Lok Prahari vs Union Of India
Date Of Judgement- 16/02/2018

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (C) NO.784 OF 2015

LOK PRAHARI,
THROUGH ITS GENERAL SECRETARY S.N. SHUKLA ... Petitioner
Versus
UNION OF INDIA & OTHERS ... Respondents

J U D G M E N T

Chelameswar, J.

1. The petitioner is a registered society under the Societies Registration Act. It is stated in the petition that most of the members of the society are retired civil servants. In the past, some of them have held important constitutional offices and, therefore, they have the requisite locus standi. The genuineness of their concern for the democracy of this country, in our opinion, is beyond any doubt.

2. A clean and fair electoral process is a sine qua non for any democracy. Rights and obligations associated with the electoral process, engaged the attention of democratic civil societies and their legislative bodies from time to time. Regulation of the right to vote or the right to contest elections and matters incidental thereto felt necessary. Democratic societies experiment with various modules of electoral processes in response to the felt necessities of the times.

3. When our Constitution was adopted, the framers of the Constitution thought that some of the basic norms regarding the electoral process, i.e. rights of voting or the right to contest elections to various bodies established by the Constitution are required to be spelt out in the Constitution itself. Our Constitution, as originally enacted[1], provided for elections to the offices of President, Vice President, membership of the Parliament, consisting two houses, the 'Lok Sabha' and the 'Rajya Sabha'; and the membership of the legislature of the various States, some of them unicameral and some bicameral.

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1 Local bodies – Part IX of the Constitution which contains with provisions dealing with local bodies including elections bodies came to be introduced by the Constitution (Seventy-third Amendment) Act, 1992.

Under Article 324[2] an Election Commission was established for the overall superintendence and control of such elections.

4. With reference to elections to each of the abovementioned bodies or offices, the Constitution stipulates certain basic norms, with respect to right to vote, the right to contest and the limitations on such rights. Such norms vary with reference to each of these offices or bodies. Citizenship of the country is a default condition[3] either for voting or contesting an election to any one of the abovementioned bodies.

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2 **Article 324.** Superintendence, direction and control of elections to be vested in an Election Commission.- (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission. (2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President. (3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission. (4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1). (5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine: Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment: Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner. (6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).

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Article 58. Qualifications for election as President.-

(1) No person shall be eligible for election as President unless he-

(a) is a citizen of India,

(b) has completed the age of thirty five years, and

(c) is qualified for election as a member of the House of the People

(2) A person shall not be eligible for election as President if he holds any office of profit under the or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice President of the Union or the Governor of any State or is a Minister either for the Union or for any State

Article 84. Qualification for membership of Parliament.- A person shall not be qualified to be chosen to fill a seat in Parliament unless he— (a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

Article 173. **Qualification for membership of the State Legislature**. - A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he— (a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

5. Article 326[4] stipulates that the elections to the House of the People and the legislative assemblies of the States shall be on the basis of adult suffrage i.e. every person who is a citizen of India and who is not less than 18 years of age on a date specified by law shall be entitled to be registered as a voter at any such election, with a further stipulation that such a right is subject to disqualifications prescribed under the Constitution, or by or under any law made by the appropriate legislature. Article 326 is also specific about the grounds on which a disqualification could be prescribed by the appropriate legislature. They are non-residence, unsoundness of mind and crime or corrupt or illegal practices. The right to vote at an election to the Rajya Sabha and the Legislative Council of a State are subject to certain further qualifications.
So also in the case of the offices of the President and Vice President.

6. Every person, who is entitled to vote at an election to the membership of the Parliament, is not automatically entitled to become a member of the Parliament. Article 84(b)[5] stipulates any person seeking to become a member of House of People (Lok Sabha) must be not less than 25 years of age and in the case of Council of States (Rajya Sabha) not less than 30 years of age. Similarly, Article 173(b)[6] stipulates similar minimum age requirements for membership of the Legislative Assemblies and the Legislative Councils. Whereas, for the Presidency and Vice-Presidency, the minimum age requirement of 35 years is prescribed under Article 58(1)(b)[7] and 66(3)(b)[8].

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4 Article 326. Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage- The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than 2[eighteen years] of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

5 Article 84. Qualification for membership of Parliament- A person shall not be qualified to be chosen to fill a seat in Parliament unless he— (b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age;

6 Article 173. Qualification for membership of the State Legislature.- A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he— (b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age;

7 Article 58. Qualifications for election as President. (1) No person shall be eligible for election as President unless he— (b) has completed the age of thirty-five years,

8 Article 66. Election of Vice President.- (3) No person shall be eligible for election as Vice-President unless he— (b) has completed the age of thirty-five years;

7. Constitution also prescribes certain disqualifications for contesting any election to any of the abovementioned bodies.

Under Article 102, a person is disqualified not only for being chosen but also for continuing as a member of either House of Parliament on various grounds.

> "Article 102. Disqualifications for membership
>
> (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament-
> (a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;
> (b) if he is of unsound mind and stands so declared by a competent court;
> (c) if he is an undischarged insolvent;
> (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;
> (e) if he is so disqualified by or under any law made by Parliament.
>
> (2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule."

8. Article 191 [9] stipulates similar disqualifications for the membership of the State Legislatures. Article 58(1)(c)[10] and

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9 Article 191. Disqualifications for membership. (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.

Article 66(3)(c)[11] of the Constitution stipulates in the context of President and Vice President that no person shall be eligible to those offices unless a person is qualified for election as a member of the House of the People and the Council of States respectively. By a necessary implication, the various qualifications and disqualifications stipulated under the Constitution for the membership of those two houses also become the qualifications and disqualifications for the offices of President and Vice-President apart from the other qualifications and disqualifications stipulated under the Constitution.

9. Articles 102(e) and 191(e) authorise the Parliament to make laws by or under which other disqualifications can be prescribed to contest in an election to the Parliament or to the State Legislature. Similarly, Articles 84(c) and 173(c) authorise the Parliament to prescribe other qualifications (by or under law) for securing the membership of the Parliament or the Legislature of the State respectively.

10. Entry 72[12] of List I of the Seventh Schedule of the Constitution of India and Entry 37[13]of List II are the fields of legislative authority which enable the Parliament and the State Legislatures respectively to make laws indicated in the various provisions mentioned above and other relevant provisions of the Constitution such as Article 327.

11. In exercise of such power, Parliament made various enactments regulating various aspects of the electoral process to the various offices and bodies mentioned earlier. For the present, we are only concerned with two enactments. The Representation of the People Acts, 1950 and 1951 (hereafter RP Act of 1950 or RP Act of 1951) which contain provisions which elaborately deal with the electoral process to the Parliament and the State Legislatures. It is sufficient for the purpose of the present case to take note of the fact that RP Act of 1951 contains various provisions in Chapter III of Part II stipulating the disqualifications for membership of Parliament and State Legislatures. They are Sections 8, 8A, 9, 9A, 10 and 10A. Chapter IV of Part II contains a provision stipulating a disqualification for voting, obviously, referable to the authority of Parliament under Article 326.

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[10] Article 58. Qualifications for election as President. (1) No person shall be eligible for election as President unless he—
(c) is qualified for election as a member of the House of the People.
[11] Article 66. Election of Vice President. (3) No person shall be eligible for election as Vice-President unless he-
(c) is qualified for election as a member of the Council of States
[12] Entry 72. Elections to Parliament, to the Legislatures of States and to the offices of President and VicePresident; the Election Commission.
[13] Entry 37. Elections to the Legislature of the State subject to the provisions of any law made by Parliament

12. The expression 'disqualified' is defined under Section 7(b) of the RP Act of 1951 as follows:

> "Section 7. Definitions. – In this Chapter, - xxx xxx xxx xxx
> (b) 'disqualified' means disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State under the provisions of this chapter, and on no other ground."

13. Section 8 deals with the disqualifications which follow as a consequence of conviction and imposition of the sentence of imprisonment of a person for the various offences specified thereunder. The period of disqualification under each of the sub-sections, however, is stipulated to be six years since the release of the convict from prison.

14. Section 8A declares that any person found guilty of a corrupt practice by a High Court trying an election petition shall be disqualified for a period not exceeding six years as may be determined by the President of India. Section 123 of the RP Act of 1951 defines corrupt practices. Ten corrupt practices are enumerated therein. By definition each one of them is capable of being committed only either by a "candidate" [14] at an election or the "election agent" [15] of a candidate or any other person with the consent of either the candidate or the election agent of a candidate.

15. Section 9 disqualifies a person who having held an office under the Government of India or under the Government of any State, was dismissed for corruption or for disloyalty to the State.

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[14] Candidate is defined under Section 79(b) of the Representation of the People Act, 1951 - "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election. However, the definition is only for the purpose of Parts VI and VII. Election agent is not defined but Section 40 of the Representation of the People Act, 1951 stipulates: "Election Agents.—A candidate at an election may appoint in the prescribed manner any one person other than himself to be his election agent and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to the returning officer."

[15] Samant N. Balkrishna & Another v. George Fernandez & Others, (1969) 3 SCC 238 Para 25. Pausing here, we may view a little more closely the provisions bearing upon corrupt practices in Section 100. There are many kinds of corrupt practices. They are defined in Section 123 of the Act and we shall come to them later. But the corrupt practices are viewed separately according as to who commits them. The first class consists of corrupt practices committed by the candidate or his election agent or any other person with the consent of the candidate or his election agent. These, if established, avoid the election without any further condition being fulfilled. Then there is the corrupt practice committed by an agent other than an election agent. Here an additional fact has to be proved that the result of the election was materially affected. We may attempt to put the same matter in easily understandable language. The petitioner may prove a corrupt practice by the candidate himself or his election agent or someone with the consent of the candidate or his election agent, in which case he need not establish what the result of the election would have been without the corrupt practice. The expression "Any other person" in this part will include an agent other than an election agent. This is clear from a special provision later in the section about an agent other than an election agent. The law then is this: If the petitioner does not prove a corrupt practice by the candidate or his election agent or another person with the consent of the returned candidate or his election agent but relies on a corrupt agent, he must additionally prove how the corrupt practice affected

This disqualification operates for five years from date of such dismissal. Section 9A stipulates that a person shall be disqualified to contest elections either to the Parliament or to the State Legislature if "there subsists a contract entered into by him" with the appropriate Government either for the supply of goods or for execution of any work undertaken by the Government. The expression "appropriate Government" is defined under Section 7(a)[16].

16. Chapter VIII of Part V of the RP Act of 1951 contains provisions dealing with 'election expenses'. Section 77 mandates that every candidate in an election shall keep a separate and correct account of all expenditure incurred by such candidate either directly or through his election agents. Such details shall pertain to the expenditure incurred between the date of nomination of the candidate and the declaration of the election result. Section 78 mandates that every contesting candidate shall lodge with the district election officer a copy of the account maintained by him as required under Section 77 of the RP Act of 1951. Section 10A stipulates that the failure to comply with the mandate of Section 78 renders the defaulters disqualified.

17. Section 123(6) of the RP Act of 1951 declares "the incurring or authorizing of expenditure in contravention of section 77" to be a corrupt practice.

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the result of the poll. Unless he proves the consent to the commission of the corrupt practice on the part of the candidate or his election agent he must face this additional burden. The definition of agent in this context is to be taken from Section 123 (Explanation) where it is provided that an agent "includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate." In this explanation the mention of "an election agent" would appear to be unnecessary because an election agent is the alter ego of the candidate in the scheme of the Act and his acts are the acts of the candidate, consent or no consent on the part of the candidate.

[16] Section 7(a). "appropriate Government" means in relation to any disqualification for being chosen as or for being a member of either House of Parliament, the Central Government, and in relation to any disqualification for being chosen as or for being a member of the Legislative Assembly or Legislative Council of a State, the State Government;

18. Electoral process is the foundation of all democratic forms of Government. The framers of the Constitution were aware of the fact that no election process can be infallible nor can any election be absolutely pure. Therefore, there are bound to be disputes regarding elections.

19. Hence, Article 329(b) of the Constitution stipulates –

> "Article 329. Bar to interference by courts in electoral matters.—Notwithstanding anything in this Constitution
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> ***** ***** *****
>
> (b) No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

While the Article contemplates resolution of the electoral disputes by election petitions, it prohibits the examination of such disputes before conclusion of the election, obviously to ensure that the electoral process is not unduly hampered while it is in progress; essentially a balance between order and chaos.

20. Pursuant to the command of Article 329(b), provisions are made in Part VI of the RP Act of 1951 which deal with disputes regarding elections. Section 100[17] stipulates various grounds on which an election of a returned candidate shall be declared to be void. Such a declaration follows automatically on the proof of the facts constituting any one of the grounds mentioned in Section 100(1)(a), (b) and (c). One of the grounds is that if the High Court comes to the conclusion that the returned candidate has committed a corrupt practice either directly or through his 'election agents'[18].

21. In so far as the ground specified in sub-section 1(d), election of a returned candidate can be declared to be void only if it is established that (i) any one of the events specified therein did occur and (ii) such an event materially affected the result of the election insofar as it concerns the returned candidate.

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[17] **Section 100. Grounds for declaring election to be void**.— (1) Subject to the provisions of sub-section (2) if the High Court is of opinion— (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or (c) that any nomination has been improperly rejected; or (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance or any nomination, or
(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void, If in the opinion of the High Court, a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice but the High Court is satisfied—
(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;
(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and
(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the High Court may decide that the election of the returned candidate is not void."

[18] Section 100(1)(b) of the RP Act of 1951

22. The experience of the first 50 years of the functioning of democracy in this country disclosed some undesirable trends that have crept into its working. Various bodies such as the Law Commission of India and a Committee popularly known as the Vohra Committee[19] constituted by the Government of India etc. pointed out various shortcomings in the working of the democracy and the need to address those concerns.

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[19] See: **Union of India v. Association for Democratic Reforms and Another,** (2002) 5 SCC 294

Para 2 … It is pointed out that the Law Commission has made recommendation for debarring a candidate from contesting an election if charges have been framed against him by a court in respect of certain offences and necessity for a candidate seeking to contest election to furnish details regarding criminal cases, if any, pending against him. It has also suggested that true and correct statement of assets owned by the candidate, his/her spouse and dependent relations should also be disclosed. The petitioner has also referred para 6.2 of the report of the Vohra Committee of the Government of India, Ministry of Home Affairs, which reads as follows:

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

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

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

23. This Court in Union of India v. Association for Democratic Reforms & Another, (2002) 5 SCC 294, hereafter referred to as "ADR case" opined that "voter speaks out or expresses by casting vote" and such a speech is part of the fundamental right under Article 19(1)(a). This Court after taking into consideration various aspects of the matter including the above-mentioned Reports and other materials, held that for the effective exercise of his fundamental right, the voter is entitled to have all relevant information about the candidates at an election. This Court identified some of the important aspects of such information. They are (i) candidate's criminal antecedents (if any), (ii) assets and liabilities, (iii) educational qualifications. This Court also recorded that a Parliamentary Committee headed by Shri Indrajit Gupta submitted a Report in 1998 on the question of State funding of elections, emphasizing the need of immediate overhauling of the electoral process.

This Court opined that since the law made by Parliament did not make appropriate provisions compelling candidates at an election, either to the Parliament or the legislative bodies of the State, to disclose information regarding the abovementioned factors, Election Commission in exercise of its power under Article 324 of the Constitution of India is required to call upon the candidates to furnish the necessary information. This Court directed disclosure of various facts including information regarding the assets and liabilities of the candidates at an election and their respective spouses and dependents (collectively hereafter referred to for the sake of convenience as ASSOCIATES):

> "48. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:
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> (1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past – if any, whether he is punished with imprisonment or fine.
>
> (2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.

(3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.

(5) The educational qualifications of the candidate."

24. Subsequent[20] to the said judgment, Parliament chose to amend the RP Act of 1951 by introducing Section 33A. Parliament provided for the disclosure of certain limited information regarding criminal antecedents of the candidates at an election, but not of all the information as directed by this Court (in para 48) of the abovementioned judgment.

On the other hand, Parliament made a further declaration under Section 33B. "33B Candidate to furnish information only under the Act and the rules —Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made thereunder."

In other words, Parliament declared that other information required to be declared by the candidate by virtue of the directions issued in **Union of India v**. **Association for Democratic Reforms & Another**, (2002) 5 SCC 294 need not be given.

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[20] Judgment is dated 02.05.2002 and the Amendment introducing Section 33A is dated 28.12.2002 (By The Representation of the People (Third Amendment) Act, 1951 (Act No.72 of 2002)

25. The constitutionality of the said provision fell for the consideration before this Court in People's Union for Civil Liberties (PUCL) & Another v. Union of India & Another, (2003) 4 SCC 399, hereafter referred to as "PUCL case". This Court held Section 33B to be beyond the legislative competence of the Parliament. This Court recorded [21] that Section 33A fails to ensure complete compliance with the directions issued by this Court in ADR case.

26. Be that as it may, Section 33A mandates that a candidate is also required to deliver to the returning officer at the time of the filing of nomination an affidavit sworn by the candidate in the prescribed form[22]. As a corollary to the said mandate, Rule 4A[23] was inserted in the Conduct of Election Rules, 1961 (hereafter referred to as the RULES) stipulating that an affidavit in the Form No.26 is required to be filed. The form, as originally prescribed under Rule 4A w.e.f. 3.9.2002, stood substituted w.e.f. 1.8.2012. The form, inter alia, requires information regarding the Permanent Account Numbers (PAN) given by the Income Tax authorities to the CANDIDATE. It also requires details of the assets (both movable and immovable) of the ASSOCIATES. The other details required to be given in the affidavit may not be relevant for the purpose of the present case.

27. The petitioner believes that certain further steps are required to be taken for improving the electoral system in order to strengthen democracy. According to the petitioner, the assets of some of the members of the Parliament and the State legislatures (hereafter referred to as "LEGISLATORS") and their ASSOCIATES

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[21] "78. … The Amended Act does not wholly cover the directions issued by this Court. On the contrary, it provides that a candidate would not be bound to furnish certain information as directed by this Court."

[22] Section 33A. Right to information.— (2) The candidate of his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form very fine the information specified in sub-section (1).

[23] Rule 4A. Form of affidavit to be filed at the time of delivering nomination paper.—The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under subsection (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26.

grew disproportionately to their known sources of income (hereafter referred to as UNDUE ACCRETION OF ASSETS). The petitioner made representations to bodies like the Central Board of Direct Taxes and the Election Commission of India requesting them to examine the matter and take appropriate remedial measures. It appears that the petitioner annexed a (sample) list of certain LEGISLATORS whose assets increased more than 5 times after they got elected for the first time to the concerned legislative bodies. The petitioner believes that there is a need to periodically examine the sources of income of the LEGISLATORS and their ASSOCIATES to ascertain whether there is an UNDUE ACCRETION OF ASSETS. In the representation to the Chairperson of CBDT dated 30 June 2015, the petitioner stated, inter alia,

> "... As a result, the wealth of politicians has been growing by leaps and bounds at the expense of "We the People". Evidently, no improvement in system and governance is possible unless the role of money power in winning elections is curbed and the public representatives who misuse their position for amassing wealth are brought to book.
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> … A list of re-elected MPs and MLAs whose assets are increased more than five times (500%) after the previous election, provided by the ADR, is annexed herewith. Detailed information about the total income shown in the last Income Tax Return of these MPs/MLAs and their spouses and dependents is available in the affidavit in Form 26 filed with the nomination paper at the time of last election. These affidavits are available on the websites of the Election Commission of India as well as Chief Electoral Officers of the States. All that is required to be seen is as to whether the increase in assets is proportionate to the increase in income from the known sources in the intervening period. The CBDT is best equipped to do this exercise as part of responsibility cast upon them under the law. After completion of this exercise necessary follow up can be taken to serve as a lesson to them and deterrent to others to desist from converting public service into private enterprise."

28. It is in this background, the instant petition came to be filed wherein the petitioner alleges - "That in view of the reluctance of the Parliament to act on their 18 year old resolution referred to above and the failure of the respondents to even respond, leave alone meaningfully effectuate implementation of the judgments of this Hon'ble Court in Association of Democratic Reforms (AIR 2002 SC 2112) People's Union for Civil Liberties (PUCL) (AIR 2003 SC 2363), Resurgence India vs. Election Commission of

India and Another (AIR 2014 SC 344) and Krishnamoorthy Vs. Sivakumar (AIR 2015 SC 1921) in this regard for restoring and maintaining the purity of our highest legislative bodies in accordance with the intentions of the founding fathers of the Constitution and the concern expressed by the framers of the Representation of the People Act, 1951 intervention of this Hon'ble Court has become necessary in terms of the following observation of this Hon'ble Court in the case of Vineet Narain, (1998) 1 SCC 226 (para 49)."

in order to justify their approaching this court for the various reliefs sought in the writ petition. They are:

"1. issue a writ, order or direction, in the nature of mandamus –

(1) to respondents no.1 and 2 to make necessary changes in the Form 26 prescribed under Rule 4A of the Conduct of Election Rules, 1961 keeping in view the suggestion in para 38 of the WP;
(2) to respondent no.1 to consider suitable amendment in the Representation of the People Act 1951 to provide for rejection of nomination papers of the candidates and disqualification of MPs/MLAs/MLCs deliberately furnishing wrong information about their assets in the affidavit in Form 26 at the time of filing of the nomination;
(3) to respondents no.3 to 5 to-
(i) conduct inquiry/investigation into disproportionate increase in the assets of MPs/MLAs/MLCs included in list in Annexure P6 to the WP,
(ii) have a permanent mechanism to take similar action in respect of MPs/MLAs/MLCs whose assets increase by more than 100% by the next election,
(iii) fast track corruption cases against MPs/MLAs/MLCs to ensure their disposal within one year.

2. declare that non disclosure of assets and sources of income of self, spouse and dependents by a candidate would amount to undue influence and thereby, corruption and as such election of such a candidate can be declared null and void under Section 100(1)(b) of the RP Act of 1951 in terms of the judgment reported in AIR 2015 SC 1921.

3. issue a writ, order or direction in the nature of mandamus to the respondents to consider amending Section 9-A of the Act to include contracts with appropriate Government and any public company by the Hindu undivided family/trust/partnership firm(s)/private company (companies) in which the candidate and his spouse and dependents have a share or interest.

4. issue a writ, order or direction in the nature of mandamus to the respondents that pending amendment in Section 9-A of the Act, information about the contracts with

appropriate Government and any public company by the candidate, his/her spouse and dependents directly or by Hindu undivided family/trust/partnership firm(s)/private company (companies) in which the candidate and his spouse and dependents have a share or interest shall also be provided in the affidavit in Form 26 prescribed under the Rules."

5. By way of I.A. 8/2016 the Petitioner prayed that an amendment be made to the Writ Petition for the addition of the following prayers: As Form 26 prescribed under the Rules provides information only about possible disqualification on the basis of conviction in criminal cases, mentioned in Section 8 of the RP Act of 1951, it does not contain information on the provisions in Section 8-A, 9, 9A, 10, and 10-A regarding disqualification in Chapter III of the said Act which may render a candidate ineligible to contest. The Petitioner therefore, prays that Form 26 may be further amended to provide the following information

I. Whether the candidate was found guilty of a corrupt practice u/S 99 of the RP Act of 1951?

II. If yes, the decision of the President under Section 8-A(3) of the Act on the question of his disqualification, along with the date of the decision.

III. Whether the candidate was dismissed for corruption or for disloyalty while holding an office under the Government of India or the Government of any State?

IV. If, yes the decision of such dismissal as per the certificate issued by the EC under Section 9 of the Act.

V. Whether the candidate is a managing agent, manager or Secretary of any company or Corporation (other than co-operative society) in the capital of which the appropriate government has not less than twenty-five percent share?

VI. Whether the candidate has lodged an account of election expenses in respect of the last election contested by him within the time and in the manner required by or under the RP Act of 1951?

29. The 2nd respondent [Election Commission of India (ECI)] filed a counter affidavit supporting the case of the petitioner insofar as the prayer with respect to the need to obligate the CANDIDATES to disclose their sources of income etc.

"Para 3. Since the prayers made in the accompanying PIL are not adversarial, the answering Respondent No.2 – Election Commission of India (ECI) supports the cause espoused by the Petitioner organization, which is a step ahead towards a (i) healthier democracy, (ii) in furtherance of level playing field for participative democracy, and (iii) free and fair elections. The ECI supports the

prayer No.1 as it has already written to Ministry of Law and Justice to Amend the Form 26 for including the source of income of candidate and spouse vide letter no.3/4/ECI/LET/FUJC/JUD/ SDR/VOL-I/2016 dated 07.09.2016."

In substance both the petitioner and the Election Commission believe that it is time to cleanse the Augean stable.

30. UNDUE ACCRETION OF ASSETS of LEGISLATORS and their ASSOCIATES is certainly a matter which should alarm the citizens and voters of any truly democratic society. Such phenomenon is a sure indicator of the beginning of a failing democracy. If left unattended it would inevitably lead to the destruction of democracy and pave the way for the rule of mafia. Democracies with higher levels of energy have already taken note of the problem and addressed it. **Unfortunately, in our country, neither the Parliament nor the Election Commission of India paid any attention to the problem so far**. This Court in ADR case took note of the fact that in certain democratic countries, laws exist [24] compelling legislators, officers and employees of the State to periodically make financial disclosure statements. But this Court did not issue any further direction in that regard. Hence the present writ petition.

31. Undue accumulation of wealth in the hands of any individual would not be conducive to the general welfare of the society. It is the political belief underlying the declaration of the Preamble of the Constitution that India should be a Socialistic Republic. Articles 38 and 39 of our Constitution declare that the State shall direct its policy towards securing that the ownership and control of material resources of the community are distributed so as to best subserve the common good and guaranteeing that the economic system does not result in the concentration of wealth and means of production to the common detriment. In our opinion, such declarations take within their sweep the requirement of taking appropriate measures to ensure that LEGISLATORS and the ASSOCIATES do not take undue advantage of their constitutional status afforded by the membership of the LEGISLATURE enabling the LEGISLATOR to have access to the power of the State. Accumulation of wealth in the hands of elected representatives of the people without any known or by questionable sources of income paves way for the rule of mafia substituting the rule of law. In this regard, both the petitioner and the 2nd respondent are ad idem. The 2nd respondent in its counter stated:

"Para 4. The increasing role of money power in elections is too well known and is one of the maladies which sometimes reduces the process

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[24] United States of America enacted a law known as Ethics in Government Act, 1978 which was further amended in 1989. "Ethics Manual for Members, Employees and Officers of the US House of Representatives" indicates that such disclosure provisions were enacted to "monitor and deter possible conflicts of interests".

> of election into a mere farce by placing some privileged candidates with financial resources in a distinctly advantageous position as compared to other candidates. The result of such an election cannot reflect the true choice of the people. The system also sometimes deprives qualified and able persons of the prerogative to represent masses."

32. If assets of a LEGISLATOR or his/her ASSOCIATES increase without bearing any relationship to their known sources of income, the only logical inference that can be drawn is that there is some abuse [25] of the LEGISLATOR's Constitutional Office. Something which should be fundamentally unacceptable in any civilized society and antithetical to a constitutional Government. It is a phenomenon inconsistent with the principle of the Rule of Law and a universally accepted Code of Conduct expected of the holder of a public office in a Constitutional democracy. Cromwell declared that such people are "enemies to all good governments". The framers of the Constitution and the Parliament too believed so. The makers of the Constitution gave sufficient indication of that belief when they provided under Articles 102(1)(a) and 191(1)(a) that holding of any office of profit would disqualify a person either to become or continue to be a LEGISLATOR. It is that belief which prompted the Parliament to make the prevention of corruption laws.

33. The most crude process by which a LEGISLATOR or his ASSOCIATES could accumulate assets is by resorting to activities which constitute offences under the Prevention of Corruption Act, 1988[26] (hereafter the PC Act). Gold is their God!

Abnormal growth of assets of a LEGISLATOR or his ASSOCIATES need not always be a consequence of such illegal activity. It could be the result of activities which are improper, i.e. activities which may or may not constitute offences either under the PC Act or any other law but are inconsistent with the basic constitutional obligations flowing from the nature of the office of a LEGISLATOR. They are deputed by the people to get grievances redressed. But they become the grievance.

(i)There are known cases of availing of huge amount of loans for allegedly

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[25] "behind every great fortune lies a great crime" - BALZAC 27

[26] Section 7 of the PC Act.
"Public servant taking gratification other than legal remuneration in respect of an official act.— Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extend to seven years and shall also be liable to fine."

commercial purposes from public financial institutions by LEGISLATORS or their ASSOCIATES either directly or through bodies corporate which are controlled by them; a notorious fact in a good number of cases. Such loan accounts become nonperforming assets [27] (NPAs) within the meaning of SARFAESI ACT in the hands of the financial institutions which advance loans. It is equally a widely prevalent phenomenon that borrowers (LEGISLATORS or even others) whose accounts have become NPAs are able to secure fresh loans in huge amounts either from the very same or other financial institutions.

(ii)Securing of contracts of high monetary value either from Government (Central or State) or other bodies corporate which are controlled by Government is another activity which enables LEGISLATORS and their ASSOCIATES to acquire huge assets. It is worth mentioning here that

(iii) Section 7(d)[28] of the RP Act of 1951 initially provided that any person who has a share or interest in a contract for the supply of goods or for the execution of any works or performance of any services either by himself or through any person or body of persons in trust for him or for his benefit etc. is disqualified. However, by amendment of Act 58 of 1958, the said provision was dropped and Section 9A [29] was introduced which enables the ASSOCIATES of the LEGISLATORS either directly or through a body corporate to acquire such contracts.

(iv) Abnormal increase in the personal assets of the LEGISLATORS and their ASSOCIATES is required to be examined in juxtaposition to the above mentioned activities. Further, it is also necessary to examine whether such benefits were received by taking undue advantage of the office of the LEGISLATOR.

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[27] Section 2(o) "non-performing asset" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset, (a) in case such bank or financial institution is administered or regulated by an authority or body established, constituted or appointed by any law for the time being in force, in accordance with the directions or guidelines relating to assets classifications issued by such authority or body; (b) in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank;

[28] Section 7. Disqualification for membership of Parliament or of a State Legislature – A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of the state –
(a) xxxxx xxxxxx xxxxxx xxxxxx
(b) xxxxx xxxxxx xxxxxx xxxxxx
(c) xxxxx xxxxxx xxxxxx xxxxxx
(d) If, whether, by himself or by any person or body of person in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by the appropriate Government.
(e) xxxxx xxxxxx xxxxxx xxxxxx
(f) xxxxx xxxxxx xxxxxx xxxxxx

[29] Section 9A. Disqualification for Government contracts etc.- A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate government for the supply of goods to, or for the execution of any works, undertaken by that government.

34. The question is how to ensure compliance with the constitutional goals enshrined in Articles 38 and 39 in the context of the problem on hand.

POSSIBLE SOLUTIONS:

(1) making of laws which render such undue accumulation of wealth an offence;

(2) disqualifying LEGISLATORS who have acquired wealth through unconstitutional means, from continuing as or seeking to get re-elected as LEGISLATORS; and

(3) making it known to the electorate to enable them to make a choice whether such LEGISLATORS should be given a further opportunity.

Whatever be the best solution out of the abovementioned three possibilities, it requires collection of data regarding the financial status of the LEGISLATORS and their ASSOCIATES and examining the same to ascertain whether there is an impermissible accumulation of wealth in their hands.

OFFENCE:

35. Provisions already exist in the Prevention of Corruption Act, 1988 (hereafter the PC Act) specifying various activities enumerated therein to be offences. For example: Under Section 13(1)(e)[30] of the PC Act, it is misconduct for a public servant to be in possession either personally or through some other person, "of pecuniary resources or property disproportionate to his known sources of income." Under Section 13(2) [31] , such a misconduct is an offence punishable with imprisonment for a period up to 10 years and also liable to fine.

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[30] 13. Criminal misconduct by a public servant.—(1) A public servant is said to commit the offence of criminal misconduct,

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or
xxxxxx xxxxx xxxxxx xxxxx xxxxxx xxxxxx or
(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Explanation.—For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

[31] Section 13(2) - Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine.

[32] P. V. Narasimha Rao v. State, (1998) 4 SCC 626
"Para 85. Having considered the submissions of the learned counsel on the meaning of the expression "public servant" contained in Section 2(c) of the 1988 Act, we are of the view that a Member of Parliament is a public servant for the purpose of the 1988 Act."

This Court has already held that a LEGISLATOR is a public servant [32] . Section 8(1)(m) [33] of the RP Act of 1951 declares[34] that a person convicted for an offence under the PC Act, 1988 is disqualified[35] both for being chosen or continuing as a LEGISLATOR.

DISQUALIFICATION:

36. We now deal with the question of disqualifying LEGISLATORS either from continuing as LEGISLATORS or from getting re-elected to any legislative body on the ground that they or their ASSOCIATES have acquired assets which are disproportionate to their known sources of income.

37. We have already noted that under Section 8(1)(m) of the RP Act of 1951, it is provided that persons convicted and sentenced to imprisonment for not less than 6 months for offences under the provisions of various enumerated offences under Section 8 of the RP Act of 1951 are disqualified either

(ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release."

for being chosen or continuing as a LEGISLATOR. The petitioner seeks such a disqualification to be imposed even in the absence of a conviction under the provisions of the PC Act.

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[33] "Section 8. Disqualification on conviction for certain offences.—(1) A person convicted of an offence punishable under-
(m) the Prevention of Corruption Act, 1988 (49 of 1988); shall be disqualified, where the convicted person is sentenced to-
(i) only fine, for a period of six years from the date of such conviction;

[34] But the difficulty lies in initiating the prosecution and obtaining proof of the fact that a LEGISLATOR either by himself or through his ASSOCIATES acquired assets (during the incumbency as LEGISLATOR) which are disproportionate to his known sources of the income. Initiation of investigation and prosecution for establishing the occurrence of the offences under the PC Act and proof of the guilt are riddled with procedural constraints and political obstacles and dis-prudential difficulties.

It becomes a more complicated and difficult task when the accused himself happens to be a law maker/LEGISLATOR. The history of this country during the last 70 years speaks eloquently how unsuccessful the State has been in bringing to book the LEGISLATORS with questionable financial integrity. The reasons are many. Low level efficiency of the State machinery (both investigating and prosecuting agencies) and the legal system, lack of political will are some of the known reasons. Criminal jurisprudence gives a great deal of benefit of doubt to an accused person and expects the State to prove the guilt of accused beyond all reasonable doubt.

[35] Section 7(b) of the RP Act of 1951:

"disqualified" means disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State."

38. Parliament has prescribed various disqualifications in Chapter III of Part II of the RP Act of 1951 (Sections 8, 8A, 9, 9A, 10 and 10A). Each of those disqualifications arises out of various factors specified under each of those sections. Undue accumulation of wealth (assets of the LEGISLATORS) is not one of the grounds specified either under any of the abovementioned provisions or under Articles 102 and 191 of the Constitution which stipulate some of the disqualifications. However, both the Articles[36] stipulate that the Parliament may, by or under any law, prescribe disqualifications other than those specified thereunder.

39. The distinction between something done by a law and done under a law fell for consideration of this court in several cases commencing from Dr. Indramani Pyarelal Gupta & others vs. W.R. Natu & others, AIR 1963 SC 274[37] and a constitution bench of this Court held at para 15:

> "……. The meaning of the words, "under the Act" is wellknown. "By" an Act would mean by a provision directly enacted in the statute in question and which is gatherable from its express language or by necessary implication therefrom. The words "under the Act" would, in that context signify what is not directly to be found in the statute itself but is conferred or imposed by virtue of powers enabling this to be done; in other words, bye-laws made by a subordinate law-making authority which is empowered to do so by the parent Act. The distinction is thus between what is directly done by the enactment and what is done indirectly by rulemaking authorities which are vested with powers in that behalf by the Act. …….. That in such a sense bye-laws would be subordinate legislation "under the Act" is clear from the terms of Ss.11 and 12 themselves."

We are of the opinion that the ratio of the judgment applies in all force to the interpretation of Articles 102(1)(e) and 191(1)(e).

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[36] Article 102. Disqualifications for membership. (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—
xxx xxx xxx xxx
(e) if he is so disqualified by or under any law made by Parliament.
Article 191. Disqualifications for membership. (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—
xxx xxx xxx xxx
(e) if he is so disqualified by or under any law made by Parliament.

[37] See also Bharat Sanchar Nigam Limited Vs. Telecom Regulatory Authority of India and Others, (2014) 3 SCC 222, para 90.

40. Manifold and undue accretion of assets of LEGISLATORS or their ASSOCIATES by itself might be a good ground for disqualifying a person either to be a LEGISLATOR or for seeking to get re-elected as a LEGISLATOR. Statutes made by the Parliament are silent in this regard. But Section 169(1)[38] of the RP Act of 1951 authorizes the central government to make rules for carrying out the purposes of the Act. If the nation believes that those who are elected to its legislative bodies ought not to take undue advantage of their election to the LEGISLATURE for accumulation of wealth by resorting to means, which are inconsistent with the letter and spirit of the Constitution and also the laws made by the legislature, appropriate prescriptions are required to be made for carrying out the purpose of the RP Act of 1951. **The purpose of prescribing disqualifications is to preserve the purity of the electoral process. Purity of electoral process is fundamental to the survival of a healthy democracy.** We do not see any prohibition either under the Constitution or the laws made by the Parliament disabling or stipulating that the central government should not make rules (in exercise of the powers conferred by the Parliament under Section 169 of the RP Act of 1951 read with Articles 102(1)(e) and 191(1)(e) of the Constitution) providing for such disqualification. On the other hand, Parliament under Section 169 of the RP Act of 1951 authorizes the Government of India to make rules for carrying out the purposes of the Act.

41. The Conduct of Election Rules, 1961 is an example of subordinate legislation; enacted by the Central Government pursuant to the power given under Section 169(1) of the RP Act of 1951.[39] Section 169(2) authorizes the making of rules for carrying out the purposes of the Act – 'without prejudice to the generality of the power to make Rules'. The power under Section 169 is very wide. The function of rule-making is to fill up the gaps in the working of a statute because no legislature can ever comprehend all possible situations which are required to be regulated by the statute.[40]

42. Logically, we see no difficulty in accepting the submission of the petitioner in the light of the mandate of the directive principles and the prescription of the Parliament under the PC Act that such undue accretion of wealth is a culpable offence. There is a need to make appropriate provision declaring that the UNDUE ACCRETION OF ASSETS is a ground for disqualifying a LEGISLATOR even without prosecuting the ---

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[38] Section 169. Power to make rules.—(1) The Central Government may, after consulting the Election Commission, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

[39] The Central Government may, after consulting the Election Commission, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

[40] Para 133 of J.K. Industries Limited &Anr vs. Union of India., (2007) 13 SCC 673

It is well settled that, what is permitted by the concept of "delegation" is delegation of ancillary or subordinate legislative functions or what is fictionally called as "power to full up the details the details". The judgments of this Court have laid down that the legislature may, after laying down the legislative policy, confer discretion on administrative or executive agency like the Central Government to work out details within the framework of the legislative policy laid down in the plenary enactment.

LEGISLATOR for offences under the PC Act. It is well settled that a given set of facts may in law give rise to both civil and criminal consequences. For example; in the context of employment under State, a given set of facts can give rise to a prosecution for an offence and also simultaneously form the basis for disciplinary action under the relevant Rules governing the service of an employee.

43. It is always open to the LEGISLATURE to declare that any member thereof is unfit to continue as such. In Raja Ram Pal v. Hon'ble Speaker, Lok Sabha & Others, (2007) 3 SCC 184, this Court took note of the history of the parliamentary privileges, scheme and text of the Constitution and opined that the power of expulsion is part of the privileges and immunities of the Parliament. It is relevant to notice that under Article 105(3), "the powers, privileges and immunities of each house of Parliament" may be "defined by Parliament by law". This court noticed and proceeded on the assumption[41] that no such law existed. Yet it was held by this Court[42] that such power was part of the privileges of the Legislature.

44. It therefore follows clearly and a fortiori that at least in the context of expulsion of a member of the LEGISLATURE, by a decision of that House, no statutory provision is required for stipulating the grounds on which a member could be expelled or the procedure which is required to be followed. Though Article 105 and 194 authorizes the LEGISLATURE to define the "powers and privileges and immunities", the non-exercise of that power to legislate, does not detract the power of the LEGISLATURE to expel a member on the ground that a member resorted to some activity which does not meet the approval of the House. A decision to expel a member would certainly have the same effect as disqualifying a member on the grounds specified under Articles 102 and 191. This Court in Raja Ram Pal case highlighted the difference between "expulsion" and "disqualification". [43] It may not answer the description of the expression disqualified as defined under the RP Act of 1951 or the grounds mentioned under Article 102 and 191. The disqualification brought about by expulsion is limited, of course, to the tenure of the member and does not disqualify him from seeking to become a member again by contesting an election in accordance with law.

45. The next question to be examined is whether it is permissible for the respondents to make subordinate legislation stipulating that UNDUE ACCRETION OF ASSETS would render a LEGISLATOR disqualified within the meaning of the expression under Section 7(b) of the RP Act of 1951 and to establish a body to undertake the regular monitoring of financial affairs of the LEGISLATORS.

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[41] See paragraph 43 Per. Sabharwal, CJI.
[42] See paragraph 318, Per. Sabharwal, CJI.
[43] Id. at paragraphs 144 and 145

46. If a temporary disqualification, such as the one discussed above, could be imposed on a LEGISLATOR even in the absence of any legislative prescription, in the light of the Scheme and tenor of Articles 102(1)(e) and 191(1)(e) read with Section 169 of the RP Act of 1951, the Government of India would undoubtedly be competent to make such a stipulation by making appropriate Rules declaring that UNDUE ACCRETION OF ASSETS would render a LEGISLATOR "disqualified". Further, it would be equally competent for the Government of India to establish a permanent mechanism for monitoring the financial affairs of the LEGISLATORS and their ASSOCIATES for periodically ascertaining the relevant facts. Because the establishment of such a permanent mechanism would be a necessary incident of the authority to declare a LEGISLATOR "disqualified".

INFORMATION TO THE VOTER:

47. The information regarding the sources of income of the CANDIDATES and their ASSOCIATES, would in our opinion, certainly help the voter to make an informed choice of the candidate to represent the constituency in the LEGISLATURE. It is, therefore, a part of the fundamental right under Article 19(1)(a) as explained by this Court in ADR case.

It must be mentioned that the 1st respondent in its counter affidavit stated:

> "Para 6. That it is further stated that the Election Commission of India's proposal relating to amending of Form 26 was thoroughly examined and considered in Ministry of Law and Justice and a final decision has been taken to amend the Form 26 of 1961 Rules. As the issues involved relate to policy matter and after due deliberations on the subject matter a final policy decision was taken to amend the Form 26."

48. Collection of such data can be undertaken by any governmental agency or even the Election Commission[44]. The present writ petition seeks that State be compelled to make a law authorizing the collection of data pertaining to the financial affairs of the LEGISLATORS. The petitioner submits that the first step in the collection of data should be to call upon those who seek to get elected to a legislative body to make a declaration of - (i) their assets and those of their ASSOCIATES (which is already a requirement under Section 33 of the RP Act of 1951 etc.); and (ii) the sources of their income.

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[44] We must make it clear that nothing in law prevents a vigilant citizen from collecting such data for initiating appropriate proceedings in accordance with law.

49. The obligation to make the second of the abovementioned two declarations arises as a corollary to the fundamental right of the voter under Article 19(1)(a) to know the relevant information with respect to the CANDIDATE, to enable the voter to make an assessment and make an appropriate choice of his representative in the Legislature. The enforcement of such a fundamental right needs no statutory sanction. This Court and the High Courts are expressly authorized by the Constitution to give appropriate directions to the State and its instrumentalities and other bodies for enforcement of Fundamental Rights. On the other hand, nobody has the fundamental right to be a LEGISLATOR or to contest an election to become a LEGISLATOR. They are only constitutional rights structured by various limitations prescribed by the Constitution and statutes like the RP Act of 1951. The Constitution expressly permits the structuring of those rights by the Parliament by or under the authority of law by prescribing further qualifications or disqualifications.[45] To contest an election for becoming a legislator, a CANDIDATE does not require the consent of all the voters except the appropriate number of proposers being electors of the Constituency, [46] and compliance with other procedural requirements stipulated under the RP Act of 1951 and the rules made thereunder. But to get elected, every CANDIDATE requires the approval of the 'majority' of the number of voters of the Constituency choosing to exercise their right to vote. Voters have a fundamental right to know the relevant information about the CANDIDATES. For reasons discussed

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[45] See Articles 84(c), 102(1)(e), 173(c) and 191(1)(e)

Article 84. Qualification for membership of Parliament.— A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

xxxxx xxxxx xxxxx

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament Article 102. Disqualifications for membership. (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

xxxxx xxxxx xxxxx

(e) if he is so disqualified by or under any law made by Parliament. Article 173. Qualification for membership of the State Legislature.— A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

xxxxx xxxxx xxxxx

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament

Article 191. Disqualifications for membership. (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State— xxxxx xxxxx xxxxx

(e) if he is so disqualified by or under any law made by Parliament. 46Section 33. Presentation of nomination paper and requirements for a valid nomination. —(1) On or before the date appointed under clause (a) of section 30 each CANDIDATE shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the CANDIDATE and by an elector of the constituency as proposer :

Provided that a CANDIDATE not set up by a recognised political party, shall not be deemed to be duly nominated for election form a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency:

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday:

Provided also that in the case of a local authorities' constituency, graduates' constituency or teachers' constituency, the reference to "an elector of the constituency as proposer" shall be construed as a reference to ten per cent. of the electors of the constituency or ten such electors, whichever is less, as proposers.

earlier, the financial background in all its aspects, of the CANDIDATE and his/her ASSOCIATES is relevant and critical information. Therefore, a CANDIDATE'S constitutional right to contest an election to the legislature should be subservient to the voter's fundamental right to know the relevant information regarding the CANDIDATE; information which is critical to the making of an informed and rational choice in this area.

50. No doubt, compelling a CANDIDATE to disclose the relevant information, would to an extent be a legal burden on the CANDIDATE'S constitutional right to contest an election. The question, therefore, would be whether it requires a statutory sanction to create such compulsion.

If we analyze the scheme of the Constitution, rights falling under the Fundamental Rights chapter cannot be abrogated or taken away except by authority of law. Law in the context has always been held by this Court to require statutory basis[47]. There are various other rights conferred by the Constitution other than the fundamental rights. Whenever it was thought fit that such rights should be curtailed, the text of the Constitution made a declaration to that effect and also stipulated the manner in which such rights could be controlled or regulated. Article 102[48] is a limitation on the constitutional right of the citizens to seek the membership of the Parliament. It prescribes certain disqualifications for being chosen as or for a being a Member of either House of the Parliament. It further declares that apart from the enumerated disqualifications, other disqualifications could be prescribed by or under any law made by the Parliament. In other words, Parliament could itself prescribe disqualifications or could authorize some other body or authority to prescribe such disqualifications. Similar is the structure of Article 84 with respect to qualifications for membership of Parliament. We have already recorded our opinion that a disqualification could be prescribed by a Rule. Logically there cannot be any objection for imposing the legal burden upon the CANDIDATES to disclose the relevant information by RULES (subordinate legislation) under the RP Act of 1951. Form 26 provides for various kinds of information to be disclosed by the candidate. It cannot be said that the existing information required to be disclosed under the Affidavit is exhaustive of all the information a candidate needs to provide. Neither is the information provided under Section 33A an exhaustive list. This is because any embargo placed on the voters' right to know the relevant information to be disclosed by the candidate is subject to scrutiny under the fundamental right of the voter under Article 19(1)(a). Therefore, any limitation on information to voter cannot be inferred. We are of the opinion that Form 26 is only indicative of the information which is required to enable the voter to make an informed choice. And we see no legal bar in Section 169(2) to

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[47] State of Bihar v. Project Uchcha Vidya, Shiksha Sangh, (2006) 2 SCC 545, 574 paragraph 69; Bhuvan Mohan Patnaik & Others v. State of Andhra Pradesh, (1975) 3 SCC 185, 189 paragraph 14

[48] Supra Note 35

fetter the Central Government's rule making power from making such information available.[49]

51. Under Section 33 [50] of the RP Act of 1951, every CANDIDATE is required to deliver to the returning officer "a nomination paper completed in the prescribed form…". The expression "prescribed" is defined under Section 2(g) to mean "prescribed by rules made under this Act". Section 169 [51] authorizes the Government of India by notification in the Official Gazette to make rules for carrying out the purposes of the Act. Therefore, the contents of the nomination form could be determined by the Rules.

52. We shall now examine each one of the prayers in the writ petition and the feasibility of granting any relief thereon in the light of our above conclusions.

53. At the outset, we must make it clear that prayers 1(2)[52] and 3[53] seek directions to the respondents for amendment of the provisions of the RP Act of 1951.

Amendment of the RP Act of 1951 is a matter exclusively within the domain of the Parliament. It is well settled that no court could compel and no writ could be issued to compel any legislative body to make a law. It must be left to the wisdom of the legislature. Prayers 1(2) and 3, insofar as they seek directions in the nature of mandamus to consider amendment of the RP Act of 1951 cannot be granted.

54. In prayer 1(1) [54] , the petitioner seeks a direction to respondent Nos.1 and 2 to make changes in Form 26 prescribed under Rule 4A of the RULES, which would provide for

The prescription such as the one sought by the petitioner regarding the disclosure of the sources of income of the CANDIDATE and his/her ASSOCIATES in a

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49 The authority for this proposition has its genesis in Emperor v. Sibnath Banerji, (1944-45) 71 IA 241: AIR 1945 PC 156: "…. In the opinion of their Lordships, the function of sub-section (2) is merely an illustrative one; the rule-making power is conferred by sub-section (1), and 'the rules' which are referred to in the opening sentence of sub-section (2) are the rules which are authorized by, and made under, subsection (1), as, indeed, is expressly stated by the words 'without prejudice to the generality of the powers conferred by sub-section (1)"; This statement of law was reiterated in State of J&K v. Lakhwinder Kumar, (2013) 6 SCC 333 at 343 para 23; V.T Khanzode v. Reserve Bank of India, (1982) 2 SCC 7 at page 14 para. 15; BSNL Vs. TRAI (2014) 3 SCC para. 90; Afzal Ullah v. State of UP, AIR 1964 SC 264

50 Supra Note. 46

51 It, inter alia, authorizes the making of rules pertaining to the form of affidavit under sub section (3) of Section 33A. (Inserted by Act 72 of 2002, Sec. 6 (w.r.e.f 24-8-2002)

52 1. issue a writ, order or direction, in the nature of mandamus –

xxx xxx xxx

(2) to respondent no.1 to consider suitable amendment in the Representation of the People Act 1951 to provide for rejection of nomination papers of the candidates and disqualification of MPs/MLAs/MLCs deliberately furnishing wrong information about their assets in the affidavit in Form 26 at the time of filing of the nomination;

53 3. issue a writ, order or direction in the nature of mandamus to the respondents to consider amending Section 9-A of the Act to include contracts with appropriate Government and any public company by the Hindu undivided family/trust/partnership firm(s)/private company (companies) in which the candidate and his spouse and dependents have a share or interest.

54 "1. Issue a writ, order or direction, in the nature of mandamus - (1) to respondents no.1 and 2 to make necessary changes in the Form 26 prescribed under Rule 4A of the Conduct of Election Rules, 1961 keeping in view the suggestion in para 38 of the WP;"

whether the respondents could be compelled to make appropriate Rules for the above-mentioned purpose. The Government of India, functioning as a statutory body for prescribing rules under the RP Act of 1951, is amenable to writ jurisdiction under Article 32 for the enforcement of the fundamental right under Article 19(1)(a) of the voter to know the relevant information with respect to the candidates.

Respondent Nos.1 and 2 are constitutionally obliged to implement the directions given by this Court in exercise of its jurisdiction under the Constitution. It may also be noticed that Section 169(1) of the RP Act of 1951 obligates the Government of India to make Rules after consulting the Election Commission. In the light of the conclusions recorded in paras 42 to 45, we are also of the opinion the information regarding the sources of income of the LEGISLATORS and their ASSOCIATES and CANDIDATES is relevant and LEGISLATORS and CANDIDATES could be compelled even by subordinate legislation. We see no reason for declining prayer 1(1).

55. In the light of the law declared by this Court in ADR case and PUCL case, we do not see any legal or normative impediment nor has any tenable legal objection been raised before us by any one of the respondents, for issuance of the direction relating to the changes in FORM 26 (declaration by the CANDIDATES). On the other hand, the 2nd respondent in his counter stated:

> "7. It is submitted that so far as the first prayer in the captioned writ petition is concerned, the information about source(s) of income of candidates, their spouses and dependants will be a step in the direction of enhancing transparency and should form part of the declaration in Col.(9) of Form 26. The Answering Respondent Commission vide its letter no.3/4/ECI/LET/FUNC/JUD/SDR/Vol.I/2016 dated 7.09.2016 has already requested the Ministry of Law and Justice to consider the proposed amendments made in column (3) and column (9) of Form 26 and in total affirmation with the prayer made by the petitioner."

Therefore, we are of the opinion the prayer 1(1) should be granted and is accordingly granted. We direct that Rule 4A of the RULES and Form 26 appended to the RULES shall be suitably amended, requiring CANDIDATES and their ASSOCIATES to declare their sources of income.

56. We shall now deal with prayer 1(3) which seeks three distinct reliefs. In our opinion, it would be more logical to deal with the relief sought in prayer 1(3)(ii)[55] first. In prayer

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[55] 1. issue a writ, order or direction, in the nature of mandamus –

xxx xxx xxx

(3) to respondents no.3 to 5 to

xxx xxx xxx

(ii)have a permanent mechanism to take similar action in respect of MPs/MLAs/MLCs whose assets increase by more than 100% by the next election,

1(3)(ii), the petitioner seeks a direction for establishment of a permanent mechanism to inquire/ investigate into the disproportionate increase in the assets of LEGISLATORS during their tenure as LEGISLATORS. The 1st respondent is silent in its counter in this regard except making an omnibus claim and a general stand that all the prayers are in the realm of policy and within the exclusive domain of the Parliament.

57. We have already taken note of (i) the fact that increase in the assets of the LEGISLATORS and/or their ASSOCIATES disproportionate to the known sources of their respective incomes is, by compelling inference, a constitutionally impermissible conduct and may eventually constitute offences punishable under the PC Act and (ii) 'undue influence' within the meaning of Section 123 of the RP Act of 1951. In order to effectuate the constitutional and legal obligations of LEGISLATORS and their ASSOCIATES, their assets and sources of income are required to be continuously monitored to maintain the purity of the electoral process and integrity of the democratic structure of this country. Justice Louis D. Brandeis, perceptively observed: "the most important political office is that of the private citizen."

58. The citizen, the ultimate repository of sovereignty in a democracy must have access to all information that enables critical audit of the performance of the State, its instrumentalities and their incumbent or aspiring public officials. It is only through access to such information that the [51] citizen is enabled/empowered to make rational choices as regards those holding or aspiring to hold public offices, of the State.

59. The State owes a constitutional obligation to the people of the country to ensure that there is no concentration of wealth to the common detriment and to the debilitation of democracy. Therefore, it is necessary, as rightly prayed by the petitioner, to have a permanent institutional mechanism dedicated to the task. Such a mechanism is required to periodically collect data of LEGISLATORS and their respective ASSOCIATES and examine in every case whether there is disproportionate increase in the assets and recommend action in appropriate cases either to prosecute the LEGISLATOR and/or LEGISLATOR'S respective ASSOCIATES or place the information before the appropriate legislature to consider the eligibility of such LEGISLATORS to continue to be members of the concerned House of the legislature.

60. Further, data so collected by the said mechanism, along with the analysis and recommendation, if any, as noted above should be placed in the public domain to enable the voters of such LEGISLATOR to take an informed and appropriate decision, if such LEGISLATOR chooses to contest any election for any legislative body in future.

61. For the reasons mentioned above, we allow the prayer 1(3)(ii) of the 1st respondent.

62. In prayer 1(3)(i)[56], the petitioner prays that an inquiry/ investigation be conducted into the "disproportionate increase in the assets" of the LEGISLATORS named in Annexure P-6 to the writ petition. We are of the opinion that an inquiry/investigation such as the one sought for by the petitioner with reference to the named LEGISLATORS would amount to selective scrutiny of the matter in the absence of any permanent mechanism regularly monitoring the growth of the assets of all the LEGISLATORS and/or their ASSOCIATES as a class. Such a selective investigation could lead to political witch-hunting. We, therefore, decline this relief, at this stage.

63. We shall now deal with prayer no.2 [57] which seeks a declaration that non-disclosure of assets and sources of income would amount to 'undue influence' – a corrupt practice under Section 123(2) of the RP Act of 1951. In this behalf, heavy reliance is placed by the petitioner on a judgment of this Court in Krishnamoorthy v. Sivakumar & Others, (2015) 3 SCC 467. It was a case arising under the Tamil Nadu Panchayats Act, 1994. A notification was issued by the State Election Commission stipulating that every candidate at an election to any Panchayat is required to disclose information inter alia whether the candidate was accused in any pending criminal case of any offence punishable with imprisonment for two years or more and in which charges have been framed or cognizance has been taken by a court of law. In an election petition, it was alleged that there were certain criminal cases pending falling in the abovementioned categories but the said information was not disclosed by the returned candidate at the time of filing his nomination. One of the questions before this Court was whether such non-disclosure amounted to 'undue influence' – a corrupt practice under the Panchayats Act. It may be mentioned that the Panchayats Act simply adopted the definition of a corrupt practice as contained in Section 123 of the RP Act of 1951.

On an elaborate consideration of various aspects of the matter, this Court held as follows:

91. … While filing the nomination form, if the requisite information, as has been highlighted by us, relating to criminal antecedents, is not given, indubitably, there

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[56] 1. issue a writ, order or direction, in the nature of mandamus –

xxx xxx xxx

(3) to respondents no.3 to 5 to-

(i) conduct inquiry/investigation into disproportionate increase in the assets of MPs/MLAs/MLCs included in list in Annexure P6 to the WP,

[57] Prayer No.2 – "declare that non disclosure of assets and sources of income of self, spouse and dependents by a candidate would amount to undue influence and thereby, corruption and as such election of such a candidate can be declared null and void under Section 100(1)(b) of the RP Act of 1951 in terms of the judgment reported in AIR 2015 SC 1921."

is an attempt to suppress, effort to misguide and keep the people in dark. This attempt undeniably and undisputedly is undue influence and, therefore, amounts to corrupt practice. …"

64. For the very same logic as adopted by this Court in Krishnamoorthy, we are also of the opinion that the nondisclosure of assets and sources of income of the CANDIDATES and their ASSOCIATES would constitute a corrupt practice falling under heading 'undue influence' as defined under Section 123(2) of the RP Act of 1951. We, therefore, allow prayer No.2.

65. Coming to Prayer No. 4, the petitioner is only seeking information regarding the contracts, if any with the appropriate government either by the candidate or his/her spouse and dependants.

> "..information about the contracts with appropriate Government and any public company by the candidate, his/her spouse and dependents directly or by Hindu undivided family/trust/partnership firm(s)/private company (companies) in which the candidate and his spouse and dependents have a share or interest shall also be provided in the affidavit in Form 26 prescribed under the Rules."

66. In the light of the foregoing discussion, the information such as the one required under the above-mentioned prayer is certainly relevant information in the context of disqualification on the ground of undue accretion of assets, therefore, we see no objection for granting the relief as prayed for.

67. We are left with the reliefs sought by way of prayer No. 5 in I.A. No. 8 of 2016. The petitioner seeks Form 26 be amended to provide certain further information. An analysis of the information sought (as can be seen from the prayer) indicates that all the information is in the context of statutorily prescribed disqualifications under the RP Act of 1951. In our opinion, such information would certainly be relevant and necessary for a voter to make an appropriate choice at the time of the election whether to vote or not in favor of a particular candidate. Therefore, all the six prayers made in I.A. No. 8 are allowed.

68. The writ petition is allowed as indicated above, but, in the circumstances, without any costs.

….....J.
(J. CHELAMESWAR)

New Delhi
February 16, 2018

….....J.
(S. ABDUL NAZEER)