

**IN THE SUPREME COURT OF INDIA**

Writ Petition (C) No. 699 of 2016

Ashwini Kumar Upadhyay vs. Union of India

**Nineteenth Report by Vijay Hansaria, Sr. Advocate,  
Amicus Curiae dated 13.09.2023**

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## I. Scope of The Writ Petition

1. That the present writ petition has been filed, interalia, seeking the following directions:
  - a. issue a direction or order or writ including writ in the nature of mandamus or an appropriate writ, order or direction as may be necessary, directing the Respondent-1 to provide adequate infrastructure to set-up Special Courts to decide criminal cases related to People's Representatives Public Servants and Members of Judiciary within one year **and** to debar the convicted persons from Legislature, Executive and Judiciary for life uniformly in spirit of Article 14 read with Article 15 and 16 of the Constitution”
2. The prayer for expeditious disposal of trial was made in the context of following direction by this Hon’ble Court in the case of *Public Interest Foundation vs. Union of India* 2015 (11) SCC 433:-

“We, accordingly, direct that in relation to sitting MPs and MLAs who have charges framed against them for the offences which are specified in Sections 8(1), 8(2) and 8(3) of the RP Act, the trial shall be concluded as speedily and expeditiously as may be possible and *in no case later than one year from the date of the framing of charge(s)*. In such cases, as far as possible, the trial shall be conducted on a day-to-day basis. If for some extraordinary circumstances the court concerned is not being able to conclude the trial within one year from the date of framing of charge(s),

such court would submit the report to the Chief Justice of the respective High Court indicating special reasons for not adhering to the above time limit and delay in conclusion of the trial. In such situation, the Chief Justice may issue appropriate directions to the court concerned extending the time for conclusion of the trial." [*Emphasis supplied*]

3. The petitioner has subsequently filed IA 61324/2017 seeking amendment of the prayer in the Writ Petition in the following terms:
  - a. direct and declare the words "*and shall continue to be disqualified for a further period of six years since his release*" be severed from sections 8(1)(ii), 8(2) and 8(3) of the Representation of the People Act, 1951 and the words "*for a period of five years from the date of such dismissal*" be severed from section 9(1) of the Representation of the People Act, 1951 as invalid and ultra-vires the Article 14 and basic structure of the Constitution of India;
  - b. direct the Respondent-1 to take appropriate steps to setup Special Courts to decide the cases related to people representative and public servants within one year and implement the important electoral reforms, proposed by the National Commission to Review the Working of the Constitution, Law Commission of India in its 244th and 255th Report and Election Commission of India;
  - c. direct the Respondents to take appropriate steps to debar the person convicted for the offences specified in sections 8(1), 8(2), 8(3), 9(1) of

the Representation of the People Act, 1951 from contesting MLA/MP election, forming political party or becoming office bearer of political party.”

4. This Hon'ble Court vide order dated 10.09.2020 issued notice on IA 61324/2017 and granted six weeks time to the Union of India to file counter affidavit. The Union of India has filed a counter affidavit dated 02.12.2020 opposing the amendment application. The amendment application is pending consideration.
5. It is thus submitted that there are two independent issues involved in the present writ petition:
  - a. Expeditious disposal of criminal cases against elected representatives (MPs/MLAs);
  - b. Constitutional validity of section 8 of Representation of the People Act, 1951.

**II. Expeditious disposal of criminal cases against elected  
representatives (MPs/MLAs)**

6. That this Hon'ble Court has passed various interim orders from time to time for expeditious disposal of cases. Summary of such orders passed may be noted as hereunder:

<p>01.11.2017 14.12.2017</p>	<p>12 Special Courts to be set up - 9 at Sessions level and 3 at Magistrate level in 11 different States/ UTs. These Courts were to try cases against MPs/ MLAs exclusively. The Union of India was directed to bear the expenses of these 12 Courts.</p>
<p>04.12.2018</p>	<p>High Courts to constitute as many Sessions Court and Magisterial Courts in the respective States as it may consider proper, fit and expedient. Such Courts will take up the cases on a day to day basis giving priority to the more heinous crimes.</p>
<p>16.09.2020</p>	<p>All the High Courts will constitute a Special Bench comprising of the Chief Justice and an Hon'ble Judge to monitor the progress of trial of such cases. Hon'ble Chief Justices were requested to list all the cases pending in the High Courts where the trial has been stayed.</p>
<p>04.11.2020</p>	<p>Trial Courts will decide the cases expeditiously and no unnecessary adjournments shall be granted. The benefit of Witness Protection Scheme 2018 in terms of judgement in <i>Mahinder Chawla v. UOI</i> (2019) 14 SCC 615 shall be granted to the witnesses without any specific application in this regard.</p> <p>The interim orders of stay of trial by the High Court, if any, would stand vacated automatically as per law laid down in <i>Asian Resurfacing of Road Agency v. CBI</i> (2018) 16 SCC 299.</p>

<p>10.08.2021</p>	<p>No prosecution against an MP/MLA can be withdrawn under section 321 Cr.P.C. without leave of High Court and on the parameters laid down by this Hon'ble Court in <i>State of Kerala v. K. Ajith</i> 2021 SCC OnLine SC 510.</p> <p>No judicial officer presiding over Special Courts or CBI Courts involving prosecution of MPs/MLAs shall be transferred without leave of this Hon'ble Court.</p>
<p>25.08.2021</p>	<p>The High Courts shall constitute Special/CBI Courts wherever such additional Courts are required for expeditious disposal of pending trials. There shall be no laxity in the trial of cases.</p> <p>In the event of non cooperation of Central or State Governments, the High Courts shall send a status report to this Hon'ble Court.</p>
<p>25.11.2021</p>	<p>The High Courts shall ensure allocation of criminal cases to as many Sessions Court and Magisterial Courts as required; and cases triable by Magistrate shall be assigned to a designated Court of Magistrate and cases triable by Sessions shall be assigned to a designated Court of Sessions.</p>
<p>12.07.2023</p>	<p>Permission of this Hon'ble Court shall not be required for transfer of Special Judge MP/MLA. However, transfer order shall be passed after obtaining the approval of the Chief Justice of the High Court on the administrative side and the post is not kept vacant.</p>

7. That this Hon'ble Court vide order dated 10.10.2022 directed all the High Courts to file an affidavit indicating the following:

(i) The number of criminal cases pertaining to MPs/MLAs which are pending for a period in excess of five years.

(ii) the number of judges allocated to conduct the trials;

(iii) the case load per judge; and

(iv) the steps which have been taken to ensure the expeditious conclusion of the trials of these cases.

8. That in compliance with the order of this Hon'ble Court, various High Courts furnished details of the pending cases. State wise position of pending cases as per the reports filed by the High Court is as hereunder:

Sr. No.	State/UT	Case in Dec. 2018	Cases in Dec. 2021	Cases as in November 2022		
				Total cases	More than 5 years	Case load per judge
1	2	3	4	5	6	7
1.	Andhra Pradesh	109	146	92	50	92
2.	Arunachal Pradesh	6	16	4	1	Between 1 to 4
3.	Assam	38	69	75	33	Between 0 to 2.5
4.	Bihar	304	571	546	381	Average 7.3
5.	Chhattisgarh	24	12	10	2	Average 1.1
6.	Delhi	124	97	93	27	Average 16
7.	Goa	15	12	19	5	Between 2 to 8
8.	Gujarat	119	33	28	11	Between 1 to 3
9.	Haryana	35	46	48	18	Between 0 to 2
10.	Himachal Pradesh	34	68	70	17	Between 1 to 19
11.	Jharkhand	160	207	198	72	Between 1 to 37

12.	Karnataka	161	150	221	61	Between 13 to 156
13.	Kerala	312	401	384	22	Between 0 to 59
14.	Madhya Pradesh	168	260	329	51	Between 25 to 210
15.	Maharashtra	303	470	482	169	Between 1 to 31
16.	Manipur	12	4	10	1	Between 1 to 4
17.	Meghalaya	3	5	4	4	Between 1 to 2
18.	Mizoram	4	1	0	0	Not applicable
19.	Nagaland	1	0	0	0	Not applicable
20.	Orissa	331	360	454	323	Between 0 to 30
21.	Punjab	34	74	91	16	Between 0 to 4
22.	Rajasthan	46	56	57	21	Between 1 to 4
23.	Sikkim	0	0	0	0	0
24.	Tamil Nadu	321	328	260	60	Between 1 to 22
25.	Telangana	99	50	17	4	Between 1 to 16
26.	Tripura	16	0	0	0	Not applicable
27.	Uttar Pradesh	992	1339	1377	719	Average 9.31
28.	Uttarakhand	34	10	15	2	Not furnished
29.	West Bengal	269	136	244 <sup>1</sup>	23	Between 0 to 31
30.	Andaman & Nicobar (U.T.)	0	0	0	0	Not applicable
31.	Chandigarh (U.T.)	—	10	10	1	Between 0 to 5

<sup>1</sup> As per High Court



32.	Dadra & Nagar Haveli (U.T.)	2	0	0	0	Not applicable
33.	Jammu & Kashmir (U.T.)	12	7	6 <sup>2</sup>	6	Not furnished
34.	Ladakh (U.T.)	—	—	—	—	—
35.	Lakshadweep (U.T.)	—	—	—	—	—
36.	Puducherry (U.T.)	34	36	31	16	Between 1 to 12
<b>Total</b>		<b>4122</b>	<b>4974</b>	<b>5175</b>	<b>2116</b>	

9. Thus, in the light of the pendency of a huge number of cases (5175) out of which 2116 (40%) are more than 5 years old, the Amicus in the 17th report dated 14.11.2022 sought the following directions:

- a. The Courts dealing with cases against MPs/MLAs shall exclusively try these cases. Other cases would be taken up only after trials of such cases are over. The trial would be conducted on a day to day basis in terms of section 309 Cr.P.C. Necessary allocation of work would be made by the High Court and/or the Principal Sessions Judges of every district within two weeks.
- b. No adjournment shall be granted except in rare and exceptional circumstances and for reasons to be recorded.
- c. Both the prosecution and defence shall cooperate with the trial of the case and no adjournment shall be granted.
- d. State Government/ UTs will appoint/ designate at least two Special Public

<sup>2</sup> Total cases not given, more than five years stated to be six.

Prosecutors for prosecuting cases in the Special Courts in consultation with District and Sessions Judge in the concerned District. In case, the public prosecutor and/or the prosecution fail to co-operate in the expeditious trial, the trial court shall send a copy of the order to the Chief Secretary of the State, who will take necessary remedial measures and submit a report.

e. In case, the accused delays the trial, his/her bail shall be cancelled. 6.

Special Courts will give priority to the trial of cases in the following order:

- i. Offences punishable with death/ life imprisonment;
- ii. Offences punishable with imprisonment for 7 years or more;
- iii. Other offences.

f. Cases involving sitting legislators to be given priority over former legislators.

g. Forensic laboratories will give priority in furnishing the report in respect of cases being tried by the Special Courts and will submit all pending reports within one month.

h. The SHO of the concerned police station shall be personally responsible to ensure production of accused persons before the respective courts on the dates fixed and the execution of NBWs issued by the courts. They shall also be responsible for service of summons to the witnesses and their appearance and deposition in the court. In case of failure to ensure appearance of accused and witnesses, the respective Courts may send a report to the Superintendent of Police of the district who shall furnish a report to the Court

i. Courts will use technology of video conferencing for examination of

witnesses and appearance of the accused persons, to the extent possible.

- j. The trial courts shall ensure that the benefit of the Witness Protection Scheme 2018 has been made available to the witnesses in terms of the order dated 04.11.2020.

10. That this Hon'ble Court vide order dated 21.03.2023 directed all the High Courts to respond to the submissions made by the Amicus in the aforesaid report. Pursuant to the said order, the High Courts have filed their response. Most of the High Courts have agreed with most of the submissions made by the Amicus and have stated that they have already issued appropriate directions in this regard in terms of the earlier orders passed by this Hon'ble Court. However, difficulties have been expressed with regard to submission (a) mentioned above. The Bombay High Court in its affidavit dated 17.04.2023 has stated that the trial may be expedited in terms of section 309 Cr.P.C. which reads thus:

**“S. 309. Power to postpone or adjourn proceedings.—**(1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:

Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376AB, , section 376B, section 376C, section 376D, section 376DA or section DB of the Indian Penal Code (45 of 1860), the inquiry or trial shall] be completed within a period of two months from the date of filing of the charge sheet.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the

commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Provided also that—

- (a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;
- (b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;
- (c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.

Explanation 1.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.—The terms on which an adjournment or postponement

may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

11. The Calcutta High Court in its affidavit dated 11.04.2023 has stated that there are certain infrastructural issues:

“5. It is further stated that as ordered on 17.01.2022 by Hon'ble High Court in WPA 7807 of 2020, there are infrastructural issues related to lack of IT facilities like connectivity, proper laptop, lack of power backup, security facilities etc. which led to the delay in trial of cases against MPs and MLAs. It is stated that the position in regards to the infrastructure projects it is learnt that all new projects proposed to be constructed in the District Judiciaries are planned as per CSS Guidelines. It is further stated that only after due approval from the appropriate Government, can the High Court go ahead regarding the construction/repair/renovation projects to the Government for administrative approval and sanctioning of the funds towards the projects.

6. It is also stated that the financial budgetary requirement for the lack of facilities is pending with the Government as a consequence of which the required work has not yet been carried out and the same is very essential for expediting rate of disposal of the cases.”

12. That in the light of response by various High Courts, the amicus in his 18th report dated 03.05.2023 submitted that direction (a) sought in the 17th report may be modified as hereunder:

“The Chief Justices of each of the High Court shall review the number of judges required to preside over Special Courts MP/MLAs. Such Special Courts shall conduct trial in terms of section 309 Cr.P.C., more particularly in terms of fourth proviso to sub-section (2) thereof.”

13. That this Hon'ble Court vide order dated 16.09.2020 interalia passed the following orders:

“18. The learned Chief Justices of the High Courts shall also designate a Special Bench, comprising themselves and their designate, in order to monitor the progress of these trials.”

14. That in terms of the aforesaid order of this Hon'ble Court, all the High Courts have registered suo motu cases and have passed directions from time to time. However, the High Courts of Allahabad, Orissa, Madras have disposed off the suo motu Writ Petitions after noticing that the Special Courts have been constituted which are conducting trials against MPs/MLAs.

**SUBMISSION**

15. In the light of the various interim orders passed from time to time in the present proceedings and the registration of suo motu Writ Petitions by the High Court, the following submissions are made:

- a. The Special Court MP/MLAs may be directed to furnish monthly reports of pendency and disposal of cases to the High Courts and reasons for delay of cases pending for more than five years. The Presiding Officer of Special Court may also indicate difficulties, if any, faced in the expeditious disposal

of cases.

- b. The Special Court MP/MLAs shall conduct trials in terms of section 309 Cr.P.C. and more particularly in terms of fourth proviso thereto and the interim orders passed from time to time in the present case. The Special Judge shall also take into account the submissions made in paragraph 9(b) to 9(j) of the present submissions.
- c. The Principal Sessions Judge of each district shall take into account number of cases pending before the Special Court MP/MLA while allotting other cases to the said Court.
- d. The High Courts in the suo motu writ petitions registered in terms of the order dated 16.09.2020 shall consider the monthly reports filed by the Special Courts MP/MLA and pass suitable directions for expeditious disposal of cases. High Court may give specific directions in case of non-cooperation by the prosecution or delay by the accused or any infrastructural issues raised by the Special Court. Those of the High Courts which have disposed of the writ petitions, shall revive the same.
- e. The High Courts may create an independent icon, button or tab on their website with regard to pending cases against MPs/MLAs furnishing the following details:-
  - i. Pendency of cases in each district giving bifurcation of cases pending for more than 1 year, between 1 and 3 years, between 3 and 5 years and more than 5 years, including the nature of offence, in

the format as maintained by the National Judicial Data Grid.

ii. Upload the order sheet of the High Courts in the suo motu Writ petition

iii. Upload the order sheet of all cases of the Special Court MP/MLA District wise, both at the Sessions level and Magistrate level.

**III. Constitutional validity of section 8 of the Representation of the People Act, 1951**

16. That the petitioner in the writ petition has sought a mandamus "to debar the convicted person from legislature, executive and judiciary for life." Subsequently, in IA No. 61324/2017, the validity has been challenged to the provisions of section 8 of the Representation of the People Act, 1951, in so far as disqualification to contest election is confined "for a period of six years since his release."

17. This Hon'ble Court vide order dated 01.11.2018 interalia directed as hereunder:

"On the next date fixed i.e. 04.12.2018, the Court would consider fixing a date of hearing for main relief (first relief) sought in the Writ Petition, namely, that disqualification of an elected representative following conviction in criminal case(s) should be for lifetime."

18. That sub-section (1) of section 8 of the Act provides that a person convicted of the offences specified in the said sub-section shall be disqualified from contesting an election for being chosen as or for being a member of either House of the Parliament or of Legislative Assembly or Legislative Council of the State. If, upon such conviction, sentence of only fine is imposed for a period of six years from



the date of such conviction; and in case, the convicted person is sentenced to imprisonment, the disqualification shall be from the date of conviction and for a further period of six years since his release. The offences specified in sub-section (1) of section 8 and the sentence prescribed are as hereunder:

<b>Sr. No.</b>	<b>Particulars of offence</b>	<b>Sentence</b>
<b>I. Indian Penal Code, 1860</b> (Offences mentioned under section 8(1)(a) of RP Act, 1951)		
1.	Section 153A. Promoting enmity between different classes If in place of worship	Upto 3/ 5 years and/ or fine
2.	Section 171E. Bribery by way of gratification for inducing voters in election	Upto 1 year or fine
3.	Section 171F. Undue influence or personation at an election	Upto 1 year or fine
4.	Section 376. Rape	7 years to Life imprisonment
5.	Section 376A. Rape causing death or resulting in persistent vegetative state	20 years to Life imprisonment
6.	Section 376B. Sexual intercourse by husband upon his wife during separation	2 years to 7 years
7.	Section 376C. Sexual intercourse by person in authority	5 years to 10 years
8.	Section 376D. Gang rape	20 years to Life imprisonment
9.	Section 498A. Husband or relative of husband of	Upto 3 years and

	a woman subjecting her to cruelty	fine
10.	Section 505. Statements conducing to public mischief	Upto 3/ 5 years and/ or fine
<b>II. Protection of Civil Rights Act, 1955</b> (Offences mentioned under section 8(1)(b) of RP Act, 1951)		
11.	Section 3 to Section 7. Untouchability	1 month to 6 months
<b>III. Customs Act, 1962</b> (Offences mentioned under section 8(1)(c) of RP Act, 1951)		
12.	Section 132. False declaration/ false documents etc.	Upto 2 years or fine
13.	Section 133. Obstruction of officer of customs	Upto 2 years or fine
14.	Section 135. Evasion of duties or prohibitions	Upto 3 years or fine
<b>IV. The Unlawful Activities (Prevention) Act, 1967</b> (Offences mentioned under section 8(1)(d) of RP Act, 1951)		
15.	Section 10. Member of an unlawful association	2 years to life imprisonment/ death
16.	Section 11. Dealing with funds of an unlawful association	Upto 3 years or fine
17.	Section 12. Contravention of an order made in respect of a notified place	Upto 1 year and fine
<b>V. The Foreign Exchange Regulation Act, 1973</b> (Offences mentioned under section 8(1)(e) of RP Act, 1951)		
18.	Section 56. Offences and prosecutions for contravention of the Act	6 months to 7 years

<b>VI. The Narcotic Drugs and Psychotropic Substances Act, 1985</b> (Offences mentioned under section 8(1)(f) of RP Act, 1951)		
19.	Section 15 to 29. Contravention in relation to poppy straw/coca plant/ opium/ cannabis/ psychotropic substance etc.	1 year to 20 years
20.	Section 31A. Penalty for offences after previous conviction	One and a half times of the maximum term or Death Sentence
<b>VII. Terrorist and Disruptive Activities (Prevention) Act, 1987</b> (Offences mentioned under section 8(1)(g) of RP Act, 1951)		
21.	Section 3 and 4. Committing terrorist and disruptive acts	5 years to life imprisonment/ Death
<b>VIII. Religious Institutions (Prevention of Misuse) Act, 1988</b> (Offences mentioned under section 8(1)(h) of RP Act, 1951)		
22.	Section 3 to 7. Using religious institutions/ places for promotion of political activity etc.	Upto 5 years and fine
<b>IX. The Representation of the People Act, 1951</b> (Offences mentioned under section 8(1)(i) of RP Act, 1951)		
23.	Section 125. Promoting enmity between classes in connection with the election	Upto 3 years or fine
24.	Section 135. Removal of ballot papers from polling stations	Upto 1 year or fine
25.	Section 135A. Booth capturing	1 year to 3 years and fine
26.	Section 136. Other electoral offences and penalties	Upto 6 months/ 2 years or fine

<p align="center"><b>X. The Places of Worship (Special Provisions) Act, 1991</b> (Offences mentioned under section 8(1)(j) of RP Act, 1951)</p>		
27.	Section 6. Contravention of section 3	Upto 3 years and fine
<p align="center"><b>XI. The Prevention of Insults to National Honour Act, 1971</b> (Offences mentioned under section 8(1)(k) of RP Act, 1951)</p>		
28.	Section 2. Insulting the Indian National Flag or the Constitution of India	Upto 3 years or fine
29.	Section 3. Preventing singing of National Anthem	Upto 3 years or fine
<p align="center"><b>XII. The Commission of Sati (Prevention) Act, 1987</b> (Offences mentioned under section 8(1)(l) of RP Act, 1951)</p>		
30.	Section 3. Attempt to commit Sati	Upto 1 year or fine
31.	Section 4. Abatement of Sati	Life Imprisonment or Death sentence
32.	Section 5. Glorification of Sati	1 year ton 7 years
<p align="center"><b>XIII. The Prevention of Corruption Act, 1988</b> (Offences mentioned under section 8(1)(m) of RP Act, 1951)</p>		
33.	Section 7. Offences relating to public servant being bribed	3 years to 7 years
34.	Section 7A. Taking undue advantage to influence public servant	3 years to 7 years
35.	Section 8. Offences relating to bribing of a public servant	Upto 7 years or fine
36.	Section 9 and 10. Offences relating to bribing by a commercial organisation	3 years to 7 years

37.	Section 11. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant	6 months to 5 years
38.	Section 12. Abetment of offences	3 years to 7 years
39.	Section 13. Criminal misconduct (disproportionate assets) by a public servant	4 years to 10 years
40.	Section 14. Habitual offender	5 years to 10 years
41.	Section 15. Attempt to commit offence under section 13	2 years to 5 years
<b>XIV. Prevention of Terrorism Act, 2002</b> (Offences mentioned under section 8(1)(n) of RP Act, 1951)		
42.	Section 3. Terrorist Acts	5 years to life imprisonment/ Death sentence
43.	Section 4. Possession of certain unauthorized arms, etc	Upto Life Imprisonment or fine
44.	Section 5. Enhanced penalties	Upto Life Imprisonment and fine

19. Sub-section (2) of section 8 provides that a person convicted for contravention of certain specified offences and sentenced to imprisonment for six months or more shall be disqualified from the date of conviction and for a further period of six years since his release. The offences mentioned in this sub-section are as hereunder:

<b>XV. Essential Commodities Act, 1955</b> (Offences mentioned under section 8(2)(a) of RP Act, 1951)		
45.	Section 7. Penalties for contravening order made under section 3	3 months to 7 years
<b>XVI. The Prevention of Food Adulteration Act, 1954</b> (Offences mentioned under section 8(2)(b) of RP Act, 1951)		
46.	Section 16. Penalties	6 months to 3 years
<b>XVII. Drugs and Cosmetics Act, 1940</b> (Offences mentioned under section 8(2)(b) of RP Act, 1951)		
47.	Section 13. Offences for importing adulterated drugs	Upto 6 months to 5 years or fine
48.	Section 27. Manufacture, sale, etc., of drugs in contravention of this Chapter	1 year to Life Imprisonment
<b>XVIII. Dowry Prohibition Act, 1961</b> (Offences mentioned under section 8(2)(c) of RP Act, 1951)		
49.	Section 3. Giving or taking dowry	Minimum 5 years
50.	Section 4. Demanding dowry	6 months to 2 years and fine
51.	Section 4A. Ban on advertisement	6 months to 5 years or fine

20. Sub-section (3) of section 8 provides that a person convicted for offences other than those mentioned in sub-sections (1) and (2) and sentenced to imprisonment for two years or more shall be disqualified from the date of conviction and for a further period of six years since his release.

21. It is thus submitted that section 8 of the Representation of the People Act, 1951 has categorised the offences for the purpose of disqualification in the following three categories:

- a. Offences punishable under sub-section (1) of section 8 in which case sentence of fine would invite disqualification for a period of six years from the date of conviction; and in case of sentence of imprisonment for any duration, the disqualification shall be from the date of conviction and for a further period of six years since the release of the accused (may be called as '*Specified Offences Category-I*').
- b. Offences punishable under sub-section (2) of section 8 and sentenced to imprisonment for six months or more would incur disqualification from the date of conviction and for a further period of six years since the release of the accused (may be called as '*Specified Offences Category-II*').
- c. Offences other than those mentioned in sub-sections (1) and (2) and sentenced to imprisonment for two years or more would incur disqualification from the date of conviction and for a further period of six years since the release of the accused (may be called as '*Non-Specified Offences*').

22. It is submitted that the Parliament has categorised the offences for the purpose of disqualification depending upon the nature, seriousness and gravity thereof and the impact on the society at large. In case of Specified Offences Category I, even a sentence of fine incurs disqualification; while in case of Specified Offences

Category-II, a minimum sentence of six months incurs disqualification; and in case of Non-Specified Offences, disqualification arises only upon sentence of imprisonment for two years or more. However, one common thread in all cases where a sentence of imprisonment has been imposed is that disqualification continues only for a period of six years since the release of the convict. Thus, a person is eligible to contest election after six years of the release even if convicted for heinous offences like rape or for dealing with drugs or being involved in terrorist activities or having indulged in corruption.

23. It is submitted that there is no nexus for limiting the disqualification for a period of six years since the release of the convict with the object of disqualifying him from becoming a member of the legislature. The provisions of sub-sections (1), (2) and (3) of section 8 to the extent they provide that "shall continue to be disqualified for a further period of six years since his release" is manifestly arbitrary and violative of Article 14 of the Constitution.

**Statutory provisions disqualifying persons to hold statutory offices upon conviction involving moral turpitude**

24. It may be noted that the statutory authorities constituted under various legislations provide for permanent disqualification and/or removal from holding such statutory office upon conviction of an offence involving moral turpitude. It is submitted that if statutory authorities cannot comprise convicted persons, it is manifestly arbitrary that such convicted persons can occupy the supreme legislative bodies after expiry of a certain period of conviction. There is no nexus



that a person can make law to disqualify another person from holding a statutory office, but the person making the law would incur the disqualification only for a limited period. The law makers are required to be much more sacrosanct and inviolable than the persons holding office under such law. The Parliamentarians and the Legislators represent the sovereign will of the people and once found to have committed an offence involving moral turpitude, are liable to be permanently disqualified from holding the said office. Limiting the period of disqualification is a flagrant violation of the equality clause enriched in Article 14 of the Constitution.

25. Illustration of some of the statutes containing permanent disqualification and removal on the ground of conviction may be noted as hereunder:

- a. Central Vigilance Commissioner and Vigilance Commissioner are liable to be removed from office if convicted for an offence involving moral turpitude vide section 6(3)(b) of the Central Vigilance Commission Act, 2003.
- b. Persons convicted for an offence involving moral turpitude are disqualified from being appointed as Lokpal and Lokayukta vide section 3(4)(ii) of the Lokpal and Lokayuktas Act, 2013.
- c. Chairman and members of National and State Human Rights Commission are liable to be removed from office if convicted for an offence involving moral turpitude vide section 5(3)(e) and 23(2)(e) of the Protection of Human Rights Act, 1993.

- d. Central Chief Information Commissioner, State Information Commissioner and Information Commissioners are liable to be removed from office if convicted for an offence involving moral turpitude vide section 14(3)(b) and 17(3)(b) of the Right to Information Act, 2005.
- e. Chairperson and members of the Competition Commission of India are liable to be removed from office if convicted for an offence involving moral turpitude vide section 11(2)(c) of the Competition Act, 2002.
- f. Chairman and members of the Central and the State Commissions for the protection of Child Rights are liable to be removed from office if convicted for an offence involving moral turpitude vide section 7(2)(f) of the Commissions for Protection of Child Rights Act, 2005.
- g. Chairman and member of Unique Identification Authority are liable to be removed upon conviction involving moral turpitude vide section 15(1)(c) of the Aadhaar (Targeted Delivery of Financial And Other Subsidies, Benefits And Services) Act, 2016.
- h. Chairman and members of Central and State Pollution Control Boards are disqualified if convicted for an offence involving moral turpitude vide section 6(1)(c) of the Water (Prevention and Control of Pollution) Act, 1974 and section 8(1)(c) of the Air (Prevention and Control of Pollution) Act, 1981.

- i. No banking company can employ or continue employment of any person convicted by a criminal court of an offence involving moral turpitude vide section 10(1)(b)(i) of the Banking Regulation Act, 1949.
- j. Members of Central Electricity Authority, Central Electricity Regulatory Commission and State Electricity Regulatory Commission are liable to be removed from office if convicted for an offence involving moral turpitude vide section 90(2)(b) of the Electricity Act, 2003.
- k. Members of the Bureau of Energy Efficiency are liable to be removed from office if convicted for an offence involving moral turpitude vide section 7(c) of the Energy Conservation Act, 2001.
- l. Chairperson and members of Insolvency and Bankruptcy Board of India are liable to be removed from office if convicted for an offence involving moral turpitude vide section 190(c) of the Insolvency and Bankruptcy Code, 2016.
- m. Chairperson and members of Insurance Regulatory and Development Authority of India (IRDA) are liable to be removed from office if convicted for an offence involving moral turpitude vide section 6(1)(c) of the Insurance Regulatory and Development Authority of India Act, 1999.
- n. Persons convicted for an offence involving moral turpitude are disqualified from being appointed as members of Juvenile Justice Board and Child Welfare Committees vide section 4(4)(ii) and 27(7)(ii) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

- o. No person can be chosen as a member of the Board of Directors of Multi-State Co-operative Societies or National Co-operative Societies if convicted for an offence involving moral turpitude vide section 43(1)(c) of the Multi-State Co-operative Societies Act, 2002.
- p. No person can be chosen as a member of the Board of Trustees of Ports if convicted for an offence involving moral turpitude vide section 6(a) of the Major Port Trusts Act, 1963.
- q. Members of National Board for Micro, Small and Medium Enterprises are liable to be removed from office if convicted for an offence involving moral turpitude vide section 4(1)(d) of the Micro, Small and Medium Enterprises Development Act, 2006.
- r. Chairperson and members of State Food Commission are liable to be removed from office if convicted for an offence involving moral turpitude vide section 16(9)(c) of the National Food Security Act, 2013.
- s. Persons convicted for an offence involving moral turpitude are disqualified from being appointed as Chairman and members of Central and State Coordination Committees vide section 5(1)(c) and 15(1)(c) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
- t. Chairperson and members of Telecom Regulatory Authority of India are liable to be removed from office if convicted for an offence involving moral

turpitude vide section 7(1)(b) of the Telecom Regulatory Authority of India Act, 1997.

26. It is submitted that as per the Service Rules applicable to the Central Government and State Government employees, a person convicted for any offence involving moral turpitude is liable to be dismissed from the service. Even a Class-IV employee would be terminated from service, once convicted for an offence involving moral turpitude, not to speak of Class-I, II and III employees and the persons holding any offices under the All India Services Act, 1951 and the Rules framed thereunder.

27. That it is submitted that the following expert bodies and committees have raised concerns about the criminalisation of politics from time to time:-

- i. Dinesh Goswami Committee Report (1990)
- ii. Vohra Committee Report (1993)
- iii. Indrajit Gupta Committee on State Funding of Elections (1998)
- iv. Law Commission 170th Report on Reforms of the Electoral Laws (1999)
- v. National Commission to Review the Working of the Constitution (2001)
- vi. Election Commission of India — Proposed Electoral Reforms (2004)
- vii. Parliamentary Standing Committee 18th Report (2007)
- viii. The Second Administrative Reforms Commission (2008)
- ix. Justice J.S. Verma Committee Report on Amendments to Criminal Law (2013)
- x. Law Commission of India - 239th Report on expeditious investigation and trial of criminal cases against influential public personalities (2012) and
- xi. Law Commission of India - 244th Report on electoral disqualification (2014).

28. This Hon'ble Court in various judgments has also noted the increasing trend of criminalisation of politics which has severely affected the democratic functioning.

The Amicus craves leave to refer and rely on the following judgments:-

- a. *Dinesh Trivedi v. Union of India*, (1997) 4 SCC 306 [Para 27]
  - b. *Union of India v. Assn. for Democratic Reforms*, (2002) 5 SCC 294 [Para 22, 48]
  - c. *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399 [Para 115]
  - d. *K. Prabhakaran v. P. Jayarajan*, (2005) 1 SCC 754 [Para 54]
  - e. *Lily Thomas v. Union of India*, (2013) 7 SCC 653
  - f. *Manoj Narula v. Union of India* (2014) 9 SCC 1 [Para 9, 98, 99, 100, 123, 129, 152]
  - g. *Public Interest Foundation v. Union of India*, (2019) 3 SCC 224 [Para 2, 26, 28, 118, 119]
  - h. *Brajesh Singh v. Sunil Arora* 2021 (10) SCC 241 [Para 13, 20, 53, 74, 75]
29. It is submitted that WP (Civil) 414/2017 Ajay Pal Nagar v. UOI was filed before the

Hon'ble Court in which inter alia the following prayer was made:

"Declare that the words "*and shall continue to be disqualified for a further period of six years since his release*" be severed from sections 8(1)(ii), 8(2) and 8(3) of of Representation of the People Act, 1951 as invalid and ultravires the Constitution and its basic structure."

The aforesaid petition was withdrawn by the petitioner by order dated 03.07.2017 in the following terms:

"Learned Senior counsel appearing for the petitioner states, that the petitioner may be permitted to withdraw this petition, with liberty to move

an appropriate application for being impleaded in Writ Petition (C) No. 699/2016. The writ petition is dismissed as withdrawn, with liberty as afore-mentioned.”

Ajay Pal Nagar has thereafter filed an application in the present case by IA No. 54552/2017 which is pending.

30. That the following applications have been filed seeking impleadment as intervenor/co-petitioner in the present case challenging the vires of section 8.

- a. IA No. 57812/2017 - Filed by *Prashant Kumar Umrao*
- b. IA No. 58124/2017 - Filed by *Rakesh Kumar Upadhyay*
- c. IA No. 127023/2018 - Filed by *Kapil Mishra*
- d. IA No. 127368/2018 - Filed by *Vikram Gulati*
- e. IA No. 2083/2019, 2085/2019 - Filed by *Lok Prahari through Secretary, S.N. Shukla*

**Submission:**

31. It is submitted that in the RP Act, 1951 the Parliament has categorised the offences for the purpose of disqualification depending upon the nature, seriousness and gravity thereof and the impact on the society at large.

- a. In respect of offences specified in clauses (a) to (n) of sub-section (1) of section 8 of RP Act, 1951, even a sentence of fine incurs disqualification;
- b. In respect of offences specified in sub-section (2) of section 8 of RP Act, 1951, a minimum sentence of six months incurs disqualification; and
- c. In respect of offences specified in sub-section (3) of section 8 of RP Act,

1951, disqualification arises only upon a sentence of imprisonment for two years or more.

32. It is submitted that there is no nexus for limiting the disqualification for a period of six years since the release of the convict with the object of disqualifying him from becoming a member of the legislature. The provisions of sub-sections (1), (2) and (3) of section 8 to the extent they provide that "shall continue to be disqualified for a further period of six years since his release" are *manifestly arbitrary* and violative of Article 14 of the Constitution.

33. It is submitted that the issue of validity of section 8 of the RP Act, 1951 may be considered independently of the issue of expeditious disposal of cases by the Special Court MP/MLA.

#### **IV. Other Miscellaneous Applications pending**

34. It is submitted that various other interim applications are pending with this Hon'ble Court, details of which are as hereunder:

##### **A. Applications for trial by competent Magistrate Court**

35. IA No. 81286 /2018, IA No. 81287/2018, IA No. 130542/2018, IA No. 130543/2018, IA No. 107427/2018 & IA No. 107431/2018 - Filed by Jeetu alias Jeetender Patwari & 12. IA 143394/2021 - Filed by Rambeer Shokeen. In all these IAs, the applicants are seeking trial of cases against them by the competent Magistrate Court instead of Sessions Court. It is submitted that this Hon'ble Court vide order dated 24.11.2021 has directed that the cases triable by Magistrate under Cr.P.C. have to be tried by the Magistrate Court. The applications may be



disposed of in terms of the order dated 24.11.2021.

**B. In Re : Ateeq Ahmad**

36. This Hon'ble Court vide order dated 23.04.2019 directed that Ateeq Ahmad be transferred from Deoria Jail, U.P. to Gujarat Jail. It was further directed that investigation of FIR No. 810/2018 be transferred from Police Station Krishna Nagar, Lucknow, U.P. to C.B.I. which relates to abduction of one Mohit Jaiswal by Ateeq Ahmad inside Deoria jail. The CBI has filed reports in sealed cover before this Hon'ble Court. Various applications have been filed on this issue by Ateeq Ahmad as well as the State. (IA No. 73459/2019, IA No. 72938/2019, IA No. 98425/2019 - Filed by Ateeq Ahmed, IA No. 103522/2019 - Filed by State of U.P. and IA No. 2027/2020 and 2029/2020 - Filed by Mohit Jaiswal)
37. It is submitted that Ateeq Ahmad has died on 15.04.2023 and a Writ Petition [WP(Criminal) 177/2023] in this regard is pending before this Hon'ble Court. It is submitted that the issues regarding CBI investigation that the reports submitted by CBI in FIR 810/2018 may be considered by this Hon'ble Court along with [WP(Criminal) 177/2023].

**C. For expeditious disposal of pending trial / Writ Petitions**

38. That certain interim applications have been filed seeking expeditious disposal of pending trials/writ petitions (IA No. 127553/2020 - Filed by Rajesh Kumar Jaiswal; IA No. 108742/2021 & 108743/2021 - Filed by Jethabhai Gelabhai Ahir; IA 7992/2022 & 8016/2022 - Filed by Ravi Bhushan; IA 55243/2022, 55244/2022 & 55246/2022 - Filed by Dharmendragiri Balugiri Goswami

39.It is submitted that the aforesaid applications be disposed of with the direction that the competent courts will decide them according to the law and the guidelines laid in the present case.

**SUBMITTED BY**  
**VIJAY HANSARIA, SR ADVOCATE**

**DATED : 13.09.2023**