charges (percentage of Party Strength)	MPs with Serious Criminal charges (percentage of Party Strength)
BJP	116	44 (38%)	19 (16%)

INC	206	44 (21%)	13(6%)
SHS	11	9(82%)	3(27%)
SP	23	9(39%)	8(34%)
JDU	20	8(40%)	3(15%)
BSP	21	6(29%)	6(29%)
AITC	19	4(21%)	4(21%)
NCP	9	4(44%)	3(33%)
DMK	18	4(22%)	1(6%)
BJD	14	4(29%)	1(7%)
CPM	16	3(19%)	1(6%)
OTHERS	50	23(46%)	14(28%)

Source: www.adrindia.org (compiled from affidavits filed by candidates with the Election Commission of India for the 2009 General Elections).

As per the affidavits filed with the Election Commission of India in the context of General Elections 2009, 76 MPS elected to the XVth Lok Sabha had 275 criminal cases relating to offences covered under Section 8 (1) or Section 8 (2) of the RP Act, or to offences punishable by imprisonment for 3 years or more. This number is substantially higher than in the XIVth Lok Sabha as is evident from the following table:

	XIVth Lok Sabha	XVth Lok Sabha	% Increase
MPs with criminal record	128	162	27%
Total pending criminal cases	429	522	22%

MPs with pending serious criminal cases	55	76	34%
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Source: www.adrindia.org (compiled from affidavits filed by candidates with Election Commission in connection with the General Elections of 2009 and 2004)

The seriousness of the 275 criminal cases pending against 76 MPs of the XV Lok Sabha can be gauged from the following table:

CASE CATEGORY	PERCENTAGE
Violent Crime i.e. rape, murder, dacoity etc.	50%
Forgery	18%
Cheating	13%
Theft	4%
Other Serious Crimes	15%

Source: <http://www.adrindia.org> (compiled from affidavits filed by candidates with the Election Commission before the 2009 General Elections).

Lok Sabha 2009- MPS with criminal backgrounds –document Transcript of General Elections are annexed herewith and marked as **Annexure P – 5.**

It is also worth mentioning that on an average, these cases have been pending for over 5 years.

The data concerning State Legislatures in this respect are as follows:

State Legislative Assembly	Year of Most Recent Constitution	Number of MLAs with pending criminal cases	Percentage of Assembly Strength:
Jharkhand	2009	59	73%
Haryana	2009	15	17%
Maharashtra	2009	146	51%
Arunachal Pradesh	2009	3	5%
Madhya Pradesh	2008	54	23%
Rajasthan	2008	30	17%
Delhi	2008	27	39%
Chhattisgarh	2008	11	12%
Uttar Pradesh	2007	160	40%

Source: www.adrindia.org (compiled from affidavits filed by candidates with the Election Commission before the respective State Legislative Assembly Elections)

- t) The petitioners respectfully submit that the presence of such a large number of legislators with tainted backgrounds in the highest forum of democracy is reflective of a growing nexus between criminals and the political establishment with deleterious consequences for the nation.
- u) The disinclination on the part of the politicians to take any positive acts to decriminalize politics can be easily gauged from the views of the political parties as recorded in the 18th Report of the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, and Law and justice on `Electoral

Reforms (Disqualification of persons from contesting Elections on framing of charges against them for certain offences)' wherein it is stated as under:

“...all the political parties feel that merely framing of charges by a competent court should not be the basis of denying a candidate the right to contest election.”

Consequently, the Standing Committee rejected the proposal of the Election Commission whereby it had proposed an amendment to the RP Act under which candidates would stand disqualified from contesting elections upon framing of charged against them. The Committee rejected the proposal principally on the ground that at the time of framing of charges, the Court is not required to appreciate evidence to conclude whether the materials produced are sufficient for convicting the accused and on the ground that prosecution in certain cases is bound to be influenced by the party in power or by failure of system and in such cases, there is every likelihood of framing false and malafide charges against their political opponents.

The said reasoning of the Standing Committee is absolutely fallacious inasmuch as it has rejected the proposal merely on the possibility of misuse whereas the facts reveal that an amendment of the nature suggested by the Election Commission is absolutely imperative to ensure free and fair elections in today's circumstances.

- v) That this is the reason why the Petitioner is constrained to approach this Hon'ble Court for laying down appropriate guidelines/framework to ensure that those charged with serious criminal offences are unable to enter the political arena by contesting elections and additionally, for laying down a time frame during which trial of such persons are concluded in a time bound manner (through fast track courts) which itself would serve as a deterrent for criminals to enter politics as they would face an expedited trial that may result in a conviction.

The Petitioners most respectfully submit that a regulatory framework may be provided in terms of the recommendations made by the various expert Committees as referred to in Paragraph 8 (g) above. In particular, this Hon'ble Court may consider laying down guidelines to the effect that:

- i) Any person charged for an offence for which the punishment prescribed is 3 years and above may be debarred from contesting any elections, Provided that the chargesheet has been filed in court for the offence and the court has taken cognizance; Further provided that the cognizance has been taken more than 6 months prior to election notification.
- ii) Criminal cases against legislators be concluded within 6 months of elections through a system of fast track courts.
- w) That there are several instances wherein this Hon'ble Court has laid down guidelines in exercise of powers under Art. 32 of the Constitution of India when the Legislatures have left the field

unoccupied by not legislating to provide for the effective enforcement of fundamental rights of citizens. [See *Vishaka & Ors. v. State of Rajasthan*, (1997) 6 SCC 241; *Lakshmi Kant Pandey v. Union of India (UOI)*, (1984) 2 SCC 244, *People's Union for civil Liberties (PUCL) and Ors. Vs. Union of India (UOI) and Anr.*, (2002) 5 SCC 294; *Destruction of Public and Private Properties v. State of A.P. and Ors.*, (2009) 5 SCC 212]

- x) That all the above are all cases where for enforcement of fundamental rights, this Hon'ble Court has itself legislated on the premise that the field is unoccupied. This shows that for enforcement of certain vital rights, courts have travelled the extra length by judicially taking policy decisions in the form of guidelines.

11. IMPLEMENTATION OF THE DIRECTIONS PASSED BY THIS HON'BLE COURT IN *DINESH TRIVEDI, M.P. AND ORS. VS. UNION OF INDIA (UOI) AND ORS.*, (1997) 4 SCC 306

- a) That although more than 14 years have passed since this Hon'ble Court expressed alarm over the nexus between politicians, bureaucrats and criminal elements particularly in the Indian political scenario and even recommended that a high level committee be appointed by the President of India on the advice of the Prime Minister after consultation with the Speaker of the Lok Sabha, nothing seems to have been done in this regard. Although a nodal agency has ostensibly been established, as per information available, it has met only 36 times till date and no concrete steps

have been taken as were contemplated by this Hon'ble Court in the *Dinesh Trivedi case*.

- b) That as the criminalization of politics has only increased over the years, it is imperative that necessary directions be passed to ensure and secure proper and timely implementation of the directions passed by this Hon'ble Court in the *Dinesh Trivedi case*.

12. DIRECTIONS TO THE GOVERNMENT TO CONSIDER THE FEASIBILITY OF ENACTING LEGISLATION TO DEAL WITH THE MENACE OF CRIMINALIZATION OF POLITICS

- a) After the Bombay blasts on 13.03.1993, the Government of India appointed a Commission to investigate the nexus between certain politicians, criminals, police and other authorities in the midst of serious allegations of there being such a nexus in existence which had contributed to the blasts and after seeing the reports of Intelligence and Investigation agencies on the activities/linkages of the Dawood Ibrahim gang. In Paragraph 3.3 of its report, the Committee observed as under:

“3.3 CBI has reported that all over India crime Syndicates have become a law unto themselves. Even in the smaller towns and rural areas, muscle-men have become the order of the day. Hired assassins have become a part of these organisations. The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country. The existing criminal

justice system, which was essentially designed to deal with the individual offences/crimes, is unable to deal with the activities of the Mafia; the provisions of law in regard economic offences are weak; there are insurmountable legal difficulties in attaching/confiscation of the property acquired through Mafia activities.”

[Emphasis supplied]

A true and correct copy of the Vohra Committee report to the extent available in public domain is annexed herewith and marked as **Annexure P – 6.**

The need to eradicate the menace of criminalization of politics has been emphasized even in the latest Background Paper on Electoral Reforms, 2010 of the Legislative Department, Ministry of Law and Justice co-sponsored by the Election Commission of India is annexed herewith and marked as **Annexure P – 7.**

- b) That it was expected that taking a cue from the aforesaid report, appropriate legislation would be enacted to dispel the evil highlighted by the Committee. Rather than take remedial steps and enact legislation in this behalf, successive Governments have chosen to ignore the report and let it gather dust.
- c) That as submitted herein above, the right to vote is a fundamental right and flows from Art. 14 and 19(1)(a) of the Constitution of India. Voters have the right to free and fair elections to be able to exercise this fundamental right. The legislature despite the crying

need to take appropriate legislative steps to remedy the menace of criminalization of politics has remained silent and has thus failed to fulfil its constitutional mandate.

- d) That in the circumstances, it is most humbly submitted that this Hon'ble Court may direct the Government to enact legislation as is necessary while upholding the Constitution of India and the fundamental rights of citizens.
- e) It is submitted that in appropriate cases and for protection of fundamental rights of citizens, this Hon'ble Court has previously also directed the legislature to frame appropriate legislation. [See *Gainda Ram and Ors. v. M.C.D. and Ors.*, (2010) 10 SCC 715]

13. CHALLENGE TO SEC. 8(4) OF THE REPRESENTATION OF PEOPLE ACT, 1951

- a) The Petitioners lastly seek to challenge the constitutional validity of Sec. 8(4) of the Representation of People Act, 1951, which provides that in the case of a sitting legislator, the mere filing of an appeal would operate as a stay of the disqualification, even if bail was refused and the sitting member obtained neither stay of conviction, nor a stay of sentence. Sec. 8(4) is quoted herein under for the sake of convenience:

“(4) Notwithstanding anything in sub-section (1), sub-section (2) or sub-section (3) a disqualification under either subsection shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three

months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.”

In the respectful submission of the Petitioners, the aforesaid provision is totally discriminatory and violative of the equality clause in Article 14 of the Constitution inasmuch as no such privilege is afforded to ordinary citizens (who may wish to contest elections) or in other similar circumstances.

- b) Furthermore, the aforesaid provision is totally arbitrary and irrational and is for this reason also violative of the provisions of Art. 14 of the Constitution of India. It permits a person convicted of a serious crime to continue as a legislator pending various stages of appeal without having any regard to the nature of the offence, the evidence against concerned person etc. In *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3, this Hon’ble Court had opined as under:

“Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and Constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.”

- c) It is submitted that Sec. 8(4) of the Representation of People Act defies all logic and is downright arbitrary. It mandates that even

though a legislator has been convicted of a serious crime as referred to in the earlier part of the Section by a court of competent jurisdiction, he would continue as a sitting legislator.

d) That although this Hon'ble Court has upheld the aforesaid provision in *P. Prabhakaran v. P. Jayarajan*, (2005) 1 SCC 754, in the humble submission of the Petitioners, the said judgment requires reconsideration. This Hon'ble Court has in the aforesaid judgment upheld the validity of Sec. 8(4) noticing that classification as provided for under the said provision between sitting legislators as against other ordinary citizens (even those hoping to contest elections) would be permissible and the special dispensation provided by the provision in favour of sitting legislators is valid inter alia for the following two reasons:

- (i) if a Government is surviving on a thin majority and loses one of its members, who was found guilty of a criminal offence, the Government may fall.
- (ii) if such exemption was not given and a bye-election was held, the entire exercise would be a waste, if subsequently the Appellant legislator were to be acquitted in appeal.

It is submitted that both the aforesaid reasons/ grounds do not justify the special dispensation accorded by Sec. 8(4). If the reasons aforementioned would support the validity of Sec. 8(4), the same would apply even where an election petition filed against a returned candidate is allowed or if a legislator is disqualified under Schedule X of the Constitution of India. However, in the latter of the circumstances, the Supreme Court in appeal has a discretion not to

grant a stay of the declaration of the invalidity of the election. There seems to be no justification in placing a person who is functioning as a Member of Parliament, or of a Legislative Assembly, who is convicted for an offence covered by Section 8 of the Act on a different footing from a legislator whose election has been set aside pursuant to an election petition or those who are disqualified under Schedule X of the Constitution relating to defections. In these cases, the legislator approaches the Court, which may finally decide in his favour or not. Consequently, in all these cases, it is the court which must have the discretion, based on the nature of the offence and the findings of the trial court or the election court or the Speaker (in the case of defection), to decide whether the member should be allowed to continue to function during the pendency of further proceedings before the Court. The provisions of Sec. 8(4) pre-empt this discretion and seems to be by its nature a provision in terrorem.

e) For the aforesaid reasons, the decision in *P. Prabhakaran v. P. Jayarajan*, (2005) 1 SCC 754 requires reconsideration and Sec. 8(4) of the Representation of People Act is liable to be declared ultra vires.

14. That the present Public Interest Litigation is being filed bona fide and in the interest of justice and in the interest of the country as a whole, through the petitioners who are registered Societies duly registered with the concerned authorities. Copies of registration Certificates are annexed and marked as **Annexure P-8 Colly** at pages to of the paper book.
15. That the annexures filed along with the present Public Interest Petition are true copies of their respective originals.

16. That the petitioner has not filed any other Petition for seeking similar relief before this Hon'ble Court or any High Courts in India.

PRAYER

In the facts and circumstances mentioned above and in the interest of justice, it is the humble prayer of the Petitioner above named that this Hon'ble Court may be graciously pleased to:

- A. Lay down appropriate guidelines/ framework to ensure that those charged with serious criminal offences are unable to enter the political arena by contesting elections;
- B. Lay down a time frame of six months during which trial of such persons are concluded in a time bound manner;
- C. Direct the Central Government to implement the directions passed by this Hon'ble Court in *Dinesh Trivedi, M.P. and Ors. v. Union of India (UOI) and Ors.*, (1997) 4 SCC 306 in letter and spirit;
- D. Direct the Government to consider the feasibility of enacting legislation to deal with the menace of criminalization of politics and debar those charged with serious offences from contesting elections of any sort.
- E. Declare the provisions of Sec. 8(4) of the Representation of People Act as ultra vires Art. 14 of the Constitution of India;
- F. Pass any further order(s) as may be deemed fit and proper.

Drawn by:
(Shri Ashish Mohan)
Advocate

Filed by:

Settled by:
(Shri Dinesh Dwivedi)
Senior, Advocate

(K.K. Mohan)
Advocate for the Petitioner

Drawn on: 16.11.2011
Filed on: 11.2011

IN THE SUPREME COURT OF INDIA
EXTRAORDINARY ORIGINAL JURISDICTION
CIVIL WRIT PETITION (PIL) NO. _____ OF 2011
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Public Interest Foundation & Others.

.. Petitioners

VERSUS

Union of India & Anr.

.. Respondents

Volume –I

PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE PETITIONERS K.K. MOHAN

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INDEX

Srl. No.	Particulars of documents	Pages
1.	Listing Proforma	A1 to A2
2.	List of dates and events	A to H
3.	Writ Petition with affidavits	1 to 40
4.	Annexure P-1 A true and correct copy of the 18 th Report on `Electoral Reforms (Disqualification of Persons from contesting Elections on framing of charges against them for certain offences)`	41 to 68
5.	Annexure P-2 A true and correct copy of the 170 th Report of the Law Commission of India on `Reforms of the Electoral Laws (1999)`	69 to 213

6. Annexure P-3 The relevant portion of the report of the National Commission to Review the Working of the Constitution (Chapter 4, Vol. I) 214 to 253
7. Annexure P -4 A true and correct copy of the report of the Election Commission of India titled 'Proposals on Electoral Reforms (July 2004)' 254 to 285
8. Annexure P-5 Lok Sabha 2009- MPs with criminal backgrounds-document Transcript of General Election. 286 to 295
9. Annexure P- 6 A true and correct copy of the Vohra Committee report to the extent available in public domain 296 to 320
10. Annexure P-7 The need to eradicate the menace of criminalization of politics has been emphasized even in the latest Background Paper on Electoral Reforms, 2010 of the Legislative Department, Ministry of Law and Justice co-sponsored by the Election Commission of India 321 to 365

To,

The Registrar,
Supreme Court of India,
New Delhi

Date: 2nd December, 2011

Sub: Public Interest Foundation & Others. VERSUS Union of India & Anr.
Diary No. 36674 of 2011

Sir,

In the above matter the registry of this Hon'ble Court raised certain objections and all of them have been rectified except objection No. 17(i) i.e. Judgment referred in para (b) of the prayer clause, the judgment is reported judgment in (1974) 4 SCC 3, the same will be produced before the Hon'ble Court at the time of argument /hearing of the case. At this stage judgment is not necessary.

Kindly registry the Writ Petition at the risk of counsel.

(K.K. Mohan)
Advocate for the Petitioner