IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO ..... OF 2022

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

.....Petitioner

Verses

1. Union of India
   Through the Secretary,
   Ministry of Home Affairs,
   North Block, New Delhi-110001,
2. Union of India
   Through the Secretary,
   Ministry of Law and Justice
   Shastri Bhawan, New Delhi-110001,
3. The Law Commission of India
   Through the Chairman
   Loknayak Bhawan, Khan Market, New Delhi-110003
4. Election Commission of India
   Through the Chief Election Commissioner
   Nirvachan Sadan, Ashoka Road, New Delhi-110001
5. Government of Maharashtra
   Through the Chief Secretary
   Mantralay, Madam Cama Road, Mumbai-400032
6. Government of NCT of Delhi
   Through the Chief Secretary
   Secretariat, IP Estate, New Delhi-11002 ....Respondents

PIL TO DEBAR THE MINISTERS FROM HOLDING CONSTITUTIONAL POST WHO ARE IN JUDICIAL CUSTODY FOR MORE THAN TWO DAYS

THE HON'BLE CHIEF JUSTICE
AND LORDSHIP'S COMPANION JUSTICES
OF THE HON'BLE SUPREME COURT OF INDIA
HUMBLE PETITION OF ABOVE-NAMED PETITIONER

THE MOST RESPECTFULLY SHOWETH AS THE UNDER:

1. Petitioner is filing this PIL under Article 32 seeking writ, order or direction to the respondents to ensure that the Minister, who is not only a public servant under S. 21 of Indian Penal Code and S. 2(c) of the Prevention of Corruption Act but also a Law Maker and takes constitutional oath under Schedule-3; shall be temporarily debarred from holding the office, after 2 days in judicial custody (like IAS, IPS, Judges and other public servants are suspended from their services).
2. Alternatively, being custodian of the Constitution, direct the Law Commission of India to examine election law of developed countries and prepare a comprehensive report to maintain nobility & dignity of Ministers, Legislators and Public Servants in spirit of Article 14.
3. Petitioner also seeks direction to Maharashtra Government to sack its Cabinet Minister Nawab Malik who was arrested on 23.2.2022 and continues in judicial custody in connection with cases of black money, benami properties, money laundering and disproportionate assets, linked with Mafia Don Dawood Ibrahim. Petitioner also seeks direction to Delhi Government to sack Cabinet Minister Satyendra Jain, who was arrested on 31.05.2022 and continues in judicial

custody in connection with cases of black money, benami properties, ghost companies, money laundering and disproportionate assets.

4. **The Facts** constituting cause of action accrued on 23.02.2022 and subsequent days when after extensive enquiry, ED arrested Cabinet Minister of Maharashtra Mr. Nawab Malik in connection with cases of disproportionate assets black money benami properties & money laundering linked with Dawood Ibrahim. The cause of action once again accrued on 31.05.2022 when Cabinet Minister of Delhi Satyendra Jain was arrested by ED in connection with cases of ghost companies, money laundering, disproportionate assets, black money and benami properties. The Court has rejected their bail application but both Ministers are holding constitutional post till date.

5. **The Injury** is large because Minister is not only a public servant under S. 21 of the Indian Penal Code and S. 2(c) of the Prevention of Corruption Act but also a Law Maker, which is Hon'ble & Noble Post and takes constitutional oath under Schedule-3. Minister gets salary, free rail ticket, free air ticket and several other allowances & perks for entire tenure and pension & other benefits for lifetime. So, he is a full-time salaried public servant like IAS, IPS, Judges. But, unlike the public servants, Ministers like Nawab Malik and Satyendra Jain

are still enjoying constitutional position, even while being in judicial custody for long time, which is arbitrary and contrary to Article 14.

6. There are very few constitutional offices as important as that of the Ministers. In *PV Narasimha Rao case [(1998) 4 SCC 626 para 162],* the Supreme Court while holding that MPs-MLAs are public servant for purposes of the Prevention of Corruption Act 1988 had held that: "*In a democratic form of government, it is the MP or a MLA who represents the people of his constituency in the highest law-making bodies at the Centre and State respectively. He is representative of the people in the process of making the laws that will regulate their society, he is their representative in deciding how the funds of the Centre and the States shall be spent and in exercising control over the executive. It is difficult to conceive of a duty more public than this or of a duty in which the State, the public and the community at large would have greater interest."* Of course, the refusal to consider candidates for IAS/judgeship may be on touchstone of suitability and not eligibility. It is worth noting, however, that the proposed direction is not an eligibility condition for legislators but rather merely imposes a condition on political executive. Moreover, in context of institutional integrity of office of the CVC, the Court has

held that the pendency of criminal cases may be considered a bar on appointment to important offices such as the CVC. *[(2011) 4 SCC 1.]*

7. That in the above context the Court may first of all, appreciate the Oath under Schedule 3, which a Minister takes while entering his office. Under the oath he has to affirm that he will be bear true faith and allegiance to the Constitution of India "..... I will faithfully discharge the duty upon which I am about to enter".

8. Now the duties which a Minister has to discharge have to be ascertained and then find out whether he has any moment in his life which he can devote anywhere else or to any other profession or vocation. He has to be present in the House on all days of its sitting. Restriction on him from absence from the House is to the extent that he has to seek leave of Speaker for his absence. Not only this, he can be disqualified, if he absents from sitting for 60 days. Besides being required to be present in all sittings of House, he also spends time to participate in the Standing Committees of which he may be selected as member. The MPs are also responsible for developmental work in his Constituency for which he is allocated a sum of Rs.5 crore per year under MPLAD scheme. He has not only to initiate bill but also ensure through his supervision the implementation of the

same. He has to adopt one undeveloped village every year under the Sansad Adarsh Gram Yojana and develop it.

9. In Part–IXA of the Constitution provision is made for representation of MP at intermediate, district, Panchayat & Zila Panchayat level. MLAs have also provided for the representation of the MP in Municipal Bodies within his Constituency. MP is also nominated to District Planning Committees, which are responsible for preparing development plans. MPs have been assigned an important role in monitoring of centrally funded schemes in their respective districts. National Rural Integrated Water Programme, which mandates the setting up of District Water Sanitation Implementation of which all MPs and MLAs from the area are Members. This is responsible for formulation, management and monitoring of projects of drinking water, scrutiny and approval of scheme submitted by Block/Gram Panchayat. Similarly, under the National Rural Health Mission, the MPs are members of District Level Vigilance and Municipal Committee to reveal the progress and implementation of scheme.

10. Parliamentary Rules have provisions for 'Question Hour' and 'Zero Hour' during which written and oral questions can be asked. These include questions specific to State/Constituency which he represents

or of national interest. Therefore, MPs must be present on every working day and dedicate themselves fulltime for people's welfare.

11. Parliament has many committees, whose members are nominated by Chairperson. The Committees scrutinize policies, programmes and bills and propose amendments to the same. There are other Committees such as Public Accounts Committee and Committee on Public Undertakings, which scrutinize reports submitted by CAG. These Committees are regulated by the Rules of Procedure.

12. Article 102 states that a MP can be disqualified if he holds an "Office of Profit". He can also be disqualified if he quits his party or defects to another party after being elected as MP under the 10th Schedule. Under Article 101, if an MP is absent from the meetings for more than 60 days without permission, his seat may be declared vacant. Under Article 104, if an MP sits or votes in Parliament without taking oath, he shall be liable to pay a fine of up to Rs 500 per day. However, there is no provision either in the Constitution or in the Rules of Procedure to measure the performance of MPs.

13. The Legislator plays important role in development of his State. He can fulfill his developmental role under the Member of Parliament Local Area Development Scheme (MPLADS). Under the scheme,

every MP is allocated 5 crore per year for initiating developmental works in his constituency. The scheme is administered by the Ministry of Statistics and Programme Implementation (MoSPI), which lays down guidelines on the works and activities permitted under MPLADS. The funds under MPLADS are channeled through the respective implementing agencies in the district.

14. Local bodies such as Panchayats and municipalities also have an important role in bringing development at the grassroots. Part IXA of the Constitution has a provision under which Legislator of State may provide for representation of MP at intermediate and District level Panchayats (Panchayat Samiti and Zila Parishad). Similarly, under Part IXA of the Constitution, State legislator may provide for representation of MPs in municipal bodies within the constituency. MPs may be nominated to District Planning Committees (DPCs) which are responsible for preparing development plans for district.

15. MPs have to monitor centrally sponsored schemes in respective constituencies. National Rural Drinking Water Program (NRDWP) mandates setting up of District Water Sanitation Mission (DWSM) of which MPs and MLAs from the area would be members. The DWSM is among other things, responsible for formulation, management

monitoring of projects on drinking water security, scrutiny and approval of schemes submitted by Block Panchayat/Gram Panchayat and coordination of matters relating to water and sanitation between different departments. Similarly, under the National Rural Health Mission (NRHM), MPs are expected to be member of District Level Vigilance and Monitoring Committees (DVMC) to review the progress in implementation of the scheme.

16. The MPs could also work towards catalyzing schemes of the State and Central government in their constituencies. This is possible by proactive engagement with public officials at the Central and State levels, greater interaction with constituents to understand needs, concerns, and greater information– both qualitative & quantitative – about their constituencies. As elected representatives, they have legitimate political authority to engage directly with the private/ corporate sector for industrial development of their constituencies.

17. The MPLAD Scheme provides funds for implementing development works in their constituencies. Permissible items under scheme are:

(i) *Purchase of tricycles, motorized/battery operated wheelchair, artificial limbs, etc. for physically challenged individuals. The items purchased will be given to the beneficiaries at a public function.*

Applications for such assistance shall be examined and approved by Committee under District Chief Medical Officer to ensure proper eligibility ***(ii)*** *Health Purchase of ambulances/hearse vans. District Magistrate/Chief Medical Officer is responsible for ownership and management of ambulances. Purchase of ambulances to transport sick or injured animals in Wildlife sanctuaries and National Parks. The Wildlife Sanctuary /National Park concerned would be responsible for ownership and management of the ambulances.* ***(iii)*** *Purchase of computers, computer software along with training for government and government aided institutions. Mobile Library for educational institutions of Centre, State, U.T/Local bodies and furniture up to Rs 50 lakh for primary/secondary school. Purchase of book for schools/colleges/public library and vehicles including school buses/vans with a limit of Rs 22 lakh/year. The Twelve Nominated MPs can recommend works anywhere in the Country.*

18. The primary function of the **MLA** is law-making. The Constitution of India states that the MLAs can exercise his legislative powers on the State List and the Concurrent List. The State List contains subjects of importance to individual State alone, such as trade, commerce, development, irrigation and agriculture, while the Concurrent List

contains items of importance to both the and the State Government such as succession, marriage, education, adoption, forests and so on.

19. Although MLAs are the highest law-making organs of the State and the profession is honorable and noble but there is no restriction on them to practice other professions like the bar on IAS, IPS, Judges to practice other profession. There is no action even if they are in custody like IAS IPS Judges are suspended. There is no provision of minimum number of hours that an MLA must spend in Assembly and his constituency. Similarly, he can be Minister in being in jail. Assembly holds absolute financial powers. A Money Bill can only originate in the Assembly if MLAs give consent. It must be noted that in the States that have a bicameral legislator, both the Legislative Council and the Vidhan Parishad can pass the Bill or suggest changes to the Bill within 14 days of its receipt although the members are not bound to abide by the changes suggested.

20. All grants and tax-raising proposals must be authorized by the MLAs. They exercise certain other executive powers also. MLAs control the activities and actions taken by the Chief Minister and the Council of Ministers. In other words, the government is answerable to the Legislative Assembly for all its decisions. In addition, A vote of

no-confidence can be passed only by the MLAs. If passed by a majority, force the ruling government to resign.

21. Question Hour, Cut Motions, Adjournment Motions can be exercised by MLAs in order to restrict the executive organ of the Government. MLAs have certain electoral powers also. They comprise the Electoral College that elects the President of India. MLAs elect Members of the Rajya Sabha, who represent a particular state and Speaker of the Legislative Assembly. In States with a bicameral legislator, one-third of the members of the Legislative Council are elected by the MLAs.

22. Significance attached by the founding fathers to 'Right to Equality' is evident not only from the fact that they employed both the expressions 'Equality before the Law' and 'Equal protection of the Laws' in the Article 14 but proceeded further to state that the same rule in positive and affirmative terms in the Articles 15-18. Right to Equality postulated by the Article 14 is as much a fundamental right as any other fundamental right dealt with in Part-III of the Constitution. Article 14 enunciates a vital principle, which lies at the core of our republicanism, and shines like a beacon light towards the goal of classless egalitarian socio-economic order which we

promised to build for ourselves when we made a tryst with density on that fateful day when we adopted our Constitution.

23. If we have to choose between fanatical devotion to the principle of equality and feeble allegiance to it, we would unhesitatingly prefer to err on the side of the former as against the later. What the equality clause is intended to strike at are real and substantial disparities and arbitrary and capricious actions of Executive and it would be contrary to the object and intendment of the equality clause to exalt delicate distinctions, shades of harshness & theoretical possibilities of prejudice into legislative inequality/executive discrimination.

24. At concluding session of Constituent Assembly, Dr Rajdendra Prasad said: *"We have prepared a democratic Constitution system. But, the successful working of democratic institution requires in those who have to work them, willingness to respect the viewpoint of others, capacity for compromise and accommodation. Many things, which cannot be written in constitution, are done by conventions. We shall show capacities and develop conventions. Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. That will depend upon the men who administer it. It is a trite saying that a country can have*

only the government it deserves. Our Constitution has provisions in it, which appear to some to be objectionable from one point of view or another. We must admit that the defects are inherent in the situation and the people at large. If the elected people are capable and men of character and integrity; they would be able to make the best even of a defective Constitution. If they are lacking, Constitution cannot help the Country. After all a constitution like a machine is a lifeless thing. It requires life because of men who control and operate it and India needs today nothing more than a set of honest men who will have the interest of the Country before them. There is fissiparous tendency arising out of various elements in life. We have communal caste language and provincial difference and so on and so forth. It requires men of strong character, men of vision, men who will not scarify the interest of country at large for the sake of smaller groups and areas and who rise above the prejudices, which are born of these differences. Today I feel that the work that confronts is even more difficult than the work which we had when we were engaged in the struggle. We did not then have any conflicting claims to reconcile, no lopes and fishes to distribute, no powers to share. We have all these now and the temptations are great. Would pray to God that we shall

have the wisdom and strength to rise above them and to serve the Country which we have succeeded in liberating".

25. In hind sight it can be assumed that a MP who has subscribed to the oath mentioned above and duties and functions which have been stated hereinabove, it will be oxymoron to ground realities. MLA cannot develop sense of belongings to his Constituency when he is in jail. He hardly has any time to develop his sense of belonging to his constituency. The oath which obliges him to perform only as an item of discharge all their duties can be added in a wish list.

26. That as stated earlier Legislator is a monthly salaried person. So far as Members of Parliament are concerned, their Salaries, Allowances and Pension are determined by the Allowances and Pensions of Members of Parliament Act, 1954. Rules have been framed under the Act providing for a Traveling and Daily Allowances Rule, 1957, Housing & Telephone Facility Rules, 1956, Medical Facilities Rules, 1959, Allowances for Journey Abroad Rules, 1960, Constituency Allowances Rules, 1986, Advance for the Purchase of Conveyance Rules, 1986, The Office Expenses Allowance Rules, 1988 etc. It is common knowledge that no Pay Commission is constituted for increasing salary & allowances of Members of Parliament. It is

increased by just raising hands in the house. Very recently a Member of Parliament while speaking at a Public Function made a statement that in last 10 years the salaries and allowances of Parliamentarian have been raised seven times. Needless to say that even for the best Bill there is always opposition in the House but so far as raising of salaries and perks is concerned, there is absolutely no resistance.

27. Court has repeatedly issued directions in the past to the Election Commission to exercise its powers under Article 324 with respect to "*superintendence, direction and control*" of the conduct of elections to Parliament and the State legislatures to redress violations of the fundamental rights and to protect the purity of the electoral process.

28. There is good reason why the Court must take steps to control the problem of criminalization of politics. A host of reports by eminent commissions and committees including the Election Commission in its *Proposed Electoral Reforms*-2004, the Law Commission in its 170th and 244th Reports (1999 & 2014), the Consultation Paper on Electoral Reforms issued by the National Commission to Review the Working of the Constitution headed by former Chief Justice of India Sh. M.N. Venkatachaliah (2002), the Second Administrative Reforms Commission (2009) and the Vohra Committee (1993) have drawn

attention to the severity of the problem and have suggested electoral reforms to stem the tide of criminals flowing into our polity.

29. The Court has in a series of decisions over the last two decades taken steps to address the problem by: **(i)** Recommending the setting up a high level committee to consider Vohra Committee Report in *Dinesh Trivedi v Union of India* (1994) 4 SCC 306; **(ii)** Directing the Election Commission to ensure that candidates file affidavits along with their nomination papers setting out the criminal cases pending against them in *Union of India v. Association for Democratic Reforms,* (2002) 5 SCC 294; **(iii)** Holding that the disqualification under Section 8 of the RPA would apply even where sentences run consecutively beyond two years in *K.Prabhakaran v. P.Jayarajan*, (2005) 1 SCC 754; **(iv)** Striking down Section 8(4) of the RPA which permitted sitting MP's and MLA's to continue in office if they have filed an appeal within a period of three months after conviction in *Lily Thomas v. Union of India,* (2013) 7 SCC 653; and **(v)** Most recently, on 01.11.2017 in WP(C) 699/2016(Ashwini Kumar Upadhyay v. UOI) , directing to set up fast track courts to complete the trial of criminal cases against sitting MP's and MLA's within a period of one year. Despite the reports referred to above

and the efforts of this Hon'ble Court, neither Parliament nor the Government of India has taken serious action to tackle the problem.

30. What is alarming is that the percentage of candidates with criminal antecedents and their chances of winning have increased steadily over the years. Data shows that where charges against a candidate are serious, it slightly increases statistical probability of his winning the election. The study yields even more alarming insights about the symbiotic relationship between criminals and pol. parties. Criminals who earlier used to help politicians win elections in the hope of getting favours have cut out the "middle man" in favour of entering politics themselves. Political parties in turn have become steadily more reliant on criminals as candidates not only because they "self-finance" their own elections in an era where election have become phenomenally expensive but also because candidates with criminal antecedents are more likely to win than "clean" candidates. Political parties are competing with each other in a race to bottom because they cannot afford to leave their competitors free to recruit criminal. Especially in the context of ethnic divisions such as caste-religious cleavages, criminals are able to get votes based on their caste or religious affiliation, their money power, their perceived willingness

to "bend," if not break, the law to favour their constituents and also because of coercion and intimidation including of their rivals.

31. The consequences of permitting criminals to contest elections and become legislators are extremely serious: *(i) During electoral process itself, not only do they deploy "enormous amounts of illegal money" to interfere with the outcome, they also intimidate voters and rival candidates. (ii) Thereafter, in our weak rule-of-law context, once they gain entry to our system of governance as legislators, they interfere with, and influence, the functioning of the government machinery in favour of themselves and members of their organization by corrupting government officers and, where that does not work, by using their contacts with Ministers to make threats of transfer and initiation of disciplinary proceedings. Some even become Ministers themselves, which only makes the situation worse. (iii) Legislators with criminal antecedents also attempt to subvert the administration of justice and attempt by hook or crook to prevent cases against themselves from being concluded and, where possible, to obtain acquittals. Long delays in disposal of cases against sitting MP's and MLA's and low conviction rates is testimony to their influence.*

32. The current legislative framework permits criminals to enter the electoral process and become legislators, thus (a) interferes with the purity and integrity of the electoral process; (b) violates the right to choose freely the candidate of the voter's choice and, therefore, the freedom of expression of voter under Article 19(1); (c) amounts to a subversion of democracy, which is part of the basic structure; and (d) is antithetical to the rule of law which is at core of Article 14.

33. The importance of insights from social sciences in constitutional decision-making should not be minimized. Without innovations such as the Brandeis brief that relied as much on data and analysis from the social sciences as legal arguments, many path-breaking decisions by U.S. Supreme Court that led to a fundamental reorientation of constitutional law, would not have been possible. Landmark decision in *Brown v. Board of Education*, 347 U.S. 483 (1954) on affirmative action was based on similar data and analysis from social sciences. When around Half of the MP's and MLAs cutting across all political parties have criminal cases pending against them, it is not surprising that a Parliamentary Standing Committee in 2007 itself simply rejected the recommendation of Law Commission in its 170thReport (1999) and Election Commission's "*Proposal for Electoral Reforms*"

(2004) to amend the RPA to impose an electoral disqualification on persons against whom charges have been framed for serious offences punishable by sentences of 5 years or more.

34. In the context of upholding the denial of the right to vote to those confined in jail or in police custody, the Court in *Anukul Chandra Pradhan v. Union of India*, (1997) 6 SCC 1, held: "*...criminalization of politics is bane of society and negation of democracy. It is subversive of free and fair elections, which is a basic feature of the Constitution. Thus, a provision made in the election law to promote the object of free and fair elections and facilitate maintenance of law and order, which are the essence of democracy, must, therefore, be so viewed*". (Law Commission in 244th Report records that eminent jurist Fali S. Nariman "... *articulated the need for enlarging the whole concept of disqualification and emphasized that the law needs to go ahead in order to promote purity and integrity of the democratic process."*)

35. Criminals should not be allowed to become law-givers. In *Association for Democratic Reforms* the Court also held that *"... voters may not elect law-breakers as law-makers and some flowers of democracy may blossom."* Candidates with criminal antecedents also interfere with the purity of electoral process through coercion

and intimidation of voters and rival candidates, which is a violation of the freedom of expression of the voter under Article 19(1)(a). The Court in *Prabhakaran*, (para. 54) gave judicial recognition to the fact that "*…persons with criminal background do pollute the process of election as they do not have many a hold barred and have no reservation from indulging in criminality to win success at an election.*" In *PUCL* (2013) 10 SCC 1 (para. 28), Court recognized that "*…casting of the vote is a facet of the right of expression of an individual and the said right is provided under Article 19(1)(a) of the Constitution of India* (*Association for Democratic Reforms,* (2002) 5 SCC 294, *People's Union for Civil Liberties*, (2003) 4 SCC 399) …".

36. Permitting criminals to become legislators results in the breakdown of the rule of law both in terms of the government machinery as well as the system of administration of justice. This Hon'ble Court must take steps to deter criminals from becoming legislators also to uphold the rule of law inherent in Article 14. The Court in *Manoj Narula* (para. 1) has held that: *"A democratic polity, as understood in its quintessential purity, is conceptually abhorrent to corruption and, especially corruption at high places, and repulsive to the idea of criminalisation of politics as it corrodes the legitimacy of the*

collective ethos, frustrates the hopes and aspirations of the citizens and has the potentiality to obstruct, if not derail, the rule of law …"

[*Lok Prahari* (2018) 4 SCC, 699, *Krishnamoorthy* (2015) 3 SCC 467]

37. Justice Dickson in Hunter v. Southam (1984)2SCR 145 (Canada):

"The task of expounding Constitution is crucially different from that of construing a statute. A statute defines present rights and obligations. It is easily enacted and easily repealed. A Constitution, by contrast, is drafted with an eye to future. Its function is to provide a continuing framework for legitimate exercise of governmental power and when joined by a Bill or Charter of Rights, for the unremitting protection of individual rights and liberties. Once enacted, its provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers. Judiciary is the guardian of the constitution and must, in interpreting its provisions, bear these considerations in mind."

38. In **M. Nagaraj v Union of India [(2006) 8 SCC 212] The Supreme Court observed:** *"The Constitution is not an ephemeral legal document embodying a set of legal rules for the passing hour. It sets out principles for an expending future and is intended to endure for ages to come and consequently to be adapted to the various crises of human affairs. Therefore, purposive rather than strict literal approach to interpretation should be adopted. A constitutional provision must be construed not in a narrow and constricted sense but in a wide and liberal manner so as to anticipate and take account*

of changing conditions and purposes so that a constitutional provision does not get fossilized but remains flexible enough to meet newly emerging problems and challenges."

39. The Power Conferred by Article 32 of the Constitution of India is in the widest terms and is not confined to issuing the high prerogative writs specified therein, but includes within its ambit the power to issue any directions or orders or writs which may be appropriate for enforcement of fundamental rights. Therefore, even when the conditions for issue of any of these writs are not fulfilled, the Supreme Court would not be constraint to fold its hand in despair and plead inability to help the citizen who has come before it for judicial redress. The Court is not helpless to grant relief in a case of violation of right to life and liberty and it should be prepared to *"forge new tools and device new remedies"*.

40. For purpose of vindicating these precious fundamental rights, in so far as the Supreme Court is concerned, apart from Articles 32 and 142, which empower the Court to issue such directions as may be necessary for doing complete justice in any matter, Article 144 also mandates all authorities civil or judicial in the territory of India, to act in aid of the order passed by Supreme Court. Being protector of civil liberties of citizens, the Supreme Court has not only the power

and jurisdiction, but also an obligation to protect the fundamental rights, guaranteed by **Part-III** in general and under Article 21 in particular, zealously and vigilantly. The Supreme Court and High Courts are the sentinels of justice and have been vested with extra ordinary powers of judicial review to ensure that rights of citizens are duly protected. **[MANOHAR LAL SHARMA (2014) 2 SCC 532]**

41. It is not merely right of individual to move the Supreme Court, but also responsibility of the Court to enforce fundamental rights. Therefore, if the petitioner satisfies the Supreme Court that his fundamental right has been violated, it is not only the 'right' and 'power', but the 'duty' and 'obligation' of the Court to ensure that the petitioners fundamental right is protected and safeguarded. **[Ramchandran, Law of Writs, 6th Edition, 2006, Pg. 131, Vol-1]**

42. Power of the Supreme Court is not confined to issuing prerogative writs only. By using expression "in the nature of", the jurisdiction has been enlarged. The expression "in the nature of" is not the same thing as the other phrase "of the nature of". The former emphasis as essential in nature, latter is content with mere similarity. **[M. NAGRAJ & OTHERS v. UNION OF INDIA, (2006) 8 SCC 212]**

43. **Supreme Court cannot refuse an application under Article 32**, merely on the grounds: **(i)** that such application has been made to Supreme Court in the first instance without resort to the High Court under Article 226 **(ii)** that there is some adequate alternative remedy available to petitioner **(iii)** that the application involves an inquiry into disputed questions of fact / taking of evidence. **(iv)** that declaratory relief i.e., declaration as to unconstitutionality of impugned statute together with consequential relief, has been prayed for **(v)** that the proper writ or direction has not been paid for in the application **(vi)** that the common writ law has to be modified in order to give proper relief to the applicant. **[K.K. KOCHUNNI v. STATE OF MADRAS, AIR 1959 SC 725 (729)] (vii)** that the Article in part three of the Constitution, which is alleged to have been infringed, has not been specifically mentioned in petition, if the facts stated therein, entitle the petitioner to invoke particular article. **[PRESS TRUST OF INDIA, AIR 1974, SC 1044]**

44. Article 32 of the Constitution provides important safeguard for the protection of the fundamental rights. It provides guaranteed quick and summary remedy for enforcing the fundamental right because a person complaining of breach of any of his fundamental rights by an

administrative action can go straight to the Court for vindication of his right without having to undergo directory processes of proceeding from lower to the higher court as he has to do in other ordinary litigation. The Court is the protector defender & guarantor of fundamental rights of the people. It was held: *"the fundamental rights are intended not only to protect individual rights but they are based on high public. Liberty of the individual and protection of fundamental rights are very essence of democratic way of life adopted by the Constitution and it is the privilege and duty of this Court to uphold those rights. This Court would naturally refuse to circumscribe them or to curtail them except as provided by Constitution itself."* **[DARYAO v. STATE OF UP, AIR 1961 SC 1457]**

45. In another case, the Supreme Court held: *"the fundamental right to move this Court can therefore be described as the corner stone of the democratic edifice raised by Constitution. That is why it is natural that the Court should regard itself as the protector and guarantor of fundamental rights and should declare that it cannot consistently with the responsibility led upon it, refuse to entertain application seeking protection against infringement of such right. In discharging the duties assigned to it, the Court has to play the role of a "sentinel*

on the qui vive" and it must always regard it as its solemn duty to protect the said fundamental right zealously and vigilantly." **[PREM CHAND GARG v. EXCISE COMMISSIONER UP AIR 1963 SC 996].**

46. **The Language used in Articles 32 and Article 226 is very wide** and the powers of the Supreme Court as well as of the High Court's extends to issuing orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provision of the Constitution, there is no need to look back to procedural technicalities of the writs in English Law. The Court can make and order in the nature of these prerogative writs in appropriate cases in appropriate manner so long as the fundamental principles that regulate the exercise of jurisdiction in matter of granting such writ are observed **[T.C. BASAPPA v. T. NAGAPPA, AIR 1954 SC 440]**

47. **An application under Article 32 cannot be thrown out simply** because the proper direction or writ has not been prayed for. Thus, where an order in the nature of mandamus is sought in a particular form, nothing bars the Court from granting it in a different form.

Article 32 gives a very wide discretion in the matter of framing the writ to suit the exigencies of particular cases. **[CHARANJIT LAL CHOWDHURY v. UOI AIR 1951 SC 41]** Even if petitioner has asked for wider relief which cannot be granted by Court, it can grant such relief to which the petitioner is entitled to **[B.R. RAMABHADRIAH, AIR 1981 SC 1653]**. Supreme Court has power to grant consequential relief to do full and complete justice even in favor of those persons who may not be before the Court or have not moved the Supreme Court. **[PRABODH VERMA, AIR 1985 SC 167]**

48. For the protection of fundamental right and rule of law, the Court under this article can confer jurisdiction on a body or authority to act beyond the purview of statutory jurisdiction or function, irrespective of the question of limitation prescribed by the statute. Exercising such power, Supreme Court entrusted the NHRC to deal with certain matters with a direction that the Commission would function pursuant to its direction and all the authorities are bound by the same. NHRC was declared not circumscribed by any condition and given free hand and thus act *sui generis* conferring jurisdiction of special nature **[PARAMJIT KAUR AIR 1999 SC 340]**

49. Simply because a remedy exists in the form of Article 226 for filing a writ in High Court, it does not prevent or bar an aggrieved person from directly approaching Supreme Court under Article 32. It is true that Court has imposed a self-restraint in its own wisdom on exercise of jurisdiction where aggrieved person has an effective alternative remedy in the form of Article 226. However, this rule which requires the exhaustion of alternative remedy is a rule of convenience and a matter of discretion rather than rule of law. It does not oust the jurisdiction of the Court to exercise its jurisdiction under Article 32. **[MOHAMMED ISHAQ (2009) 12 SCC 748]**

50. The Supreme Court is entitled to evolve the New Principles of Liability to make the guaranteed remedy to enforce fundamental rights real and effective, to do complete justice to aggrieved person. It was held that the court was not helpless and the wide powers given to the Court by Article 32 of the Constitution, which is fundamental right imposes a constitutional obligation on the Supreme Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enables reward of monetary compensation in appropriate cases, where that is the only redress

available. The remedy in public law has to be more readily available when invoked by have-nots who are not possessed of the where withal for enforcement of their right in private law, even though its exercise is to be tempted by judicial restraint to avoid circumvention of private law remedies, which more appropriate. Under Article 32, the Court can pass appropriate orders to do complete justice between parties even if it is found that petition filed is not maintainable in law. **[SAIHBA ALI (2003) 7 SCC 250]**

51. Petitioner's name is Ashwini Kumar Upadhyay. Residence at: _____, Ph. _____, E-mail: aku.adv@gmail.com, PAN: _____, AADHAAR-_____Income is ___ LPA. Petitioner is an Advocate & social-political activist and striving for gender justice, gender equality & dignity of women; unity & national integration and transparency & good governance. Petitioner has filed PILs for Police, Judicial and Election Reform.

52. Petitioner has not filed any other petition either in this Court or in any other Court seeking same or similar directions as prayed.

53. Petitioner has no personal interests in filing this PIL. This petition is totally bonafide and to preserve the nobility of constitutional office.

54. There is no civil, criminal or revenue litigation, involving petitioner, which has or could have legal nexus with issue involved in this PIL.

55. Petitioner has not submitted representation and there is no other remedy available except approaching this Court under Article 32.

56. There is no personal gain private motive or oblique reasons in filing.

PRAYERS

The Court may issue writ, order or direction to respondents to:

a) direct and declare that the Minister, who is not only a public servant under S. 21 of the IPC and S. 2(c) of the PCA but also a Law Maker and takes constitutional oath under Schedule-3; shall be temporarily debarred from holding office, after 2 days in judicial custody (like IAS, Judges & other public servants are suspended from services);

b) alternatively, being custodian of the Constitution, direct the Law Commission of India to examine election laws of developed countries and prepare a comprehensive report to maintain nobility & dignity of Ministers, Legislators and Public Servants in spirit of Article 14;

c) direct Maharashtra Government to sack its Cabinet Minister Nawab Malik who was arrested on 23.2.2022 & continues in judicial custody in connection with cases of black money, benami properties, money laundering & disproportionate assets, linked with Dawood Ibrahim;

d) direct Delhi Government to sack Cabinet Minister Satyendra Jain, who was arrested on 31.05.2022 and continues in judicial custody in connection with cases of black money, benami properties, ghost companies, money laundering and disproportionate assets;

e) pass such other order as Court deems fit and proper.

New Delhi — Advocate for petitioner
16.06.2022 — (Ashwani Kumar Dubey)