

IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO 1232 OF 2020
(UNDER ARTICLE 32 OF THE CONSTITUTION OF
INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

S/o Sh. Suresh Chandra Upadhyay

[Office: 15, M.C. Setalvad Chambers Block

Supreme Court of India, New Delhi-110001]

Res: G-284, Govindpuram, Ghaziabad-201013 ...Petitioner

Verses

1. Union of India
Through the Secretary,
Ministry of Law & Justice,
Shastri Bhawan, New Delhi-110001,
2. Election Commission of India
Through the Director Law
NirvachanSadan,
Ashoka Road, New Delhi-110001

.....Respondents

**USE NAME AGE EDUCATIONAL QUALIFICATION AND
PHOTOGRAPH OF CANDIDATES ON BALLOT AND EVM INSTEAD
OF THE SYMBOL OF POLITICAL PARTIES IN ORDER TO SECURE
EQUAL OPPORTUNITY TO ALL CONTESTING CANDIDATES IN
SPIRIT OF THE ARTICLES 14, 15, 21.**

To,

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 an appropriate writ order or direction to the ECI to use the '*Name, Age, Educational Qualification and Photograph*' of the candidates on EVM, in order to provide equal opportunity to contesting candidates and to weedout corruption, criminalization, casteism, communalism, regionalism, linguism and nepotism, the seven menaces of our democracy.

2. When the framers opted parliamentary system of democracy based on '*adult franchise*', they had not bargained for the '*law breakers becoming law makers*' but ADR reports confirm that the trend for last 25 year has been increasingly towards criminalization, and now 43% of MPs have criminal cases. Many MPs are facing serious criminal charges like rape, murder, kidnapping, extortion, fraud and theft and still they not only participate in law making but also interfere in police investigations to perpetrate their criminal empire.
3. Our democracy is suffering from seven menaces- Corruption, Criminalization, Casteism, Communalism, Lingusism, Regionalism and Nepotism and the best solution to weed these menaces is to replace political party symbols on Ballot & EVM with Name, Age, Education Qualification and Photograph of the Candidates. Ballot and EVM without political party symbol have many benefits **(a)** It will help electors to vote and support intelligent diligent and honest candidates, which is not possible in today's scenario. **(b)** It will not only weed out casteism and communalism from our democracy but also control use of black money and benami transaction in election. **(c)** Ballot and EVM without political party symbol will control dictatorship of political party bosses in ticket distribution and forced them to give ticket to those who religiously work for people's welfare. **(d)** Our democracy will be free from the grip of political

party bosses **(e)** Ballot & EVM without political party symbol will control nepotism and favouritism, one of the gravest menace to our democracy **(f)** Political parties will be forced to give tickets to local candidates rather than parachute candidates. **(g)** Ballots and EVMs without party symbol will not only control the criminalization of politics but also keep check on the middle-man and political brokers. **(h)** It will open gateway for social activists, educationists' jurists intellectuals and public welfare spirited honest people to enter into politics and work for betterment of society **(i)** The entry of honest and diligent people in Parliament and State Assemblies will lead to formation of better laws for people's welfare **(j)** Intelligent diligent and honest MPs will utilize MPLAD funds effectively **(k)** Efficiency of Parliament and State Assemblies will increase ten times **(l)** It will control regionalism-linguism, which have become a serious threat to democratic political system. **(m)** Long pending reforms viz. election reform police reform judicial reform education reform administrative reform industrial reform agriculture reform labor reform tax reform constitutional reform will be done within year.

4. Facts constituting cause of action accrued on 1.7.2019 and continue when petitioner came to know that 43% MPs have criminal cases. ADR analyzed self-sworn affidavits of 539 out of 542 MPs of the present Lok Sabha. Election in Vellore constituency was cancelled

and 3 MPs were not analyzed due to unavailability complete affidavits on ECI website at the time of analysis. Out of 539 MPs, 233(43%) MPs have declared criminal cases against themselves. Out of 542 winners analyzed after 2014 election, 185 (34%) had declared criminal cases against themselves and out of 543 winners analyzed after 2009 Lok Sabha election, 162 (30%) had declared criminal cases against themselves. There is an increase of 44% in the number of Lok Sabha MPs with declared criminal cases against themselves since 2009, and the root cause of this bizarre situation is the use of political party symbol on Ballot Paper and EVM. Presently 159(29%) MPs have declared serious cases including cases related to rape, murder, attempt to murder, kidnapping, crimes against women etc. Out of 542 winners analyzed after 2014 Lok Sabha election, 112 (21%) had declared serious cases against themselves. Out of 543 winners analyzed after 2009 Lok Sabha election, 76 (14%) had declared serious criminal cases against themselves. Thus, there is an increase of 109% in the number of Legislators with declared serious criminal cases since 2009. Winner from Idukki Constituency has 204 declared criminal cases including cases related to culpable homicide, house trespass, robbery, criminal intimidation etc. Total 30 MPs have declared cases of attempt to murder (S.307), 19 MPs have declared cases related to crimes against women and out

of 19 MPs, 3 MPs have declared cases related to rape (S.376). Total 29 MPs have declared cases related to hate speech. This is happening in India, which is governed by the Constitution and the root cause of this bizarre situation is use of party symbol on EVM.

5. ADR Report indicates that the chances of winning with criminal cases in 2019 election was 15.5% whereas for a candidate with clean background was merely 4.7%. Total 116 (39%) out of 301 winners from BJP, 29 (57%) out of 51 from INC, 10 (43%) out of 23 winners from DMK, 9 (41%) out of 22 winners of AITC, 13 (81%) out of 16 winners of JD(U) have declared criminal cases against themselves. Total 87(29%) out of 301 winners from BJP, 19 (37%) out of 51 winners from INC, 6 (26%) out of 23 winners from DMK, 4 (18%) out of 22 winners from AITC and 8 (50%) out of 16 winners from JD(U) have declared serious criminal cases against themselves.
6. Out of 539 MPs analyzed in 2019, 475 (88%) are crorepatis. Out of 542 winners analyzed in 2014 election, 443 (82%) were crorepatis. Out of 543 winners analyzed in 2009 election, 315 (58%) were crorepatis. Total 265 (88%) out of 301 MPs of BJP, 43 (84%) out of 51 MPs of INC, 22 (96%) out of 23 MPs of DMK, 20 (91%) out of 22 MPs of AITC, 19 (86%) out of 22 MPs of YSRCP, 18 (100%) MPs of Shiv Sena have declared assets worth more than Rs. 1 crore. Chance of winning for a crorepati candidate in 2019 is 21%, whereas

chance of winning for a candidate with assets less than Rs. 1 crore is 1%. Total 4 out of 539 winners analyzed in 2019 have not declared their PAN details. Average asset of the 225 re-elected MPs in 2019 is Rs 21.94 Crores and average assets of 225 re-elected MPs in 2014 were Rs 17.07 Crores. Average asset growth for 225 re-elected MPs, between 2014 and 2019 is Rs 4.87 Crores. Average % growth in assets for 225 re-elected MPs is 29%. Presently, 128(24%) MPs have declared their educational qualification to be between 5th and 12th, while 392(73%) MPs have declared educational qualification of graduate and above. One MP declared himself to be just literate and One MP is illiterate in 21st century. The root cause of this peculiar situation is the use of political party symbol on Ballot and EVM.

7. This is a matter of serious concern to both— the democracy and rule of law, because 43% MPs have criminal cases against them. This is causing irreversible harm to both— noble profession, public interest. Oath of Affirmation, which Legislator makes under Third Schedule, obliges him to faithfully discharge the duty upon which he enters. Needless to say that a convicted and imprisoned Legislator cannot faithfully discharge his duty, which requires fulltime involvement. This would amount to violation of the Constitutional Oath and the root cause is same- use of political party symbol on Ballot and EVM.

8. What is alarming is that the percentage of candidates with criminal antecedents and their chances of winning have actually increased steadily over the years. Analysis shows that where charges against a candidate are serious, the probability of his winning the election is also high. Criminals who helped politicians in hope of getting favours have cut out 'middle man' and are contesting themselves. Political parties have become more reliant on criminals as they 'self-finance' the election in an era where it is shockingly expensive and also, as they are more likely to win than 'clean' candidates. Parties are competing with each other in a race to the bottom because they cannot afford to leave their competitors free to recruit criminals.
9. The injury caused to the public is extremely large because 'free and fair election' is the basic dictum of our democracy and 'right to vote' is an important statutory right of citizens but practically both have become a dead letter due to use of political party symbol on ballot paper and EVM, which leads to confusion among voters and result in casting of wrong votes. For example, when the candidate is honest, patriot and diligent but his party president promotes criminalization castesim communalism regionalism linguism and nepotism and also involved in corruption, then voter finds himself trapped between a good candidate and a bad political party. The use of political party symbol on Ballot and EVM is not only the root

cause of corruption, black money generation, benami transactions, but also the main source of criminalization casteism communalism linguism regionalism and nepotism, the greatest menaces of our democracy. Due to the use of political party symbol on Ballot and EVM, political party bosses have not only become dictators and hijacked the democracy and democratic institutions but are also stockpiling huge black money, benami properties disproportionate assets by selling the political party symbol to looters criminals and even separatists during Parliament and State Assembly Elections.

- 10.** Use of party symbol on Ballot-EVM, breaches the rights guaranteed under Articles 14-15 read with Articles 325-326: **(i)** It prevents free exercise of right to vote due to use of money power by candidates **(ii)** It affects ordinary citizen's rights to get elected and puts him to great disadvantage due to reduced win-ability factor as independent. **(iii)** Use of party symbol on Ballot-EVM is arbitrary and irrational because it invites and enables criminal backgrounds to buy ticket from National and State recognized political parties and contest election. A person convicted of rape, extortion, kidnapping and murder can come back into the electoral arena. A person guilty of corruption, terrorism etc., can become a candidate of National and State recognized parties. Take the case of 2G, CWG, Coal scam accused coming back to election arena through National & State

recognized parties. Would they not affect the elections with money and muscle power, offsetting the valuable *freedom to vote without fear or favour*? The question to be asked is in the context of *'little man's audit'*, will such an audit be free? The answer is clearly no, as it cannot be. Principle of one man one vote is based on freedom to vote in a fair election and 'fair' denoting equal opportunity, which is impossible without removing symbol from Ballot and EVM.

- 11.** The Constitution was made after detailed discussion and framers didn't feel need of political party/symbol that's why the Constitution has no mention of political parties and symbol. But, current election system is revolving totally around them only. The Constitution talks about MP-MLAs who are considered as people's representative but now they have totally become the political party representative and working on the philosophy of *'Party First, Self Next, People Last'* instead of *'Nation First, People Next, Party Last'* and the root cause of this bizarre situation is political party symbol on Ballot and EVM.
- 12.** Use of political party symbol on Ballot-EVM brazenly offends equity, equality and equal opportunity, the most important fundamental right, guaranteed under Articles 14, 15, 21 & mentioned in Preamble of the Constitution. Political parties promote and propagate their election symbol throughout the year. Thus, even their criminal candidate has more probability to win than an honest

patriot hard working independent candidate. It is necessary to state that the purpose of printing political party symbol on Ballot was to weed out confusion in case of more candidates bearing the same name and to help illiterate electors in casting their vote properly; and the ECI had taken this step by using its plenary power under Article 324.

- 13.** The consequences of permitting criminals to contest and become legislators are extremely serious for our democracy and secularism:
- (i) during electoral process itself, not only do they deploy '*enormous amounts of illegal money*' to interfere with the outcome but also intimidate voters and rival candidates
 - (ii) Thereafter, in our weak rule-of-law context, once they gain entry in governance as legislator they interfere with and influence, the functioning of government in favor of themselves & their organization by corrupting government officers and where that doesn't work, by using their contacts with Ministers to make threats of transfer and initiation of disciplinary proceedings. Many become Ministers, which worsens the situation
 - (iii) Criminal attempt to subvert the administration of justice and attempt by hook or crook to prevent cases against themselves from being concluded & where possible, to obtain acquittals. Long delays in disposal and low conviction are testimony to their influence.
- Current framework: (a) interferes with purity and integrity of the

electoral process **(b)** violates the right to choose candidate and, therefore, freedom of expression 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.

- 14.** There is good reason why ECI must replace political party symbol on EVM with name age qualification and photograph of candidate. A host of reports including ECI's *Proposed Electoral Reforms*(2004), Law Commission 170th and 244th Report (1999 and 2014), the NCRWC's Proposals (2002), Second Administrative Reform Commission (2009), Vohra Committee (1993) have drawn attention to the severity of the criminalization and have suggested electoral reforms to stem the tide of criminals flowing into our polity but Centre did nothing. Taking note of these reports, the Apex Court has in a series of decisions over the last two decades taken various steps to address the problem including: **(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 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 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 1951 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. UOI* [(2013) 7 SCC 653]; and (iv) recently, in WP(C)699/2016 directing States to setup Special Courts to complete the trial of cases against MP's and MLA's within one year.

15. 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 favor their constituents and also because of coercion-intimidation including of their rivals. Criminals have no interest in standing as independents and contest from national and state recognized political parties. Criminals want to stand as candidates of political parties because parties are still connected to distinct leaders, families, ethnic groups and social bases. Aspiring candidates can tap into these networks to expand their appeal beyond their own narrow support bases. Second, in a country with high rates of poverty and illiteracy, party symbols hold great weight; they serve as an important visual cue through which millions of voters connect to politics. As such, the historical legacy of parties matter a great deal in Indian democracy.

- 16.** The Framers opted parliamentary system of democracy based on *'universal adult suffrage'* and conferred a valuable constitutional status on the most marginal voter at par with those having money and muscle power. *'One man one vote'* was the motto emanating from Articles 325-326, irrespective of his race, caste, sex and status. Therefore, right to vote freely is not only the most valuable right but also the greatest egalitarian principle enshrined in the Constitution.
- 17.** When we analyze right to vote in context of constitutional scheme:
- (i) It confers equality of status on the most marginalized citizen at par with the most powerful
 - (ii) It fully subserves the ideals of social political equality and justice as enshrined in the Preamble.
 - (iii) It gives equal opportunity to the most marginalized citizen to have equal say in governance of the Country and
 - (iv) It enjoins Legislator to reflect his will amongst others. This is what Hon'ble Justice Krishna Aiyar meant when he talks of 'little man' expressing his 'social political audit' of the government and his representative.
- What should therefore be our aim, is how to make this exercise, free from all pollutions caused due to money-muscle power, otherwise the above right given to the little man would become worthless and the tall claims made in the Preamble would also be defeated.
- 18.** The Supreme Court held that the right to vote is an 'expression' of will and is therefore, a guaranteed right under Article 19(1)(a). The

Court, after holding that the 'little mans' right to vote is traceable to Article 19 (1)(a) when he makes his audit, further went on to hold that he has a right to information about the candidates and the law must provide for giving requisite information to enable effective exercise of this right, though, Section 33, was silent in this regard. This was taken to be a breach of Article 19 and requisite affidavits were required to be filed at the time of nomination. The law didn't consciously require, yet giving of information was ensured and enforced, to make the exercise of 'little man's social and political audit more effective. The Apex Court found this exercise necessary. Replacing the election symbol from Ballot & EVM with Name Age Qualification and Photograph of the candidate, would subserve the same cause by enabling same audit to be exercised freely-effectively.

- 19.** The framers opted adult suffrage and incorporated Articles 325-326. The principle enshrined in the provisions is called '*One Man One Vote*' principle. It ensures equality of status and non-discrimination. This principle has been repeatedly emphasized as one of the 'basic features' of our Constitution. Apart from having a 'basic feature' there is one aspect which has hither to not been noticed is that the right to vote enshrined can be a great egalitarian concept traceable to Article 14. It is the genus and Article 15, 16, 17, 25, 325 and 326

are its species. By subscribing to the principle of ‘one man one vote’, the framers in one stroke elevated the status of most marginalized to that of the most powerful. They ensured equal right to vote on all, as well as, all votes carry equal weight in the elections to the legislatures that, will express the ‘Will’ of the people. It is for this reason the principle of ‘one man one vote’ has been regarded as central feature or the heart of the democratic system imbedded in our Constitution. Articles 14-15 are not only philosophical concepts but also overarching principles called ‘genus’ and the ‘species’ would be the Articles that partake the equity equality equal opportunity.

20. The principle of equality is equally sponsored by Articles 325-326. Article 325 is practically in the same form as Article 15. The right to vote enshrined, in the principle of ‘one man one vote’ [Article 325-326], is one of the ‘basic features’ of the Constitution. It has also been traced to Article 19(1) as ‘expression’. Though Articles 325-326 are not the part of Part III physically but it can still be so regarded as it partakers of the same nature and character as Articles 14-15.

21. Breach of right under Articles 325-326 would immediately attract Articles 14-15. In order to understand how Articles 14,19,325,326 are breached presently, it is necessary to understand the nature and character of the principle of ‘one man one vote’. Apart from being a

basic feature of our Constitution and important human rights, it operates in two ways to ensure equality. Everyone has equal right to vote irrespective of caste creed sex religion etc and all votes carry equal weight. Breach of either of these would result in breach of Articles 14-15. Anything that tinkers with this has potential to upset whole edifice of universal suffrage. The Apex Court had held that the heart of parliamentary system is free and fair election. The term 'free and fair election' may not only be seen in the context of 'Right to Vote' but also from the angle of 'freedom of voting'. The Court held that 'free' elections ensure democracy while 'fair' denotes equal opportunity to all. Thus, the principle '*One Man One Vote*' demands equal opportunity, to vote with guaranteed freedom, to vote without fear or favour. Several reports demonstrate that 'criminalization of politics' has great potential to breach the 'freedom to vote' without fear or favour and the root cause of the 'criminalization of politics' is the use of political party symbol on Ballot Paper and EVM.

- 22.** Legislators, who make Laws, should have a minimum qualification so that they develop our nation at large scale speed with best skill. In the rapidly developing world, every person is equipped with knowledge. For this, information and communication technology is helpful and one can improve his education, the prime source for

development of human being. To understand ongoing changes, Legislators may improve their educational qualifications. Moreover, elector has right to know the age and qualification of candidate.

23. It is true that even if a person went through higher education, he can still be unsuitable to be legislator, but to have a legislator who didn't even go to college/university in 21st century is unfathomable. Do we, as a country, wish to be represented by a dumbfounded persona who can't find the exit or well-spoken and expressed figure that can handle any situation that arise at the moment? We have to make education a necessary qualification of legislators otherwise we will start regressing toward dark ages. The youth, preparing for administrative services, judiciary, medical, engineering leaves their luxuries behind for the sake of that position. But for Legislators, who are public servant & Law Maker, there is no rule. Actually, whoever is running the country should be more literate.

24. An educated mind is a healthy mind and a healthy mind can govern in healthy way. An educated person is able to think logically and can differentiate between right-wrong which is necessary in democracy. We cannot give our country in the hands of a person who doesn't know how to handle himself. It is not that the person should be highly qualified but there should be a minimum qualification. Education is essential for a legislator because he is the one who is

responsible to take decisions. Legislators should have minimum qualification and good knowledge because it helps them to make the right decisions for development of society. Ill-literate Legislator has a lesser thinking, realizing and implementing ability, which he needs to uphold. Political system hampers and its supremacy is been devastated. Not only this, the youths make a mindset that study has no value as illiterate legislators are more prosperous than the educated ones. Uneducated Legislators may misuse their power and in order to prevent from all these shortcomings, minimum education should be compulsory for contesting. In today's world, even electrician, fitter, driver, helper, constable peon, clerk requires a minimum qualification, so why not, for those who carry enormous responsibility of developing a vast and versatile nation?

- 25.** Legislators receive salary pension etc. from public funds and same having been sanctified by the Constitution and the law. Article 106 provides that “the members of either House of Parliament shall be entitled to receive salaries and allowances as may from time to time be determined by Parliament by law.” The law in pursuance thereof is Salary Allowances Pension of Members of Parliament Act, 1954 along with Rules (i) Travelling and Daily Allowances Rules, 1957 (ii) Housing and Telephone Facilities Rules, 1956 (iii) Medical Facilities Rules, 1959(iv) Allowances for Journeys Abroad Rules,

1960 (v) Constituency Allowance Rules, 1986 (vi) Advance for Purchase of Conveyance Rules 1986 (vii) Office Expense Allowance, 1988. On a regular basis, each of the above stated perks are revised upwards, at the behest of Legislators themselves, drawing on the consolidated fund of India. There are similar provisions in each of the States for the MLAs as well. There can be no quarrel with this however, as they are considered reasonable expenditures for the upkeep and maintenance of an individual duly elected/nominated to serve nation in high house of Parliament. Legislators are not only a public servants but also lawmaker, who take Constitutional Oath to serve the people and towards this end, they should be at least Graduate.

26. When a Bill is introduced in Parliament or State Assembly, the Legislators are supposed to debate on various provisions of the Bill, and propose amendments if they so wish. An illiterate legislator cannot faithfully perform this duty without help of others. Besides the above facts, the Oath of Affirmation, which a Legislator makes under Third Schedule, obliges him to faithfully discharge the duty upon which he is entering. Needless to say that illiterate MP cannot faithfully discharge his duty as a legislator. Rules of procedure in each House of Parliament have provisions for 'Question Hour' and 'Zero Hour' during which written and oral questions can be asked.

These include questions specific to State or Constituency, which the Legislator represents, or of national interest. Therefore, Legislators must be at least Graduate, if not highly literate. The Parliament has many committees, whose members are nominated by the 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 in each House. An illiterate Legislator cannot perform this duty also.

- 27.** The Constitution has provisions to make MP's accountable. 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 an MP under the 10th Schedule. Under Article 101, if an MP is absent from 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. But, there is no provision to describe minimum qualification and maximum age limit for contesting election, which is a gap, yet not filled. Publishing the Age & Qualification on EVM will strengthen our democracy.

- 28.** The Legislator plays an important role in development of his State. He can fulfill his developmental role under Member of Parliament Local Area Development Scheme (MPLADS). Under the scheme, every MP is allocated Rs 5 crore/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 district.
- 29.** 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 (PanchayatSamiti and ZilaParishad). 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.
- 30.** MPs have to monitor centrally sponsored schemes in their constituencies. The National Rural Drinking Water Programme (NRDWP) mandates setting up of District Water Sanitation Mission (DWSM) of which MPs & MLAs from the area would be members.

DWSM is among the 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 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 scheme. The MPs could also work towards catalyzing schemes of State and Centre in their constituencies. This is possible by proactive engagement with public officials at the Central and State levels, greater interaction with constituents to understand their needs and concerns, and greater information both qualitative & quantitative about constituencies. As elected representatives, they have legitimate political authority to engage directly with the private/corporate sector for industrial development of their constituencies. 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/management of ambulances. Purchase of ambulances to transport sick or injured animals in Wildlife sanctuaries and National Parks. 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. Thus, Legislators have multidimensional role in our democratic system therefore it is need of the hour to set minimum qualification and maximum age limit.

- 31.** The primary function of an MLA is law-making. The Constitution states that the MLA can exercise his legislative powers on the State and Concurrent List. The State List contains subjects of importance to individual State alone, such as trade, commerce, development, irrigation and agriculture, while Concurrent List contains items of importance to both the Union and the State such as succession, marriage, education, adoption, forests and so on. Although ideally

only the MLA can legislate on State List, the Parliament can legislate on subjects in the State List while Emergency has been imposed on the State. In addition to that, on the matters that are included in the Concurrent List, the laws made by Parliament are prioritized over the laws made by the Legislative Assembly if President does not give his assent to the laws made by Legislative Assembly. The Legislative Assembly holds absolute financial powers. A Money Bill can only originate in Legislative Assembly if MLAs give consent. In the States that have a bicameral legislator, both the Legislative Council and 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. The Question is: Can an illiterate legislator perform his constitutional duty faithfully in 21st century?

- 32.** All grants and tax-raising proposals must be authorized by the MLAs. They exercise certain other executive powers as well. 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, it can force the ruling government to resign. 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. Although MLAs are the highest law-making organs of the State and the profession is honorable and noble but there is no provision of minimum qualification and maximum age limit for them like Members of Executive and judiciary.

- 33.** Powers of the ECI operates in areas left unoccupied by legislation and is plenary in character. [*KanhiyaLal Omar v. R.K. Trivedi, (1985) 4 SCC 628, Para 16*] The power of “*superintendence, direction and control*” of the conduct of elections, vested in the Election Commission, is executive in character. [*A.C. Jose v. Sivan Pillai, (1984) 2 SCC 656, p. 22*] The Symbols Order is traceable to the power of the Election Commission under Article 324. [*KanhiyaLal Omar, para 16*] The power to amend, vary or rescind an order which is administrative in character under Section 21 of General Clauses Act, specifically referred to in paragraph 2(2) of the Symbols Order, would permit Election Commission to withdraw

recognition of a political party. [*JanataDal v. ECI, (1996) 1 SCC 235, para 6*]

- 34.** ECI's powers under Article 324 have been repeatedly held to be wide ranging. From the judgment of *Ponnuswamy*, [1952 SCR 218] where the phrase "*conduct of elections*" was interpreted widely, and held that the ECI is charged with all steps necessary to ensure a smooth conduct of election. This position has been bolstered by Constitution Bench decisions declaring that where there is a void or vacuum, the powers of the ECI could be exercised. [*M.S.Gill, (1978) 1 SCC 405, Special Reference No.1/2002, (2002) 8 SCC 237*]. It was precisely the above that was invoked in ADR Case [(2002)5 SCC 294] to conclude that right of voter under Article 19 must be fulfilled by compulsorily having antecedents of the candidate declared to them. As a result, directions were given to the ECI to solicit the same from contesting candidates. The Apex Court has repeatedly stated that contestants to legislative office must have high levels of integrity and good person ought to be chosen. [PUCL (2013) 10 SCC 1, Ashok Chavan (2014) 7 SCC 99] From the time of *Indira Gandhi* [1975 Supp. SCC 1], it is an established precept that free-fair election is inalienable part of the Constitutional but it is impossible without enhancing transparency [PUCL(2013)10SCC1,Manoj

Narula, (2014) 9 SCC 1]. Thus, it is clear that ECI can replace the party symbol with candidate's photograph.

- 35.** Rule 49B of the Conduct of Election Rules provides that the EVM shall contain the particulars as the ECI specifies. Similarly, Rules 22 and 30 provide that particulars on the postal ballot and ordinary ballot paper shall be as specified by the ECI. In terms of the above mentioned Rules 22, 30 & 49B, the ECI had noted that there are many cases where candidates with similar names contest for same constituency. Although appropriate suffixes were added to the names of candidates in the event of two or more candidates having same name, ECI considered that additional measures are required for confusion in the minds of electors at the time of voting. The ECI modifies its existing directions under Rules 22, 30, 49B and decided that from 01.5.2015 onwards, ballot papers and EVMs shall contain the photograph of the candidates but not removed the symbol.
- 36.** The functions performed by legislators are vital to democracy and there is no reason why they should be at lower standard than IAS, IPS and Judges. Candidates for judgeship certainly would not be considered at all if they are looters or criminals. If the Legislator, who has to make good Laws & amend the Constitution, is involved in corruption crime casteism communalism linguism regionalism and nepotism, then he would be disastrous for country and society.

37. Proposal is vital because democracy and rule of law depends upon the character competence and integrity of the legislators. People like Dr. Rajendra Prasad, Sardar Patel, Dr. Ambedkar, SP Mukherjee, Ram Manohar Lohia, Deendayal Upadhyay, C. Rajagopalachari, Jagjivan Ram and Rafi Ahmed Kidwai are still there in every State and wish to serve the nation but political parties don't give tickets.
38. Petitioner has not filed any other petition either in this Court or in any other High Court seeking same or similar directions as prayed.
39. Petitioner's name Ashwini Kumar Upadhyay, G-284, Govindpuram, Ghaziabad-201013, PAN:AAVPU7330G, AADHAAR-659982174779, #8800278866, aku.adv@gmail.com, Annual Income is 10 LPA. Petitioner is an Advocate & social-political activist, striving for unity, fraternity, national integration, transparency, good governance and the development of socially-economically downtrodden people.
40. Petitioner has no personal interests, individual gain, private motive or oblique reasons in filing this PIL. This is to clean to democracy.
41. There is no civil, criminal or revenue litigation, involving petitioner, which has/could have any legal nexus, with issue involved in the PIL
42. Petitioner submitted Representation to ECI on 1.4.2020 [**Annex P-1, pg. 35-50**] but it has not taken appropriate steps till date.

PRAYERS

Keeping in view the above stated facts and circumstances; the Court may be pleased to issue appropriate writ, order or direction to:

- a) declare that use of party symbol on EVM is illegal-unconstitutional and violative of Articles 14, 15, 21 of the Constitution of India;
- b) declare that the words '*and symbol*' occurring in Rule 49B(4)(a) of the Conduct of Election Rules 1961, are contrary to Articles 14, 15, and 21 of the Constitution, and hence void and inoperative;
- c) direct the Election Commission of India to use the '*Name, Age, Educational Qualification and Photograph*' of the candidates on EVM, in order to provide equal opportunity to contesting candidates and to weedout corruption criminalization casteism communalism regionalism linguism and nepotism, the 07 menaces of democracy;
- d) In the alternative, being custodian of the Constitution and protector of fundamental rights, direct the Election Commission of India to use its plenary power conferred under Article 324, to remove the symbols from Ballot and EVM and use Name, Age, Educational Qualification and Photograph of the contesting candidates; and,
- e) pass such other Order/direction(s), as Court deems fit and proper.

26.10.2020

ASHWANI

KUMAR

DUBEY

NEW DELHI

ADVOCATE

FOR

PETITIONER

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO OF 2020

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Verses

Union of India & Another

...Respondents

AFFIDAVIT

1. I, Ashwini Kumar Upadhyay aged 45 years, son of Sh. Suresh Upadhyay, Office at: 15, New Lawyers Chambers, Supreme Court, New Delhi-110001, Residence at: G-284, Govindpuram, Ghaziabad-201013, at present at New Delhi, do hereby solemnly affirm and declare as under:
2. I am the sole petitioner above named and well acquainted with facts and circumstances of the case and as such competent to swear this affidavit.
3. I have read and understood contents of accompanying synopsis and list of dates pages (B –K) writ petition paras (1 – 42) pages (1 – 31) and total pages (1 - 53) which are true and correct to my knowledge and belief.
4. Annexure filed with the petition is true copy of respective original.
5. I have not filed any other petition either in this Hon'ble Court or in any other Court seeking same or similar directions as prayed.
6. I have no personal interests, individual gain, private motive or oblique reasons in filing this petition. It is not guided for gain of any other individual person, institution or body. The only motive is public interest.
7. There is no civil, criminal or revenue litigation, involving petitioner, which has or could have legal nexus, with issue involved in this petition.
8. There is no requirement to move concerned government authority for relief sought in this petition. There is no other remedy except filing this PIL.
9. I have gone through the Article 32 and the Supreme Court Rules and do hereby affirm that the present petition is in conformity thereof.
10. I have done whatsoever enquiry/investigation, which was in my power to do, to collect the data or material, which was available; and which was relevant for this Hon'ble Court to entertain the present petition.
11. I've not concealed any data/material/information in this petition; which may have enabled this Hon'ble Court to form an opinion, whether to entertain this petition or not and/or whether to grant any relief or not.
12. The averments made in this affidavit are true and correct to my personal knowledge and belief. No part of this Affidavit is false or fabricated, nor has anything material been concealed there from.

(Ashwini Kumar

Upadhyay)

DEPONENT

VERIFICATION: I, Deponent do hereby verify that contents of above affidavit are true and correct to my personal knowledge and belief. No part of this affidavit is false nor has anything material been concealed there from. I hereby solemnly affirm and declare it today i.e. 26th day of October 2020 at Delhi.

(Ashwini Kumar Upadhyay)

DEPONENT

APPENDIX

CONDUCT OF ELECTIONS RULES, 1961

(STATUTORY RULES AND ORDER)

CHAPTER II - VOTING BY ELECTRONIC VOTING MACHINES

[INSERTED BY NOTIFICATION NO S.O. 230(E), DATED 24TH MARCH,
1992]

49A. Design of Electronic Voting Machines.—Every electronic voting machine (hereinafter referred to as the voting machine) shall have a control unit and a balloting unit and shall be of such designs as may be approved by the Election Commission.

49B. Preparation of voting machine by the returning Officer.—(1) The balloting unit of the voting machine shall contain such particulars and in such language or languages as the Election Commission may specify.

(2) The names of the candidates shall be arranged on the balloting unit in the same order in which they appear in the list of the contesting candidates.

(3) If two or more candidates bear the same name, they shall be distinguished by the addition of their occupation or residence or in some other manner.

(4) Subject to the foregoing provisions of this rule, the returning officer shall—

(a) fix the label containing the names and symbol of the contesting candidates in the balloting unit and secure that unit with his seal and the seals of such of candidates or their election agents present as are desirous of affixing the same;

(b) set the number of contesting candidates and close the candidate set section in the control unit and secure it with his seal and the seals of such of the candidates or their election agents present as are desirous of affixing the same.

ARTICLE 14 IN THE CONSTITUTION OF INDIA

14. Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

ARTICLE 15 IN THE CONSTITUTION OF INDIA

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

(3) Nothing in this article shall prevent the State from making any special provision for women and children

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the SC and the ST

ARTICLE 21 IN THE CONSTITUTION OF INDIA

21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law

To,

1.4.2020

Mr. Sunil Arora,

Chief Election Commissioner,

Election Commission of India, New Delhi-110001

Subject: Remove Party Symbol from Ballot Paper and EVM

Sir,

1. When the framers opted parliamentary system of democracy based on '*adult franchise*', they had not bargained for the '*law breakers becoming law makers*' but ADR reports confirm that the trend for last 25 year has been increasingly towards criminalization, and now 43% of MPs have criminal cases. Many MPs are facing serious criminal charges like rape, murder, kidnapping, extortion, fraud and theft and still they not only participate in law making but also interfere in police investigations to perpetrate their criminal empire.
2. Our democracy is suffering from seven menaces- Corruption, Criminalization, Casteism, Communalism, Linguism, Regionalism and Nepotism and the best solution to weed these menaces is to replace political party symbols on Ballot & EVM with Name, Age, Education Qualification and Photograph of the Candidates. Ballot and EVM without political party symbol have many benefits
(a) It will help electors to vote and support intelligent diligent and honest candidates, which is not possible in today's scenario. (b) It will not only weed out casteism and communalism from our democracy but also control use of black money and benami transaction in election. (c) Ballot and EVM without political party symbol will control dictatorship of political party bosses in ticket distribution and forced them to give ticket to those who religiously work for people's welfare. (d) Our democracy will be free from the grip of political party bosses (e) Ballot & EVM without political party symbol will control nepotism and favouritism, one of the gravest menace to our democracy (f) Political parties will be forced to give tickets to local candidates rather than parachute candidates. (g) Ballots and EVMs without party symbol will not only control the criminalization of politics but also keep check on the middle-man and political brokers. (h) It will open gateway for social activists, educationists' jurists intellectuals and public welfare spirited honest people to enter into politics and work for betterment of society (i) The entry of honest and diligent people in Parliament and State Assemblies will lead to formation of better laws for people's welfare (j) Intelligent diligent and honest MPs will utilize MPLAD funds effectively (k) Efficiency of Parliament and State Assemblies will increase ten times (l) It will control regionalism-linguism, which have become a serious threat to democratic political system. (m) Long pending reforms viz. election reform police reform judicial reform education reform administrative

reform industrial reform agriculture reform labor reform tax reform constitutional reform will be done within year.

3. Facts constituting cause of action accrued on 1.7.2019 and continue when petitioner came to know that 43% MPs have criminal cases. ADR analyzed self-sworn affidavits of 539 out of 542 MPs of the present Lok Sabha. Election in Vellore constituency was cancelled and 3 MPs were not analyzed due to unavailability complete affidavits on ECI website at the time of analysis. Out of 539 MPs, 233(43%) MPs have declared criminal cases against themselves. Out of 542 winners analyzed after 2014 election, 185 (34%) had declared criminal cases against themselves and out of 543 winners analyzed after 2009 Lok Sabha election, 162 (30%) had declared criminal cases against themselves. There is an increase of 44% in the number of Lok Sabha MPs with declared criminal cases against themselves since 2009, and the root cause of this bizarre situation is the use of political party symbol on Ballot Paper and EVM. Presently 159(29%) MPs have declared serious cases including cases related to rape, murder, attempt to murder, kidnapping, crimes against women etc. Out of 542 winners analyzed after 2014 Lok Sabha election, 112 (21%) had declared serious cases against themselves. Out of 543 winners analyzed after 2009 Lok Sabha election, 76 (14%) had declared serious criminal cases against themselves. Thus, there is an increase of 109% in the number of Legislators with declared serious criminal cases since 2009. Winner from Idukki Constituency has 204 declared criminal cases including cases related to culpable homicide, house trespass, robbery, criminal intimidation etc. Total 30 MPs have declared cases of attempt to murder (S.307), 19 MPs have declared cases related to crimes against women and out of 19 MPs, 3 MPs have declared cases related to rape (S.376). Total 29 MPs have declared cases related to hate speech. This is happening in India, which is governed by the Constitution and the root cause of this bizarre situation is use of party symbol on Ballot and EVM.
4. ADR Report indicates that the chances of winning with criminal cases in 2019 election was 15.5% whereas for a candidate with clean background was merely 4.7%. Total 116 (39%) out of 301 winners from BJP, 29 (57%) out of 51 from INC, 10 (43%) out of 23 winners from DMK, 9 (41%) out of 22 winners of AITC, 13 (81%) out of 16 winners of JD(U) have declared criminal cases against themselves. Total 87(29%) out of 301 winners from BJP, 19 (37%) out

of 51 winners from INC, 6 (26%) out of 23 winners from DMK, 4 (18%) out of 22 winners from AITC and 8 (50%) out of 16 winners from JD(U) have declared serious criminal cases against themselves.

5. Out of 539 MPs analyzed in 2019, 475 (88%) are crorepatis. Out of 542 winners analyzed in 2014 election, 443 (82%) were crorepatis. Out of 543 winners analyzed in 2009 election, 315 (58%) were crorepatis. Total 265 (88%) out of 301 MPs of BJP, 43 (84%) out of 51 MPs of INC, 22 (96%) out of 23 MPs of DMK, 20 (91%) out of 22 MPs of AITC, 19 (86%) out of 22 MPs of YSRCP, 18 (100%) MPs of Shiv Sena have declared assets worth more than Rs. 1 crore. Chance of winning for a crorepati candidate in 2019 is 21%, whereas chance of winning for a candidate with assets less than Rs. 1 crore is 1%. Total 4 out of 539 winners analyzed in 2019 have not declared their PAN details. Average asset of the 225 re-elected MPs in 2019 is Rs 21.94 Crores and average assets of 225 re-elected MPs in 2014 were Rs 17.07 Crores. Average asset growth for 225 re-elected MPs, between 2014 and 2019 is Rs 4.87 Crores. Average % growth in assets for 225 re-elected MPs is 29%. Presently, 128(24%) MPs have declared their educational qualification to be between 5th and 12th, while 392(73%) MPs have declared educational qualification of graduate and above. One MP declared himself to be just literate and One MP is illiterate in 21st century. The root cause of this peculiar situation is the use of political party symbol on Ballot and EVM.
6. This is a matter of serious concern to both– the democracy and rule of law, because 43% MPs have criminal cases against them. This is causing irreversible harm to both– noble profession, public interest. Oath of Affirmation, which Legislator makes under Third Schedule, obliges him to faithfully discharge the duty upon which he enters. Needless to say that a convicted and imprisoned Legislator cannot faithfully discharge his duty, which requires fulltime involvement. This would amount to violation of the Constitutional Oath and the root cause is same- use of political party symbol on Ballot and EVM.
7. What is alarming is that the percentage of candidates with criminal antecedents and their chances of winning have actually increased steadily over the years. Analysis shows that where charges against a candidate are serious, the probability of his winning the election is also high. Criminals who helped politicians in hope of getting favours have cut out ‘middle man’ and are

contesting themselves. Political parties have become more reliant on criminals as they 'self-finance' the election in an era where it is shockingly expensive and also, as they are more likely to win than 'clean' candidates. Parties are competing with each other in a race to the bottom because they cannot afford to leave their competitors free to recruit criminals.

8. The injury caused to the public is extremely large because 'free and fair election' is the basic dictum of our democracy and 'right to vote' is an important statutory right of citizens but practically both have become a dead letter due to use of political party symbol on ballot paper and EVM, which leads to confusion among voters and result in casting of wrong votes. For example, when the candidate is honest, patriot and diligent but his party president promotes criminalization casteism communalism regionalism linguism and nepotism and also involved in corruption, then voter finds himself trapped between a good candidate and a bad political party. The use of political party symbol on Ballot and EVM is not only the root cause of corruption, black money generation, benami transactions, but also the main source of criminalization casteism communalism linguism regionalism and nepotism, the greatest menaces of our democracy. Due to the use of political party symbol on Ballot and EVM, political party bosses have not only become dictators and hijacked the democracy and democratic institutions but are also stockpiling huge black money, benami properties disproportionate assets by selling the political party symbol to looters criminals and even separatists during Parliament & Assembly Elections.
9. Use of party symbol on Ballot-EVM, breaches the rights guaranteed under Articles 14-15 read with Articles 325-326: **(i)** It prevents free exercise of right to vote due to use of money power by candidates **(ii)** It affects ordinary citizen's rights to get elected and puts him to great disadvantage due to reduced win-ability factor as independent. **(iii)** Use of party symbol on Ballot-EVM is arbitrary and irrational because it invites and enables criminal backgrounds to buy ticket from National and State recognized political parties and contest election. A person convicted of rape, extortion, kidnapping and murder can come back into the electoral arena. A person guilty of corruption, terrorism etc., can become a candidate of National and State recognized parties. Take the case of 2G, CWG, Coal scam accused coming back to election arena through

National & State recognized parties. Would they not affect the elections with money and muscle power, offsetting the valuable *freedom to vote without fear or favour*? The question to be asked is in the context of '*little man's audit*', will such an audit be free? The answer is clearly no, as it cannot be. Principle of one man one vote is based on freedom to vote in a fair election and 'fair' denoting equal opportunity, which is impossible without removing symbol from Ballot-EVM.

- 10.** The Constitution was made after detailed discussion and framers didn't feel need of political party/symbol that's why the Constitution has no mention of political parties and symbol. But, current election system is revolving totally around them only. The Constitution talks about MP-MLAs who are considered as people's representative but now they have totally become the political party representative and working on the philosophy of '*Party First, Self Next, People Last*' instead of '*Nation First, People Next, Party Last*' and the root cause of this bizarre situation is political party symbol on Ballot and EVM.
- 11.** Use of political party symbol on Ballot-EVM brazenly offends equity, equality and equal opportunity, the most important fundamental right, guaranteed under Articles 14, 15, 21 & mentioned in Preamble of the Constitution. Political parties promote and propagate their election symbol throughout the year. Thus, even their criminal candidate has more probability to win than an honest patriot hard working independent candidate. It is necessary to state that the purpose of printing political party symbol on Ballot was to weed out confusion in case of more candidates bearing the same name and to help illiterate electors in casting their vote properly; and the ECI had taken this step by using its plenary power under Article 324.
- 12.** The consequences of permitting criminals to contest and become legislators are extremely serious for our democracy and secularism: **(i)** during electoral process itself, not only do they deploy '*enormous amounts of illegal money*' to interfere with the outcome but also intimidate voters and rival candidates **(ii)** Thereafter, in our weak rule-of-law context, once they gain entry in governance as legislator they interfere with and influence, the functioning of government in favor of themselves & their organization by corrupting government officers and where that doesn't work, by using their contacts with Ministers to make threats of transfer and initiation of disciplinary proceedings. Many become Ministers,

which worsens the situation **(iii)** Criminal attempt to subvert the administration of justice and attempt by hook or crook to prevent cases against themselves from being concluded & where possible, to obtain acquittals. Long delays in disposal and low conviction are testimony to their influence. Current framework: **(a)** interferes with purity and integrity of the electoral process **(b)** violates the right to choose candidate and, therefore, freedom of expression under Article 19(1); **(c)** amounts to a subversion of democracy, which is part of basic structure; **(d)** is antithetical to rule of law, which is at core of Article 14.

- 13.** There is good reason why ECI must replace political party symbol on EVM with name age qualification and photograph of candidate. A host of reports including ECI's *Proposed Electoral Reforms*(2004), Law Commission 170th and 244th Report (1999 and 2014), the NCRWC's Proposals (2002), Second Administrative Reform Commission (2009), Vohra Committee (1993) have drawn attention to the severity of the criminalization and have suggested electoral reforms to stem the tide of criminals flowing into our polity but Centre did nothing. Taking note of these reports, the Apex Court has in a series of decisions over the last two decades taken various steps to address the problem including: **(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 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 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 1951 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. UOI* [(2013) 7 SCC 653]; and **(iv)** recently, in WP(C)699/2016 directing States to setup Special Courts to complete the trial of MP's and MLA's within one year.
- 14.** 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 favor their constituents and also because of coercion-intimidation including of their

rivals. Criminals have no interest in standing as independents and contest from national and state recognized political parties. Criminals want to stand as candidates of political parties because parties are still connected to distinct leaders, families, ethnic groups and social bases. Aspiring candidates can tap into these networks to expand their appeal beyond their own narrow support bases. Second, in a country with high rates of poverty and illiteracy, party symbols hold great weight; they serve as an important visual cue through which millions of voters connect to politics.

- 15.** The Framers opted parliamentary system of democracy based on '*universal adult suffrage*' and conferred a valuable constitutional status on the most marginal voter at par with those having money and muscle power. '*One man one vote*' was the motto emanating from Articles 325-326, irrespective of his race, caste, sex and status. So, right to vote freely is not only the most valuable right but also the greatest egalitarian principle enshrined in the Constitution.
- 16.** When we analyze right to vote in context of constitutional scheme: **(i)** It confers equality of status on the most marginalized citizen at par with the most powerful **(ii)** It fully subserves the ideals of social political equality and justice as enshrined in the Preamble. **(iii)** It gives equal opportunity to the most marginalized citizen to have equal say in governance of the Country and **(iv)** It enjoins Legislator to reflect his will amongst others. This is what Hon'ble Justice Krishna Aiyar meant when he talks of 'little man' expressing his 'social political audit' of the government and his representative. What should therefore be our aim, is how to make this exercise, free from all pollutions caused due to money-muscle power, otherwise the above right given to the little man would become worthless and the tall claims made in the Preamble would also be defeated.
- 17.** The Supreme Court held that the right to vote is an 'expression' of will and is therefore, a guaranteed right under Article 19(1)(a). The Court, after holding that the 'little mans' right to vote is traceable to Article 19 (1)(a) when he makes his audit, further went on to hold that he has a right to information about the candidates and the law must provide for giving requisite information to enable effective exercise of this right, though, Section 33, was silent in this regard. This was taken to be a breach of Article 19 and requisite affidavits were required to be filed at the time of nomination. The law didn't consciously require, yet giving

of information was ensured and enforced, to make the exercise of 'little man's social and political audit more effective. The Apex Court found this exercise necessary. Removing the election symbol from Ballot & EVM would subserve the same by enabling same audit to be exercised freely-effectively.

- 18.** The framers opted adult suffrage and incorporated Articles 325-326. The principle enshrined in the provisions is called '*One Man One Vote*' principle. It ensures equality of status and non-discrimination. This principle has been repeatedly emphasized as one of the 'basic features' of our Constitution. Apart from having a 'basic feature' there is one aspect which has hitherto not been noticed is that the right to vote enshrined can be a great egalitarian concept traceable to Article 14. It is the genus and Article 15, 16, 17, 25, 325 and 326 are its species. By subscribing to the principle of 'one man one vote', the framers in one stroke elevated the status of most marginalized to that of the most powerful. They ensured equal right to vote on all, as well as, all votes carry equal weight in the elections to the legislatures that, will express the 'Will' of the people. It is for this reason the principle of 'one man one vote' has been regarded as central feature or the heart of the democratic system imbedded in our Constitution. Articles 14-15 are not only philosophical concepts but also overarching principles called 'genus' and the 'species' would be the Articles that partake the equity equality equal opportunity.
- 19.** The principle of equality is equally sponsored by Articles 325-326. Article 325 is practically in the same form as Article 15. The right to vote enshrined, in the principle of 'one man one vote' [Article 325-326], is one of the 'basic features' of the Constitution. It has also been traced to Article 19(1) as 'expression'. Though Articles 325-326 are not the part of Part III physically but it can still be so regarded as it partakers of the same nature and character as Articles 14-15.
- 20.** Breach of right under Articles 325-326 would attract Articles 14-15. In order to understand how Articles 14,19,325,326 are breached presently, it is necessary to understand the nature and character of the principle of 'one man one vote'. Apart from being a basic feature of our Constitution and important human rights, it operates in two ways to ensure equality. Everyone has equal right to vote irrespective of caste creed sex religion etc and all votes carry equal weight. Breach of either of these would result in breach of Articles 14-15. Anything that tinkers with this has potential to upset whole edifice of universal suffrage.

The Apex Court had held that the heart of parliamentary system is free and fair election. The term 'free and fair election' may not only be seen in the context of 'Right to Vote' but also from the angle of 'freedom of voting'. The Court held that 'free' elections ensure democracy while 'fair' denotes equal opportunity to all. Thus, the principle '*One Man One Vote*' demands equal opportunity, to vote with guaranteed freedom, to vote without fear or favour. Several reports demonstrate that 'criminalization of politics' has great potential to breach the 'freedom to vote' without fear or favour and the root cause of the 'criminalization of politics' is the use of political party symbol on Ballot-EVM.

- 21.** Legislators, who make Laws, should have a minimum qualification so that they develop our nation at large scale speed with best skill. In the rapidly developing world, every person is equipped with knowledge. For this, information and communication technology is helpful and one can improve his education, the prime source for development of human being. To understand ongoing changes, Legislators may improve their educational qualifications. Moreover, elector has right to know the age and qualification of candidate.
- 22.** It is true that even if a person went through higher education, he can still be unsuitable to be legislator, but to have a legislator who didn't even go to college/university in 21st century is unfathomable. Do we, as a country, wish to be represented by a dumbfounded persona who can't find the exit or well-spoken and expressed figure that can handle any situation that arise at the moment? We have to make education a necessary qualification of legislators otherwise we will start regressing toward dark ages. The youth, preparing for administrative services, judiciary, medical, engineering leaves their luxuries behind for sake of that position. But for Legislators, who are public servant & Law Maker, there is no rule. Though, they should be more literate.
- 23.** An educated mind is a healthy mind and a healthy mind can govern in healthy way. An educated person is able to think logically and can differentiate between right-wrong which is necessary in democracy. We cannot give our country in the hands of a person who doesn't know how to handle himself. It is not that the person should be highly qualified but there should be a minimum qualification. Education is essential for a legislator because he is the one who is responsible to take decisions. Legislators should have minimum qualification and good knowledge because it helps them to make the right decisions for development

of society. Ill-literate Legislator has a lesser thinking, realizing and implementing ability, which he needs to uphold. Political system hampers and its supremacy is been devastated. Not only this, the youths make a mindset that study has no value as illiterate legislators are more prosperous than the educated ones. Uneducated Legislators may misuse their power and to prevent from these shortcomings, minimum education should be compulsory for contesting. In today's world, even electrician, fitter, driver, helper, constable peon, clerk requires a minimum qualification, so why not, for those who carry enormous responsibility of developing a vast and versatile nation?

- 24.** Legislators receive salary pension etc. from public funds and same having been sanctified by the Constitution and the law. Article 106 provides that “the members of either House of Parliament shall be entitled to receive salaries and allowances as may from time to time be determined by Parliament by law.” The law in pursuance thereof is Salary Allowances Pension of Members of Parliament Act, 1954 along with Rules (i) Travelling and Daily Allowances Rules, 1957 (ii) Housing and Telephone Facilities Rules, 1956 (iii) Medical Facilities Rules, 1959 (iv) Allowances for Journeys Abroad Rules, 1960 (v) Constituency Allowance Rules, 1986 (vi) Advance for Purchase of Conveyance Rules 1986 (vii) Office Expense Allowance, 1988. On a regular basis, each of the above stated perks are revised upwards, at the behest of Legislators themselves, drawing on the consolidated fund of India. There are similar provisions in each of the States for the MLAs as well. There can be no quarrel with this however, as they are considered reasonable expenditures for the upkeep and maintenance of an individual duly elected/nominated to serve nation in high house of Parliament. Legislators are not only a public servants but also lawmaker, who take Constitutional Oath to serve people and towards this end, they should be at least Graduate.
- 25.** When a Bill is introduced in Parliament or State Assembly, the Legislators are supposed to debate on various provisions of the Bill, and propose amendments if they so wish. An illiterate legislator cannot faithfully perform this duty without help of others. Besides the above facts, the Oath of Affirmation, which a Legislator makes under Third Schedule, obliges him to faithfully discharge the duty upon which he is entering. Needless to say that illiterate MP cannot faithfully discharge his duty as a legislator. Rules of procedure in each House

of Parliament have provisions for 'Question Hour' and 'Zero Hour' during which written and oral questions can be asked. These include questions specific to State or Constituency, which the Legislator represents, or of national interest. Therefore, Legislators must be at least Graduate, if not highly literate. The Parliament has many committees, whose members are nominated by the 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 in each House. An illiterate Legislator cannot perform this duty also.

- 26.** The Constitution has provisions to make MP's accountable. 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 an MP under the 10th Schedule. Under Article 101, if an MP is absent from 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. But, there is no provision to describe minimum qualification and maximum age limit for contesting election, which is a gap, yet not filled. Publishing the Age & Qualification on EVM will strengthen our democracy.
- 27.** The Legislator plays an important role in development of his State. He can fulfill his developmental role under Member of Parliament Local Area Development Scheme (MPLADS). Under the scheme, every MP is allocated Rs 5 crore/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 district.
- 28.** 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 (PanchayatSamiti and ZilaParishad). 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.

- 29.** MPs have to monitor centrally sponsored schemes in their constituencies. The National Rural Drinking Water Programme (NRDWP) mandates setting up of District Water Sanitation Mission (DWSM) of which MPs & MLAs from the area would be members. DWSM is among the 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 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 scheme. The MPs could also work towards catalyzing schemes of State and Centre in their constituencies. This is possible by proactive engagement with public officials at the Central and State levels, greater interaction with constituents to understand their needs and concerns, and greater information both qualitative & quantitative about constituencies. As elected representatives, they have legitimate political authority to engage directly with the private/corporate sector for industrial development of their constituencies. 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/management of ambulances. Purchase of ambulances to transport sick or injured animals in Wildlife sanctuaries and National Parks. 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 school. Purchase of book for schools/colleges/public library and

vehicles including school buses/vans with a limit of Rs 22 lakh/year. Thus, Legislators have multidimensional role in our democratic system therefore it is need of the hour to set minimum qualification and maximum age limit.

- 30.** Primary function of MLA is law-making. The Constitution states that the MLA can exercise his legislative powers on the State and Concurrent List. The State List contains subjects of importance to individual State alone, such as trade, commerce, development, irrigation and agriculture, while Concurrent List contains items of importance to both the Union and the State such as succession, marriage, education, adoption, forests and so on. Although ideally only the MLA can legislate on State List, the Parliament can legislate on subjects in the State List while Emergency has been imposed on the State. In addition to that, on the matters that are included in the Concurrent List, the laws made by Parliament are prioritized over the laws made by the Legislative Assembly if President does not give his assent to the laws made by Legislative Assembly. The Legislative Assembly holds absolute financial powers. A Money Bill can only originate in Legislative Assembly if MLAs give consent. In the States that have a bicameral legislator, both the Legislative Council and 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. The Question is: Can an illiterate legislator perform constitutional duty faithfully in 21st century?
- 31.** All grants and tax-raising proposals must be authorized by the MLAs. They exercise certain other executive powers as well. 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, it can force the ruling government to resign. 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. Although MLAs are the highest law-making organs of the State and the

profession is honorable and noble but there is no provision of minimum qualification and maximum age limit for them like IAS, IPS, Judges etc.

- 32.** Powers of ECI operates in areas left unoccupied by legislation and is plenary in character. [*KanhiyaLal Omar v. R.K. Trivedi, (1985) 4 SCC 628, Para 16*] The power of “*superintendence, direction and control*” of the conduct of elections, vested in the Election Commission, is executive in character. [*A.C. Jose v. Sivan Pillai, (1984) 2 SCC 656, p. 22*] The Symbols Order is traceable to the power of the Election Commission under Article 324. [*KanhiyaLal Omar, para 16*] The power to amend, vary or rescind an order which is administrative in character under Section 21 of General Clauses Act, specifically referred to in paragraph 2(2) of the Symbols Order, would permit Election Commission to withdraw recognition of a political party. [*JanataDal v. ECI, (1996) 1 SCC 235, para 6*]
- 33.** ECI’s powers have been repeatedly held to be wide ranging. From the judgment of *Ponnuswamy*, [1952 SCR 218] where the phrase “*conduct of elections*” was interpreted widely, and held that the ECI is charged with all steps necessary to ensure a smooth conduct of election. This position has been bolstered by Constitution Bench decisions declaring that where there is a void or vacuum, the powers of the ECI could be exercised. [*M.S.Gill, (1978) 1 SCC 405, Special Reference No.1/2002, (2002) 8 SCC 237*]. It was precisely the above that was invoked in ADR Case [(2002)5 SCC 294] to conclude that right of voter under Article 19 must be fulfilled by compulsorily having antecedents of the candidate declared to them. As a result, directions were given to the ECI to solicit the same from contesting candidates. The Apex Court has repeatedly stated that contestants to legislative office must have high levels of integrity and good person ought to be chosen. [PUCL (2013) 10 SCC 1, Ashok Chavan (2014) 7 SCC 99] From the time of *Indira Gandhi* [1975 Supp. SCC 1], it is an established precept that free-fair election is inalienable part of the Constitutional but it is impossible without enhancing transparency [PUCL (2013)10SCC1,Manoj Narula, (2014) 9 SCC 1]. Thus, it is clear that ECI can replace the party symbol with candidate’s photograph.
- 34.** The functions performed by legislators are vital to democracy and there is no reason why they should be at lower standard than IAS, IPS and Judges. Candidates for judgeship certainly would not be considered at all if they are

looters or criminals. If the Legislator, who has to make good Laws & amend the Constitution, is involved in corruption crime casteism communalism linguism regionalism and nepotism, then he would be disastrous for country and society.

35. Proposal is vital because democracy and rule of law depends upon the character competence and integrity of the legislators. People like Dr. Rajendra Prasad, Sardar Patel, Dr. Ambedkar, SP Mukherjee, Ram Manohar Lohia, Deendayal Upadhyay, C. Rajagopalachari, Jagjivan Ram and Rafi Ahmed Kidwai are still there in every State and wish to serve the nation but parties don't give tickets.

Sir,

Keeping in view the above stated facts, please take appropriate steps to remove the election symbol from Ballot and EVM and use Name, Age, Educational Qualification and Photograph of Candidates, in order to provide equal opportunity to all contesting candidates and to weed out corruption, criminalization, casteism, communalism, linguism, regionalism and nepotism, the seven menaces of our democracy and development.

Thanks & Regards

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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO 1232 OF 2020

(UNDER ARTICLE 32 OF THE CONSTITUTION OF

INDIA)

IN THE MATTER OF:

ASHWINI KUMAR UPADHYAY

...PETITIONER

VERSES

UNION OF INDIA & ANOTHER

...RESPONDENTS

PAPER BOOK

[FOR INDEX KINDLY SEE INSIDE]

**(ADVOCATE FOR PETITIONER: ASHWANI KUMAR
DUBEY)**

DIARY NO 23045 OF 2020

DECLARATION

All defects have been duly cured. Whatever has been added/deleted/modified in this petition, is the result of curing of the defects and nothing else. Except curing the defects, nothing has been changed. Paper books are complete in all respects.

ADVOCATE FOR PETITIONER

(ASHWANI KUMAR DUBEY)

Advocate-on-Record

Registration Code No-1797

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9818685007, 011-22787061, 45118563

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PERFORMA FOR FIRST LISTING

Section: PIL

The case pertains to (Please tick / check the correct box):

- Central Act: Constitution of India
- Section: Articles 14, 15, 21 of the Constitution
- Central Rule: N/A
- Rule No: N/A
- State Act: N/A
- Section: N/A
- State Rule: N/A

- Rule No: N/A
 - Impugned Interim Order: N/A
 - Impugned Final Order / Decree: N/A
 - High Court: N/A
 - Name of Judges: N/A
 - Tribunal / Authority Name : N/A
-

1. Nature of Matter: Civil
2. (a) Petitioner / Appellant : Ashwini Kumar Upadhyay
(b) Email ID: aku.adv@gmail.com,
(c) Phone No: 08800278866,
 3. (a) Respondent: Union of India and Another
(b) Email ID: N/A
(c) Phone No: N/A
 4. (a) Main Category: 08 PIL Matters
(b) Sub Category: 0810, Election Matters
 5. Not to be listed before: N/A
 - 6(a). Similar disposed of matter: No similar matter
 - 6(b). Similar pending matter: No similar matter pending
 7. Criminal Matters: N/A
 - (a) Whether accused / convicted has surrendered: N/A
 - (b) FIR / Complaint No: N/A
 - (c) Police Station: N/A
 - (d) Sentence Awarded: N/A
 - (e) Period of Sentence Undergone including period of detention / custody under gone: N/A
 8. Land Acquisition Matters:
 - (a) Date of Section 4 Notification: N/A
 - (b) Date of Section 6 Notification: N/A
 - (c) Date of Section 17 Notification

9. Tax Matters: State the Tax Effect: N/A
10. Special Category: N/A
11. Vehicle No in case of motor accident claim matters: N/A
Date: 26.10.2020

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SYNOPSIS & LIST OF DATES

Petitioner is filing this PIL under Article 32, seeking an appropriate writ order or direction to the ECI to use Name, Age, Qualification and photograph of contesting candidates on Ballot and EVM instead of symbol of political parties in order to secure equal opportunity to all contesting candidates in spirit of Articles 14,15,21 and to weedout corruption, criminalization, casteism, communalism, regionalism, linguism and nepotism, the seven menaces of our democracy.

When the framers opted parliamentary system of democracy based on '*adult franchise*', they had not bargained for '*law breakers*

becoming law makers' but ADR reports confirm that the trend for last 25 year has been increasingly towards criminalization, and now 43% of MPs have criminal cases. Many MPs are facing serious criminal charges like rape, murder, kidnapping, extortion, fraud and theft and still they not only participate in law making but also interfere in police investigations to perpetrate their criminal empire.

Our democracy is suffering from seven menaces- Corruption, Criminalization, Casteism, Communalism, Lingusism, Regionalism and Nepotism and the best solution to weed these menaces is to replace political party symbols on Ballot & EVM with Name, Age, Education Qualification and Photograph of the Candidates. Ballot and EVM without political party symbol have many benefits **(a)** It will help electors to vote and support intelligent diligent and honest candidates, which is not possible in today's scenario. **(b)** It will not only weed out casteism and communalism from our democracy but also control use of black money and benami transaction in election. **(c)** Ballot and EVM without political party symbol will control dictatorship of political party bosses in ticket distribution and forced them to give ticket to those who religiously work for people's welfare. **(d)** Our democracy will be free from the grip of political party bosses **(e)** Ballot & EVM without political party symbol will control nepotism and favouritism, one of the gravest menace to our

democracy **(f)** Political parties will be forced to give tickets to local candidates rather than parachute candidates. **(g)** Ballots and EVMs without party symbol will not only control the criminalization of politics but also keep check on the middle-man and political brokers. **(h)** It will open gateway for social activists, educationists' jurists intellectuals and public welfare spirited honest people to enter into politics and work for betterment of society **(i)** The entry of honest and diligent people in Parliament and State Assemblies will lead to formation of better laws for people's welfare **(j)** Intelligent diligent and honest MPs will utilize MPLAD funds effectively **(k)** Efficiency of Parliament and State Assemblies will increase ten times **(l)** It will control regionalism-linguism, which have become a serious threat to democratic political system. **(m)** Long pending reforms viz. election reform police reform judicial reform education reform administrative reform industrial reform agriculture reform labor reform tax reform constitutional reform will be done within year.

This is a matter of serious concern to the democracy and rule of law, because 43% MPs have criminal cases against them. This is causing irreversible harm to both— noble profession, public interest. Oath of Affirmation, which Legislator makes under Third Schedule, obliges him to faithfully discharge the duty upon which he enters. Needless to say that a convicted and imprisoned Legislator cannot

faithfully discharge his duty, which requires fulltime involvement. This would amount to violation of the Constitutional Oath and the root cause is same- use of political party symbol on Ballot and EVM. What is alarming is that the percentage of candidates with criminal antecedents and their chances of winning have actually increased steadily over the years. Analysis shows that where charges against a candidate are serious, the probability of his winning the election is also high. Criminals who helped politicians in hope of getting favours have cut out 'middle man' and are contesting themselves. Political parties have become more reliant on criminals as they 'self-finance' the election in an era where it is shockingly expensive and also, as they are more likely to win than 'clean' candidates. Parties are competing with each other in a race to the bottom because they cannot afford to leave their competitors free to recruit criminals.

The injury caused to the public is extremely large because 'free and fair election' is the basic dictum of our democracy and 'right to vote' is an important statutory right of citizens but practically both have become a dead letter due to use of political party symbol on ballot paper and EVM, which leads to confusion among voters and result in casting of wrong votes. For example, when the candidate is honest, patriot and diligent but his party president promotes criminalization castesim communalism

regionalism linguism and nepotism and also involved in corruption, then voter finds himself trapped between a good candidate and a bad political party. The use of political party symbol on Ballot and EVM is not only the root cause of corruption, black money generation, benami transactions, but also the main source of criminalization casteism communalism linguism regionalism and nepotism, the greatest menaces of our democracy. Due to the use of political party symbol on Ballot and EVM, political party bosses have not only become dictators and hijacked the democracy and democratic institutions but are also stockpiling huge black money, benami properties disproportionate assets by selling the political party symbol to looters criminals and even separatists during Parliament and State Assembly Elections.

Use of symbol on Ballot-EVM, breaches the rights guaranteed under Articles 14-15 read with Articles 325-326: **(i)** It prevents free exercise of right to vote due to use of money power by candidates **(ii)** It affects ordinary citizen's rights to get elected and puts him to great disadvantage due to reduced win-ability factor as independent. **(iii)** Use of party symbol on Ballot-EVM is arbitrary and irrational because it invites and enables criminal backgrounds to buy ticket from National and State recognized political parties and contest election. A person convicted of rape, extortion, kidnapping and

murder can come back into the electoral arena. A person guilty of corruption, terrorism etc., can become a candidate of National and State recognized parties. Take the case of 2G, CWG, Coal scam accused coming back to election arena through National & State recognized parties. Would they not affect the elections with money and muscle power, offsetting the valuable *freedom to vote without fear or favour*? The question to be asked is in the context of *'little man's audit'*, will such an audit be free? The answer is clearly no, as it cannot be. Principle of one man one vote is based on freedom to vote in a fair election and 'fair' denoting equal opportunity, which is impossible without removing symbol from Ballot and EVM.

The Constitution was made after detailed discussion and framers didn't feel need of political party/symbol that's why the Constitution has no mention of political parties and symbol. But, current election system is revolving totally around them only. The Constitution talks about MP-MLAs who are considered as people's representative but now they have totally become the political party representative and working on the philosophy of *'Party First, Self Next, People Last'* instead of *'Nation First, People Next, Party Last'* and the root cause of this bizarre situation is political party symbol on Ballot and EVM.

Use of political party symbol on Ballot-EVM brazenly offends equity, equality and equal opportunity, the most important fundamental right, guaranteed under Articles 14, 15, 21 & mentioned in Preamble of the Constitution. Political parties promote and propagate their election symbol throughout the year. Thus, even their criminal candidate has more probability to win than an honest patriot hard working independent candidate. It is necessary to state that the purpose of printing political party symbol on Ballot was to weed out confusion in case of more candidates bearing the same name and to help illiterate electors in casting their vote properly; and the ECI had taken this step by using its plenary power under Article 324.

The consequences of permitting criminals to contest and become legislators are extremely serious for our democracy and secularism: **(i)** during electoral process itself, not only do they deploy '*enormous amounts of illegal money*' to interfere with the outcome but also intimidate voters and rival candidates **(ii)** Thereafter, in our weak rule-of-law context, once they gain entry in governance as legislator they interfere with and influence, the functioning of government in favor of themselves & their organization by corrupting government officers and where that doesn't work, by using their contacts with Ministers to make threats

of transfer and initiation of disciplinary proceedings. Many become Ministers, which worsens the situation **(iii)** Criminal attempt to subvert the administration of justice and attempt by hook or crook to prevent cases against themselves from being concluded & where possible, to obtain acquittals. Long delays in disposal and low conviction are testimony to their influence. Current framework: **(a)** interferes with purity and integrity of the electoral process **(b)** violates the right to choose candidate and, therefore, freedom of expression 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.

There is good reason why ECI must replace political party symbol on EVM with name age qualification and photograph of candidate. A host of reports including ECI's *Proposed Electoral Reforms*(2004), Law Commission 170th and 244th Report (1999 and 2014), the NCRWC's Proposals (2002), Second Administrative Reform Commission (2009), Vohra Committee (1993) have drawn attention to the severity of the criminalization and have suggested electoral reforms to stem the tide of criminals flowing into our polity but Centre did nothing. Taking note of these reports, the Apex Court has in a series of decisions over the last two decades taken various steps to address the problem including: **(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 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 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 1951 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. UOI* [(2013) 7 SCC 653]; and (iv) recently, in WP(C)699/2016 directing States to setup Special Courts to complete the trial of MP's and MLA's within one year.

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 favor their constituents and also because of coercion-intimidation including of their rivals. Criminals have no interest in standing as independents and contest from national and state recognized political parties. Criminals want to stand as candidates of political parties because parties are still

connected to distinct leaders, families, ethnic groups and social bases. Aspiring candidates can tap into these networks to expand their appeal beyond their own narrow support bases. Second, in a country with high rates of poverty and illiteracy, party symbols hold great weight; they serve as an important visual cue through which millions of voters connect to politics. As such, the historical legacy of parties matter a great deal in Indian democracy.

1.4.2020: Petitioner submitted detailed representation to the ECI for use of Name Age Educational Qualification and Photograph of contesting candidates but it has not taken appropriate steps till date.

26.10.2020: Use of party symbol on EVM is illegal-unconstitutional and violative of Articles 14, 15, 21 of the Constitution. But, ECI has not replaced it with Name Age Educational Qualification, Photograph of Candidates. Hence, PIL.