Manoj Narula vs Union Of India on 27 August, 2014

Bench: Dipak Misra, Madan B. Lokur, Kurian Joseph, S.A. Bobde

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 289 OF 2005

Manoj Narula ... Petitioner

Versus

Union of India ...Respondent

J U D G M E N T

Dipak Misra, J. [for himself, R.M. Lodha, C.J., and S.A. Bobde, J.] A democratic polity, as understood in its quintessential purity, is conceptually abhorrent to corruption and, especially corruption at high places, and repulsive to the idea of criminalization of politics as it corrodes the legitimacy of the collective ethos, frustrates the hopes and aspirations of the citizens and has the potentiality to obstruct, if not derail, the rule of law. Democracy, which has been best defined as the Government of the People, by the People and for the People, expects prevalence of genuine orderliness, positive propriety, dedicated discipline and sanguine sanctity by constant affirmance of constitutional morality which is the pillar stone of good governance. While dealing with the concept of democracy, the majority in Indira Nehru Gandhi v. Raj Narain[1], stated that 'democracy' as an essential feature of the Constitution is unassailable. The said principle was reiterated in T.N. Seshan, CEC of India v. Union of India and ors.[2]. and Kuldip Nayar v. Union of India & Ors.[3] It was pronounced with asseveration that democracy is the basic and fundamental structure of the Constitution. There is no shadow of doubt that democracy in India is a product of the rule of law and aspires to establish an egalitarian social order. It is not only a political philosophy but also an embodiment of constitutional philosophy. In People's Union for Civil Liberties and another v. Union of India and another[4], while holding the voters' rights not to vote for any of the candidates, the Court observed that democracy and free elections are a part of the basic structure of the Constitution and, thereafter, proceeded to lay down that democracy being the basic feature of our constitutional set- up, there can be no two opinions that free and fair elections would alone guarantee [pic]the growth of a healthy democracy in the country. The term "fair" denotes equal opportunity to all people. Universal adult suffrage conferred on the citizens of India by the Constitution has made it possible for millions of individual voters to participate in the governance of our country. For democracy to survive, it is fundamental that the best available men should be chosen as the people's

representatives for the proper governance of the country and the same can be best achieved through men of high moral and ethical values who win the elections on a positive vote. Emphasizing on a vibrant democracy, the Court observed that the voter must be given an opportunity to choose none of the above (NOTA) button, which will indeed compel the political parties to nominate a sound candidate. Accordingly, the principle of the dire need of negative voting was emphasised. The significance of free and fair election and the necessity of the electorate to have candidates of high moral and ethical values was re-asserted. In this regard, it may be stated that the health of democracy, a cherished constitutional value, has to be protected, preserved and sustained, and for that purpose, instilment of certain norms in the marrows of the collective is absolutely necessitous.

THE REFERENCE We have commenced our judgment with the aforesaid prologue as the present writ petition under Article 32 of the Constitution was filed by the petitioner as pro bono publico assailing the appointment of some of the original respondents as Ministers to the Council of Ministers of Union of India despite their involvement in serious and heinous crimes. On 24.3.2006, when the matter was listed before the Bench presided by the learned Chief Justice, the following order came to be passed: -

> "A point of great public importance has been raised in this petition. Broadly, the point is about the legality of the person with criminal background and/or charged with offences involving moral turpitude being appointed as ministers in Central and State Governments.
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> We have heard in brief Mr. Rakesh Dwivedi, learned senior counsel who was appointed as amicus curiae to assist the Court, as also the learned Solicitor General, appearing for the Union of India, and Mr. Gopal Subramaniam, learned Additional Solicitor General appearing on behalf of the Attorney General for India. Having regard to the magnitude of the problem and its vital importance, it is but proper that the petition is heard by a Bench of five Judges.
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> We issue notice to Union of India. Formal notice need not be issued since the Union of India is represented by learned Solicitor General.
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> Notices shall also be issued to the Advocates General of all the States. The notice shall state that the State Governments and the Union of India may file their affidavits along with relevant material within four weeks of service of notice.
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> The Prime Minister and some of the Ministers in Union Cabinet have been arrayed as party respondents 2 to 7. It is not necessary to implead individual ministers and/or Prime Minister for deciding the question above- named. Accordingly, respondent Nos. 2 to 7 are deleted from the array of parties.
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> List the case after the Court reopens after the summer vacation for directions as to fixing a date for its being placed before the Constitution Bench." In view of the aforesaid order and the subsequent orders, the matter has been placed before us.

Considering the controversy raised, we are required to interpret the scope and purpose of Articles 75 and 164 of the Constitution, regard being had to the text, context, scheme and spirit of the Constitution.

THE PURITY OF ELECTION In the beginning, we have emphasized on the concept of democracy which is the corner stone of the Constitution. There are certain features absence of which can erode the fundamental values of democracy. One of them is holding of free and fair election by adult franchise in a periodical manner as has been held in Mohinder Singh Gill and another v. Chief Election Commissioner, New Delhi and others[5], for it is the heart and soul of the parliamentary system. In the said case, Krishna Iyer, J. quoted with approval the statement of Sir Winston Churchill which is as follows: -

"At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper – no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point." In Raghbir Singh Gill v. S. Gurcharan Singh Tohra[6], the learned Judges, after referring to Mohinder Singh Gill's case, stated that nothing can diminish the overwhelming importance of the cross or preference indicated by the dumb sealed lip voter. That is his right and the trust reposed by the Constitution in him is that he will act as a responsible citizen choosing his masters for governing the country.

This Court has laid emphasis on the purity of elections in Union of India v. Association for Democratic Reforms and another[7] and, in that context, has observed that elections in this country are fought with the help of money power which is gathered from black sources and once elected to power, it becomes easy to collect tons of black money which is used for retaining power and for re-election. The Court further observed that if on an affidavit a candidate is required to disclose the assets held by him at the time of election, the voter can decide whether he should be re-elected. Thereafter, as regards the purity of election, the Court observed that to maintain purity of elections and, in particular, to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties, and the voters would have basic elementary right to know full particulars of a candidate who is to represent them in Parliament where laws to bind their liberty and property may be enacted because the right to get information in a democracy is recognised all throughout and it is a natural right flowing from the concept of democracy. Elaborating further, the Court opined that a voter has a right to know the antecedents including the criminal past of his candidate contesting election for MP or MLA as it is fundamental and basic for the survival of democracy, for he may think over before making his choice of electing law-breakers as law-makers. Eventually, the Court directed the Election Commission to exercise its power under Article 324 of the Constitution requiring the candidate to furnish information pertaining to the fact whether the candidate has been convicted/

acquitted/discharged of any criminal offence in the past, if any, and whether he has been punished with imprisonment or fine; 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; and certain other information.

From the aforesaid authorities, it is perceivable that while giving emphasis on the sanctity of election, the Court has expressed its concern with regard to various facets of the candidates who contest the election and seek votes.

CRIMINALISATION OF POLITICS Criminalisation of politics is an anathema to the sacredness of democracy. Commenting on criminalization of politics, the Court, in Dinesh Trivedi, M.P. and others v. Union of India and others[8], lamented the faults and imperfections which have impeded the country in reaching the expectations which heralded its conception. While identifying one of the primary causes, the Court referred to the report of N.N. Vohra Committee that was submitted on 5.10.1993. The Court noted that the growth and spread of crime syndicates in Indian society has been pervasive and the criminal elements have developed an extensive network of contacts at many a sphere. The Court, further referring to the report, found that the Report reveals several alarming [pic]and deeply disturbing trends that are prevalent in our present society. The Court further noticed that the nexus between politicians, bureaucrats and criminal elements in our society has been on the rise, the adverse effects of which are increasingly being felt on various aspects of social life in India. Indeed, the situation has worsened to such an extent that the President of our country felt constrained to make references to the phenomenon in his addresses to the Nation on the eve of the Republic Day in 1996 as well as in 1997 and hence, it required to be handled with extreme care and circumspection.

In Anukul Chandra Pradhan, Advocate Supreme Court v. Union of India and others[9], the Court, in the context of the provisions made in the election law, observed that they have been made to exclude persons with criminal background of the kind specified therein from the election scene as candidates and voters with the object to prevent criminalization of politics and maintain propriety in elections. Thereafter, the three-Judge Bench opined that any provision enacted with a view to promote the said object must be welcomed and upheld as subserving the constitutional purpose. In K. Prabhakaran v. P. Jayarajan[10], in the context of enacting disqualification under Section 8(3) of the Representation of the People Act, 1951 (for brevity “the 1951 Act”), it has been reiterated that persons with criminal background pollute the process of election as they have no reservation from indulging in criminality to gain success at an election.

It is worth saying that systemic corruption and sponsored criminalization can corrode the fundamental core of elective democracy and, consequently, the constitutional governance. The agonized concern expressed by this Court on being

moved by the conscious citizens, as is perceptible from the authorities referred to hereinabove, clearly shows that a democratic republic polity hopes and aspires to be governed by a Government which is run by the elected representatives who do not have any involvement in serious criminal offences or offences relating to corruption, casteism, societal problems, affecting the sovereignty of the nation and many other offences. There are recommendations given by different committees constituted by various Governments for electoral reforms. Some of the reports that have been highlighted at the bar are (i) Goswami Committee on Electoral Reforms (1990), (ii) Vohra Committee Report (1993), (iii) Indrajit Gupta Committee on State Funding of Elections (1998), (iv) Law Commission Report on Reforms of the Electoral Laws (1999), (v) National Commission to Review the Working of the Constitution (2001), (vi) Election Commission of India – Proposed Electoral Reforms (2004), (vii) The Second Administrative Reforms Commission (2008), (vii) Justice J.S. Verma Committee Report on Amendments to Criminal Law (2013), and (ix) Law Commission Report (2014).

Vohra Committee Report and other Reports have been taken note of on various occasions by this Court. Justice J.S. Verma Committee Report on Amendments to Criminal Law has proposed insertion of Schedule 1 to the 1951 Act enumerating offences under IPC befitting the category of 'heinous' offences. It recommended that Section 8(1) of the 1951 Act should be amended to cover, inter alia, the offences listed in the proposed Schedule 1 and a provision should be engrafted that a person in respect of whose acts or omissions a court of competent jurisdiction has taken cognizance under Section 190(1)(a), (b) or (c) of the Code of Criminal Procedure or who has been convicted by a court of competent jurisdiction with respect to the offences specified in the proposed expanded list of offences under Section 8(1) shall be disqualified from the date of taking cognizance or conviction, as the case may be. It further proposed that disqualification in case of conviction shall continue for a further period of six years from the date of release upon conviction and in case of acquittal, the disqualification shall operate from the date of taking cognizance till the date of acquittal.

The Law Commission, in its 244th Report, 2014, has suggested amendment to the 1951 Act by insertion of Section 8B after Section 8A, after having numerous consultations and discussions, with the avowed purpose to prevent criminalization of politics. It proposes to provide for electoral reforms. Though it is a recommendation by the Law Commission, yet to understand the existing scenario in which the criminalization of politics has the effect potentiality to create a concavity in the highly treasured values of democracy, we think it apt to reproduce the relevant part of the proposed amendment. It reads as follows: -

"8B. Disqualification on framing of charge for certain offences. - (1) A person against whom a charge has been framed by a competent court for an offence punishable by at least five years imprisonment shall be disqualified from the date of framing the charge for a period of six years, or till the date of quashing of charge or acquittal,

whichever is earlier.

(2) Notwithstanding anything contained in this Act, nothing in sub-section (1) shall apply to a person:

(i) Who holds office as a Member of Parliament, State Legislative Assembly or Legislative Council at the date of enactment of this provision, or

(ii) Against whom a charge has been framed for an offence punishable by at least five years imprisonment;

(a) Less than one year before the date of scrutiny of nominations for an election under Section 36, in relation to that election;

(b) At a time when such person holds office as a Member of Parliament, State Legislative Assembly or Legislative Council, and has been elected to such office after the enactment of these provisions;

(3) For Members of Parliament, State Legislative Assembly or Legislative Council covered by clause (ii) of sub-section (2), they shall be disqualified at the expiry of one year from the date of framing of charge or date of election, whichever is later, unless they have been acquitted in the said period or the relevant charge against them has been quashed." The aforesaid vividly exposits concern at all quarters about the criminalisation of politics. Criminalisation of politics, it can be said with certitude, creates a dent in the marrows of the nation.

CORRUPTION IN THE PRESENT SCENARIO Criminality and corruption go hand in hand. From the date the Constitution was adopted, i.e., 26th January, 1950, a Red Letter Day in the history of India, the nation stood as a silent witness to corruption at high places. Corruption erodes the fundamental tenets of the rule of law. In Niranjan Hemchandra Sashittal and another v. State of Maharashtra[11] the Court has observed: -

"It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a [pic]country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality." Recently, in Dr. Subramanian Swamy v. Director, Central Bureau of Investigation & Anr.[12], the Constitution Bench, speaking through R.M. Lodha, C.J., while declaring Section 6A of the Delhi Special Police Establishment Act, 1946, which was inserted by Act 45 of 2003, as unconstitutional, has opined that:-

> "It seems to us that classification which is made in Section 6-A on the basis of status in the Government service is not permissible under Article 14 as it defeats the purpose of finding prima facie truth into the allegations of graft, which amount to an offence under the PC Act, 1988.

Can there be sound differentiation between corrupt public servants based on their status? Surely not, because irrespective of their status or position, corrupt public servants are corrupters of public power. The corrupt public servants, whether high or low, are birds of the same feather and must be confronted with the process of investigation and inquiry equally. Based on the position or status in service, no distinction can be made between public servants against whom there are allegations amounting to an offence under the PC Act, 1988." And thereafter, the larger Bench further said:-

> "Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences." And again:
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> "70. Office of public power cannot be the workshop of personal gain. The probity in public life is of great importance. How can two public servants against whom there are allegations of corruption of graft or bribe taking or criminal misconduct under the PC Act, 1988 can be made to be treated differently because one happens to be a junior officer and the other, a senior decision maker.
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> Corruption is an enemy of nation and tracking down corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of public servant does not qualify such public servant from exemption from equal treatment. The decision making power does not segregate corrupt officers into two classes as they are common crime doers and have to be tracked down by the same process of inquiry and investigation." From the aforesaid authorities, it is clear as noon day that corruption has the potentiality to destroy many a progressive aspect and it has acted as the formidable enemy of the nation.
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> PROVISIONS RELATING TO QUALIFICATIONS AND DISQUALIFICATION OF MPs AND MLAs/MLCs Having stated about the significance of democracy under our Constitution and holding of free and fair elections as a categorical imperative to sustain and subserve the very base of democracy, and the concern of this Court on being moved under various circumstances about criminalization of politics, presently we shall look at the constitutional and the statutory provisions which provide for qualifications and disqualifications of Members of Parliament and that of the State Legislature.

Article 84 of the Constitution provides for qualifications for membership of Parliament. The said Article lays down that a person shall not be qualified to be chosen to fill a seat in the Parliament unless he is a citizen of India, and makes and subscribes before a 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; and further 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; and that apart, he must possess such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Article 102 provides for disqualifications for membership. It provides that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament 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; if he is of unsound mind and stands so declared by a competent court; if he is an undischarged insolvent; 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; and if he is so disqualified by or under any law made by Parliament. The explanation expressly states what would be deemed not to be an office of profit under the Government of India or the Government of any State. That apart, the said Article prescribes that a person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

Similarly, Article 173 provides for qualification for membership of the State Legislature and Article 191 enumerates the disqualifications similar to Article 102.

The Parliament by the 1951 Act has prescribed further qualifications and disqualifications to become a member of Parliament or to become a member of Legislative Assembly. Section 8 of the Act stipulates the disqualification on conviction for certain offences. We need not state the nature of the offences enumerated therein. Suffice it to mention Section 8(1) covers a wide range of offences not only under the Indian Penal Code but also under many other enactments which have the potentiality to destroy the core values of a healthy democracy, safety of the State, economic stability, national security, and prevalence and sustenance of peace and harmony amongst citizens, and many others. Sub-sections 8(3) and 8(4), which have been a matter of great debate, are reproduced below: -

“8(3) A person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (1) or sub-section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(4) Notwithstanding anything in sub-section (1), Sub-section (2) or sub-

section (3), a disqualification under either sub-section shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapse from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court." At this juncture, it is apposite to mention that the constitutional validity of sub-section (4) of Section 8 of the 1951 Act was challenged before this Court under Article 32 of the Constitution in Lily Thomas v. Union of India and others[13] wherein the Court, referring to the decision in K Prabhakaran (supra) and Articles 102(1)(e) and 191(1)(e) of the Constitution, held that once a person who was a Member of either House of Parliament or House of the State Legislature becomes disqualified by or under any law made by Parliament under Articles 102(1)(e) and 191(1)(e) of the Constitution, his seat automatically falls vacant by virtue of Articles 101(3)(a) and 190(3)(a) of the Constitution and Parliament cannot make a provision as in sub-section (4) of Section 8 of the Act to defer the date on which the disqualification of a sitting Member will have effect and prevent his seat becoming vacant on account of the disqualification under Article 102(1)(e) or Article 191(1)(e) of the Constitution. Eventually, the Court ruled that the affirmative words used in Articles 102(1)(e) and 191(1)(e) confer power on Parliament to make one law laying down the same disqualifications for a person who is to be chosen as Member of either House of Parliament or as a Member of the Legislative Assembly or Legislative Council of a State and for a person who is a sitting Member of a House of Parliament or a House of the State Legislature and the words in Articles 101(3)(a) and 190(3)(a) of the Constitution put express limitations on such power of the Parliament to defer the date on which the disqualifications would have effect and, therefore, [pic]sub-section (4) of Section 8 of the Act, which carves out a saving in the case of sitting Members of Parliament or State Legislature from the disqualifications under sub-sections (1), (2) and (3) of Section 8 of the Act or which defers the date on which the disqualification will take effect in the case of a sitting Member of Parliament or a State Legislature, is beyond the powers conferred on Parliament by the Constitution. Thereafter, dealing with sitting members of the Parliament and State Legislature, the two-Judge Bench ruled that if any sitting Member of Parliament or a State Legislature is convicted of any of the offences mentioned in sub-sections (1), (2) and (3) of Section 8 of the Act, and by virtue of such conviction and/or sentence, suffers the disqualifications mentioned in sub-sections (1), (2) and (3) of Section 8 of the Act, his membership of Parliament or the State Legislature, as the case may be, would not be saved by sub- section (4) of Section 8 of the Act.

Thus, the scheme of disqualification upon conviction laid down by the 1951 Act clearly upholds the principle that a person who has been convicted for certain categories of criminal activities is unfit to be a representative of the people. Criminal activities that result in disqualification are related to various spheres pertaining to the interest of the nation, common citizenry interest, communal harmony, and prevalence of good governance. It is clear that the 1951 Act lays down that the commission of serious criminal offences renders a person ineligible to contest in elections or continue as a representative of the people. Such a restriction does provide the salutary deterrent necessary to prevent criminal elements from holding public office thereby preserving the probity of representative government.

SUBMISSIONS OF THE COUNSEL In this backdrop, the proponements put forth by Mr. Dwivedi, learned senior counsel, who was appointed as amicus curiae, are to be noted and considered. It is his

submission that under the constitutional scheme, it is the right of a citizen to be governed by a Government which does not have Ministers in the Council of Ministers with criminal antecedents. Though qualifications and disqualifications for the Members of Parliament and Members of the State Legislative Assembly or the State Legislative Council are provided under the Constitution, and they basically relate to the election process and continuance in the House and the further disqualifications which have been enumerated under the 1951 Act have been legislated by the Parliament being empowered under the specific provisions of the Constitution, yet when the Ministers are appointed who constitute the spectrum of collective responsibility to run the Government, a stronger criteria has to be provided for. A Minister is appointed by the President on the advice of the Prime Minister as per Article 75(1) of the Constitution and a Minister enters upon his Office after the President administers him oath of office and secrecy according to the form set out for the said purpose in the Third Schedule and, therefore, submits Mr. Dwivedi, it is the constitutional obligation on the part of the Prime Minister not to recommend any person to be appointed as a Minister of the Council of Ministers who has criminal antecedents or at least who is facing a criminal charge in respect of heinous or serious offences. The choice made by the Prime Minister has to have its base on constitutional choice, tradition and constitutional convention which must reflect the conscience of the Constitution. It is propounded by him that the same would serve the spirit and core values of the Constitution, the values of constitutionalism and the legitimate expectations of the citizens of this country. The power conferred on any constitutional authority under any of the Articles of the Constitution may not be circumscribed by express or obvious prohibition but it cannot be said that in the absence of use of any express phraseology in that regard, it would confer an unfettered and absolute power or unlimited discretion on the said constitutional authority. Learned senior counsel would contend that the doctrine of implied limitation has been accepted as a principle of interpretation of our organic and living Constitution to meet the requirements of the contemporaneous societal metamorphosis and if it is not applied to the language of Article 75(1), the élan vital of the Constitution would stand extinguished. It is urged by him that judiciary, as the final arbiter of the Constitution, is under the constitutional obligation to inject life to the words of the Constitution so that they do not become stagnate or sterile. In this context, Mr. Dwivedi has commended us to the views of the learned Judges in His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and another[14] to highlight that the applicability of the doctrine of implied limitation has been accepted by this Court.

Relying on the said principle, it is contended by him that the same has to be read into the language of Article 75(1) of the Constitution to state that the Prime Minister, while giving advice to the President for appointment of a person as Minister, is not constitutionally permitted to suggest the name of a person who is facing a criminal trial and in whose case charge/charges have been framed. Learned senior counsel has further submitted that high constitutional offices have to possess “institutional integrity” so that the faith of the people at large is not shaken. He has emphasised on the office of the President, the Governors, Judges of the High Courts and of the Supreme Court of the country and the Comptroller and Auditor General of India. Such offices, as contended, are offices of high public trust and, therefore, it is a natural necessity that in such appointments, the incumbent should be of impeccable integrity and character and it cannot be conceived that such a person would be involved in any kind of criminal offence. Mr. Dwivedi has made a distinction with regard to the eligibility of a person for becoming a Member of Parliament as that is controlled by

qualifications and disqualifications and the absence of disqualifications, but to be a Minister in the Council of Ministers which is done solely on the advice of the Prime Minister, absence of criminal antecedents has to be a condition precedent. It is canvassed by him that when parliamentary democracy is a basic feature of the Constitution and the Council of Ministers exercise all the powers as per the democratic conventions, it has to be treated as an important constitutional institution of governance of the nation and, therefore, it cannot be allowed to be held by persons involved in criminal offences. He has placed reliance upon the authorities in Centre for PIL and another v. Union of India and another[15], N. Kannadasan v. Ajoy Khose and others[16], Inderpreet Singh Kahlon v. State of Punjab[17], Arun Kumar Agarwal v. Union of India[18], State of Punjab v. Salil Sabhlok and others[19] and Centre for Public Interest Litigation and another v. Union of India and another[20].

Laying stress on the word "advice", apart from referring to the dictionary meaning, the learned senior counsel has urged that the framers of the Constitution have used the word "advice" as the Office of the Prime Minister is expected to carry the burden of the constitutional trust. The advice given by the Prime Minister to the President in the context of Article 75(1) has to be a considered, deliberate and informed one, especially taking note of the absence of criminal antecedents and lack of integrity. A Minister, though holds the office during the pleasure of the President, yet as per the law laid down by this Court and the convention, the advice of the Prime Minister binds the President. However, the President, being the Executive Head of the State, can refuse to follow the advice, if there is constitutional prohibition or constitutional impropriety or real exceptional situation that requires him to act to sustain the very base of the Constitution. Learned senior counsel would submit that the President, in exercise of his constitutional prerogative, may refuse to accept the advice of the Prime Minister, if he finds that the name of a Member of Parliament is suggested to become a Minister who is facing a criminal charge in respect of serious offences. To buttress the said submission, he has drawn inspiration from the decisions in Samsher Singh v. State of Punjab and another[21] and B. R. Kapur v. State of T.N. and another[22] Mr. Dwivedi has said that the situation "peril to democracy", as visualized in Samsher Singh (supra, confers the discretion on the President and he may not accept the advice. Learned senior counsel would submit that the decision in Samsher Singh (supra) has been followed in M.P. Special Police Establishment v. State of M.P. and others[23] wherein the Governor in an exceptional circumstance differed with the advice of the Council of Ministers and granted sanction for prosecution. Emphasising on the concept of constitutional trust in the Prime Minister which is inherent in the Constitution and which was a part of the Constituent Assembly Debates, Mr. Dwivedi has referred to the Debates in the Constituent Assembly. It is argued that a constitutional convention has to be read into Article 75(1) which would convey that a person charged with serious crimes cannot be appointed as a Minister, for the individual responsibility of the Cabinet is always comprehended as a facet of collective responsibility. For the aforesaid purpose, he has found the stimulus from "Constitutional Law" by Loveland, "Constitutional and Administrative Law" by David Polland, Neil Parpworth David Hughs, "Constitutional and Administrative Law" by Hilaire Barnett (5th Edn.) and "Constitutional Practice".

Mr. Anil Kumar Jha, learned counsel who has preferred the writ petition on behalf of the petitioner, supplementing the arguments of Mr. Dwivedi, contended that though the choice of the Prime

Minister relating to a person being appointed as a Minister is his constitutional prerogative, yet such choice cannot be exercised in an arbitrary manner being oblivious of the honesty, integrity and the criminal antecedents of a person who is involved in serious criminal offences. The Prime Minister, while giving advice to the President for appointment of a person as a Minister, is required to be guided by certain principles which may not be expressly stated in the Constitution but he is bound by the unwritten code pertaining to morality and philosophy encapsulated in the Preamble of the Constitution. Learned counsel has emphasised on the purposive interpretation of the Constitution which can preserve, protect and defend the Constitution regardless of the political impact. It is contended by him that if a constitutional provision is silent on a particular subject, this Court can necessarily issue directions or orders by interpretative process to fill up the vacuum or void till the law is suitably enacted. The broad purpose and the general scheme of every provision of the Constitution has to be interpreted, regard being had to the history, objects and result which it seeks to achieve. Learned counsel has placed reliance on S.P. Gupta v. Union of India and another[24] and M. Nagaraj and others v. Union of India and others[25].

Mr. T.R. Andhyarujina, learned senior counsel, who was requested to assist the Court, has submitted that in the absence of any express provision for qualification of a Minister in the Union Cabinet under Article 75 of the Constitution except that he has to be a Member of either House of the Parliament and when the oath required to be taken by a Minister under Article 75(4) as given in the Third Schedule, does not give any requirement of his antecedent, there is no legal restriction under the Constitution for a person unless convicted of an offence as provided under Section 8A of the 1951 Act to be appointed as a Minister. It is his submission that Article 84 specifies certain qualifications for filling up the seats of Parliament, but it does not state anything as to the character and qualification of a person qualified to sit in the Parliament. Apart from the disqualifications prescribed under Article 102(i)(e) and the provisions under the 1951 Act, there is no other disqualification for a Member of Parliament to hold the post of a Minister. Therefore, the criminal antecedents or any disqualification that is going to be thought of to hold the post of a Minister after the charge is framed, as contended by the petitioner, may be in the realm of propriety but that cannot be read into the constitutional framework.

Mr. Andhyarujina has further submitted that Section 44(4)(ii) of the Australian Constitution puts a limitation on the member of the House which travels beyond conviction in a criminal case, for the said provision provides that any person who has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer, would be incapable of being chosen or of sitting as a senator or a member of the House of Representatives. Learned counsel has commended us to Lane's Commentary on the Australian Constitution, 1986 to highlight that this is an exceptional provision in a Constitution which disqualifies a person from being a Member of Parliament even if he is not convicted but likely to be subject to a sentence for the prescribed offence, but in the absence of such a provision in our Constitution or in law made by the Parliament, the Court cannot introduce such an aspect on the bedrock of propriety. Learned counsel has also referred to the U.K. Representation of Peoples Act, 1981 which provides that a person who is sentenced or ordered to be imprisoned or detained indefinitely or for more than one year is disqualified and his election is rendered void and the seat of such a member is vacated. Mr. Andhyarujina has also referred to the House of Commons

Library paper on disqualification for membership of the House of Commons wherein the practice is that the existence of a criminal record may not disqualify a person from ministerial office, but convictions for offences involving corruption, dishonesty, serious violence or serious sexual misconduct would jeopardize a person's prospect of a ministerial career. Learned senior counsel has also drawn our attention to a publication by Professor Rodney Brazier "Is it a Constitutional issue: Fitness for ministerial office" in Public Law 1994 wherein it has been stated that whether a criminal record should disqualify a person from membership of Government is unclear, however, conviction for serious offences could impede a ministerial appointment. He has also referred to a passage from Constitutional and Administrative Law by Hilaire Barnett 4th Ed. P. 354, to show that by an unwritten rule of constitutional propriety, in United Kingdom, a person is unlikely to be made a Minister if he has been convicted of a serious offence or even if he is facing prosecution for a serious offence. Submission of learned amicus curiae is that there is no implied prohibition in our Constitution on appointment of a Minister in case of a pending prosecution of a serious offence except conviction and, therefore, the principle of implied prohibition that a person who is not convicted but is being prosecuted or charge sheeted for a criminal offence is to be debarred from being a Member of the Legislature and, consequently, a Minister would not be attracted. Learned senior counsel would contend that the jurisprudence is based on innocence of the accused until he is proved guilty which is in tune with Article 14(2) of the International Covenant on Civil and Political Rights and it cannot be brushed aside. Learned amicus curiae contended that in respect of certain constitutional officials like President of India, Judges of courts including superior courts, Attorney General of India, Comptroller and Auditor General of India and Governor of a State, implied prohibition is implicit. It is urged by him that this Court, while interpreting Article 75(1), cannot introduce the concept of rule of law to attract the principle of implied prohibition as rule of law is an elusive doctrine and it cannot form the basis of a prohibition on the appointment of a Minister.

Mr. Andhyarujina, while submitting about the absence of an express constitutional prohibition or a statutory bar founded on the basis of the 1951 Act prescribing conviction, has also submitted that despite the absence of a legal prohibition, there are non-legal requirements of a constitutional behavior implicit in the character of an appointment. He has referred to a passage from Constitutional and Administrative Law by ECS Wade and AW Bradley as well as the Constitutional Debates and urged that a convention should be developed that persons facing charge for serious criminal offences should not be considered for appointment as a Minister, but the Court cannot form a legal basis for adding a prohibition for making such an appointment justiciable in the court of law unless there is a constitutional prohibition or a statutory bar.

Mr. K. Parasaran, learned senior counsel, who was also requested to render assistance, has submitted that the area of election in a democratic set-up is governed by the 1951 Act and the rules framed thereunder and in the present mosaic of democracy such a controversy, in the absence of constitutional impediment or statutory prohibition, would not come within the parameters of judicial review. It is his proponement that the Prime Minister, in certain circumstances, regard being had to the political situations, may have certain political compulsions to appoint a Minister so that the frequent elections are avoided. It is his submission that any kind of additional prohibition under Article 75(1) by way of judicial interpretation is impermissible as the Prime Minister is the sole repository of power under the Constitution to advise the President as to who should become a

Minister if he is otherwise constitutionally eligible and there is no statutory impediment. Learned senior counsel would contend that the 1951 Act includes certain offences and specifies the stage, i.e., conviction and, therefore, if anything is added to it in respect of the stage, it would be travelling beyond the text which would be contrary to the principles of statutory interpretation.

Mr. Parasaran, learned amicus curiae, has drawn a distinction between the two concepts, namely, constitutional morality and constitutional propriety on one hand and ethical acceptability on the other and, in that regard, he has submitted that the advice of the Prime Minister, as has been stated by the framers of the Constitution, to the Head of the Executive for appointment of a Minister should conform to the standards of constitutional morality, regard being had to the constitutional norms, democratic polity and the sanctity of democracy. In essence, the submission of Mr. Parasaran is that the framers of the Constitution have bestowed immense trust on the Prime Minister as would be seen from the Constitutional Debates, and, therefore, this Court should reiterate the principle of constitutional trust and that would be a suggestive one in terms of Article 75(1) of the Constitution.

Mr. Paras Kuhad, learned Additional Solicitor General, in his turn, has contended that the doctrine of implied limitation has not been accepted in Kesavananda Bharati case by the majority of Judges and, therefore, the interpretation put forth by the learned friend of the Court for the petitioner is impermissible. It is urged by him that while interpreting Article 75(1) of the Constitution, the principle of implied limitation cannot be read into it to curtail the power of a high constitutional functionary like the Prime Minister.

It is his further submission that in the absence of a constitutional prohibition or restriction, nothing should be engrafted into it or implanted. It is put forth by him that the submission of learned amicus curiae to the effect that the President can exercise his discretion by not accepting the recommendations of the Prime Minister or by not acting on the advice of the Prime Minister is contrary to the constitutional norms and the parliamentary system prevalent in our country under the Constitution. For the aforesaid purpose, he has placed reliance on the decision in U.N.R. Rao v. Smt. Indira Gandhi[26]. It is urged by him that if anything is added to Article 75(1), that would tantamount to incorporating a disqualification which is not present and the principle of judicial review does not conceptually so permit, for such a disqualification could have been easily imposed by the framers of the Constitution or by the Parliament by making a provision under the 1951 Act. To bolster the said submission, he has commended us to the Constitution Bench decision in G. Narayanaswami v. G. Pannerselvam and others[27] and a three-Judge Bench decision in Shrikant v. Vasantrao and others[28]. The choice of the Prime Minister is binding on the President and a Minister holds the office till he enjoys the confidence of the House. Learned Additional Solicitor General, for the said purpose, has drawn inspiration from certain passages from Samsher Singh (supra).

It is his further submission that if the stage of framing of charge of any offence is introduced, it would frustrate and, eventually, defeat the established concept of criminal jurisprudence that an accused is presumed to be innocent till he is proved to be guilty and there is indeed a long distance between the accused “may have committed the offence” and “must have committed the offence”

which must be traversed by the prosecution by adducing reliable and cogent evidence. In this regard, reliance has been placed on Narendra Singh v. State of M.P.[29], Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra[30], S. Ganesan v. Rama Ranghuraman[31], State of U.P. v. Naresh[32] and Kailash Gour & ors. v. State of Assam[33]. Learned counsel would suggest that the stage would affect the concept of democratic legitimacy and a person cannot become ineligible on the basis of perceived seriousness of the crime without providing a protection despite the person being otherwise eligible, efficient and capable of being chosen as a Minister by the Prime Minister.

CONSTITUTIONAL PROVISIONS Having regard to the aforesaid submissions which have been put forth from various perspectives, we shall proceed to deal with the ambit and scope of the constitutional provisions which are relevant in the present context and how they are to be interpreted on the parameters of constitutional interpretation and on the bedrock of the precedents of this Court. We think it seemly to refer to the relevant Articles of the Constitution which are centripodal to the controversy. Articles 74 and 75 read as follows: -

> "74. (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice:
>
> Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.
>
> (2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

75. (1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

(1A) The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent of the total number of members of the House of the People.

(1B) A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier.

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council of Ministers shall be collectively responsible to the House of the People.

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule." From the aforesaid Articles, it is vivid that they deal with the Council of Ministers for the Union of India.

Article 163 pertains to the Council of Ministers of State who aid and advise the Governor. It reads as follows:-

> "163. (1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.
>
> (2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.
>
> (3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

The relevant part of Article 164 is extracted below: -

> "164. (1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor:
>
> xxx xxx xxx (2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.
>
> (3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.
>
> (4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister." At this juncture, it is apt to refer to the nature of oath which is meant for the office of

a Minister. The Third Schedule provides the forms of Oaths or Affirmations of the Constitution: -

"Form of oath of office for a Minister for the Union: -

"I, A.B., do swear in the name of God/ solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will faithfully and conscientiously discharge my duties as a Minister for the Union and that I will do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will." The Form of Oath for office of a Minister of State is as follows: -

"I, A.B., do swear in the name of God/ solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will faithfully and conscientiously discharge my duties as a Minister for the State of ..... and that I will do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or ill-will." The form of oath of secrecy for a Minister for the Union is as follows: -

"I, A.B., do swear in the name of God/solemnly affirm that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister for the Union except as may be required for the due discharge of my duties as such Minister." Similar is the oath of secrecy for a Minister for a State. We have reproduced the forms pertaining to oath as Mr. Dwivedi stressed on the concept of sanctity of oath that pertains to allegiance to the Constitution, performing of duties without fear or favour and maintenance of secrecy. It is urged by him that a person with criminal antecedents taking such an oath would violate the fundamental values enshrined in the Constitution.

DOCTRINE OF IMPLIED LIMITATION It has been highlighted before us by Mr. Dwivedi, as noted earlier, that regard being had to the nature of office a Minister holds in a democratic set-up under the Constitution, persons with criminal antecedents especially charged for heinous and serious offences cannot and should not hold the said office. He has emphatically put forth that apart from the prohibitions contained in Articles 102 and 179 of the Constitution and the conviction under the 1951 Act, the relevant stage in trial needs to be introduced to the phraseology of Article 75(1) as well as Article 164(1) so that the Prime Minister's authority to give advice has to be restricted to the extent not to advise a person with criminal antecedents to become a Minister. To substantiate the said view, he has taken aid of the doctrine of "implied limitation". In Kesavananda Bharati's case, Sikri, CJ, while expressing his view on the doctrine of implied limitation, has observed that in a written Constitution, it is rarely that everything is said expressly. Powers and

limitations are implied from necessity or the scheme of the Constitution. He has further held: -

"282. It seems to me that reading the Preamble the fundamental importance of the freedom of the individual, indeed its inalienability, and the importance of the economic, social and political justice mentioned in the Preamble, the importance of directive principles, the non-inclusion in Article 368 of provisions like Articles 52, 53 and various other provisions to [pic]which reference has already been made an irresistible conclusion emerges that it was not the intention to use the word "amendment" in the widest sense.

283. It was the common understanding that fundamental rights would remain in substance as they are and they would not be amended out of existence. It seems also to have been a common understanding that the fundamental features of the Constitution, namely, secularism, democracy and the freedom of the individual would always subsist in the welfare state.

284. In view of the above reasons, a necessary implication arises that there are implied limitations on the power of Parliament that the expression "amendment of this Constitution" has consequently a limited meaning in our Constitution and not the meaning suggested by the respondents." Shelat and Grover, JJ., in their opinion, while speaking about the executive power of the President, have observed that although the executive power of the President is apparently expressed in unlimited terms, an implied limitation has been placed on his power on the ground that he is a formal or constitutional head of the executive and that the real executive power vests in the Council of Ministers. The learned Judges arrived at the said conclusion on the basis of the implications of the Cabinet System of Government so as to constitute an implied limitation on the power of the President and the Governors. Proceeding further as regards the amending power of the Constitution, as engrafted under Article 368 of the Constitution, said the learned Judges: -

"583. The entire discussion from the point of view of the meaning of the expression "amendment" as employed in Article 368 and the limitations which arise by implications leads to the result that the amending power under Article 368 is neither narrow nor unlimited. On the footing on which we have proceeded the validity of the 24th Amendment can be sustained if Article 368, as it originally stood and after the amendment, is read in the way we have read it. The insertion of Articles 13(4) and 368(3) and the other amendments made will not affect the result, namely, that the power in Article 368 is wide enough to permit amendment of each and every article of the Constitution by way of addition, variation or repeal so long as its basic elements are not abrogated or denuded of their identity." Hegde and Mukherjea, JJ., while discussing about implied limitations, opined thus: -

"655. Implied limitations on the powers conferred under a statute constitute a general feature of all statutes. The position cannot be different in the case of powers conferred under a Constitution. A grant of power in general terms or even in absolute terms may be qualified by other express provisions in the same enactment or may be qualified by the implications of the context or even by considerations arising out of what appears to be the general scheme of the statute." And again: -

"656. Lord Wright in James v. Commonwealth of Australia[34] stated the law thus:

"The question, then, is one of construction, and in the ultimate resort must be determined upon the actual words used, read not in vacuo but as occurring in a single complex instrument, in which one part may throw light on another. The Constitution has been described as the federal compact, and in the construction must hold a balance between all its parts." Thereafter, the learned Judges proceeded to state that: -

"657. Several of the powers conferred under our Constitution have been held to be subject to implied limitations though those powers are expressed in general terms or even in absolute terms." And further proceeded to state thus: -

".... though plenary powers of legislation have been conferred on the Parliament and the State Legislatures in respect of the legislative topics allotted to them, yet this Court has opined that by the exercise of that power neither Parliament nor the State Legislatures can delegate to other authorities their essential legislative functions nor could they invade on the judicial power. These limitations were spelled out from the nature of the power conferred and from the scheme of the Constitution. But, it was urged on behalf of the Union and the States that, though there might be implied limitations on other powers conferred under the Constitution, there cannot be any implied limitations on the amending power. We see no basis for this distinction." Jaganmohan Reddy, J., in his separate opinion, concurred with the view expressed by Sikri, C.J.

Palekar, J., has opined thus: -

"Some more cases like Ranasinghe's case[35] Taylor v. Attorney General of Queensland[36]; Mangal Singh v. Union of India[37], were cited to show that constitutional laws permit implications to be drawn where necessary. Nobody disputes that proposition. Courts may have to do so where the implication is necessary to be drawn." After so stating, the learned Judge distinguished the cases by observing that: -

"None of the cases sheds any light on the question with which we are concerned viz. whether an unambiguous and plenary power to amend the provisions of the Constitution, which included the Preamble and the fundamental rights, must be

frightened by the fact that some superior and transcendental character has been ascribed to them." And eventually, ruled thus: -

"1318. On a consideration, therefore, of the nature of the amending power, the unqualified manner in which it is given in Article 368 of the Constitution it is impossible to imply any limitations on the power to amend the fundamental rights. Since there are no limitations express or implied on the amending power, it must be conceded that all the Amendments which are in question here must be deemed to be valid. We cannot question their policy or their wisdom." Chandrachud, J., has observed that: -

"2087. In considering the petitioner's argument on inherent limitations, it is well to bear in mind some of the basic principles of interpretation. Absence of an express prohibition still leaves scope for the argument that there are implied or inherent limitations on a power, but absence of an express prohibition is highly relevant for inferring that there is no implied prohibition." Khanna, J., while speaking on implied limitation, noted the submission of the learned counsel for the petitioner in the following terms: - "1444. Learned counsel for the petitioners has addressed us at some length on the point that even if there are no express limitations on the power of amendment, the same is subject to implied limitations, also described as inherent limitations. So far as the concept of implied limitations is concerned, it has two facets. Under the first facet, they are limitations which flow by necessary implications from express provisions of the Constitution. The second facet postulates limitations which must be read in the Constitution irrespective of the fact whether they flow from express provisions or not because they are stated to be based upon certain higher values which are very dear to the human heart and are generally considered essential traits of civilized existence. It is also stated that those higher values constitute the spirit and provide the scheme of the Constitution. This aspect of implied limitations is linked with the existence of natural rights and it is stated that such rights being of paramount character, no amendment of Constitution can result in their erosion." Dealing with the same, the learned Judge ruled: -

"1446. So far as the first facet is concerned regarding a limitation which flows by necessary implication from an express provision of the Constitution, the concept derives its force and is founded upon a principle of interpretation of statutes. In the absence of any compelling reason it may be said that a constitutional provision is not exempt from the operation of such a principle. I have applied this principle to Article 368 and despite that, I have not been able to discern in the language of that article or other relevant articles any implied limitation on the power to make amendment contained in the said article." Be it clarified, in subsequent paragraphs, the learned Judge expressed the view that though the Parliament has been conferred the power of amendment under Article 368 of the Constitution, yet it cannot be permitted to incorporate an amendment which would destroy the basic structure or essential feature of the Constitution.

In Minerva Mills Ltd. And Others v. Union of India and Others[38], the Constitution Bench was dealing with the validity of Sections 4 and 55 of the Constitution (42nd Amendment) Act, 1976. Chandrachud, C.J., speaking for himself, Gupta, Untwalia and Kailasam, JJ., referred to the majority opinion in Kesavananda Bharati (supra) and referred to the opinion given by Sikri, C.J., Shelat and Grover, JJ., Hegde and Mukherjea, JJ., Jaganmohan Reddy, J. and Khanna, J. and opined thus:-

"11. Khanna, J. broadly agreed with the aforesaid views of the six learned Judges and held that the word "amendment" postulated that the Constitution must survive without loss of its identity, which meant that the basic structure or framework of the Constitution must survive any amendment of the Constitution. According to the learned Judge, although it was permissible to the Parliament, in exercise of its amending power, to effect changes so as to meet the requirements of changing conditions, it was not permissible to touch the foundation or to alter the basic institutional pattern. Therefore, the words "amendment of the Constitution", in spite of the width of their sweep and in spite of their amplitude, could not have the effect of empowering the Parliament to destroy or abrogate the basic structure or framework of the Constitution.

12. The summary of the various judgments in Kesavananda Bharati was signed by nine out of the thirteen Judges. Paragraph 2 of the summary reads to say that according to the majority, "Article 368 does not enable Parliament to alter the basic structure or framework of the Constitution". Whether or not the summary is a legitimate part of the judgment, or is per incuriam for the scholarly reasons cited by authors, it is undeniable that it correctly reflects the majority view." Thereafter, the learned Chief Justice proceeded to state thus:-

"16. ...The theme song of the majority decision in Kesavananda Bharati is:

"Amend as you may even the solemn document which the founding fathers have committed to your care, for you know best the needs of your generation. But, the Constitution is a precious heritage; therefore, you cannot destroy its identity"." In B. R. Kapur (supra), the Constitution Bench, after referring to the decision in Kesavananda Bharti (supra), reproduced paragraph 16 from Minerva Mills case and opined that since the Constitution had conferred a limited amending power on Parliament, Parliament could not in the exercise of that limited power, enlarge that very power into an absolute power. A limited amending power was one of the basic features of the Constitution and, therefore, the limitations on that power could not be destroyed. In other words, Parliament could not, under Article 368, expand its amending power so as to acquire for itself the right to repeal or abrogate the Constitution or to destroy its basic and essential features. The donee of a limited power could not by the exercise of that power convert the limited power into an unlimited one.

In I.R. Coelho (Dead) by Lrs. v. State of Tamil Nadu[39], the Nine-Judge Bench, while dealing with the doctrine of implied limitation, ruled thus:-

"96.....In the four different opinions six learned Judges came substantially to the same conclusion. These Judges read an implied limitation on the power of Parliament to amend the Constitution. Khanna, J. also opined that there was implied limitation in the shape of the basic structure doctrine that limits the power of Parliament to amend the Constitution but the learned Judge upheld the 29th Amendment and did not say, like the remaining six Judges, that the Twenty-ninth Amendment will have to be examined by a smaller Constitution Bench to find out whether the said amendment violated the basic structure theory or not. This gave rise to the argument that fundamental rights chapter is not part of basic structure. Khanna, J. however, does not so say in Kesavananda Bharati case." From the aforesaid authorities, it is luminescent that the principle of implied limitation is attracted to the sphere of constitutional interpretation. The question that is required to be posed here is whether taking recourse to this principle of interpretation, this Court can read a categorical prohibition to the words contained in Article 75(1) of the Constitution so that the Prime Minister is constitutionally prohibited to give advice to the President in respect of a person for becoming a Minister of the Council of Ministers who is facing a criminal trial for a heinous and serious offence and charges have been framed against him by the trial Judge. Reading such an implied limitation as a prohibition would tantamount to adding a disqualification at a particular stage of the trial in relation of a person. This is neither expressly stated nor is impliedly discernible from the provision. The doctrine of implied limitation was applied to the amending power of the Constitution by the Parliament on the fundamental foundation that the identity of the original Constitution could not be amended by taking recourse to the plenary power of amendment under Article 368 of the Constitution. The essential feature or the basic structure of the doctrine was read into Article 368 to say that the identity or the framework of the Constitution cannot be destroyed. In Minerva Mills case, giving example, the Court held that by amendment, the Parliament cannot damage the democratic republican character as has been conceived in the Constitution. Though in Article 368 of the Constitution there was no express prohibition to amend the constitutional provisions, yet the Court in the aforesaid two cases ruled that certain features which are basic to the Constitution cannot be changed by way of amendment. The interpretative process pertained to the word "amendment". Therefore, the concept of implied limitation was read into Article 368 to save the constitutional integrity and identity. In B.R. Kapur's case, the Constitution Bench ruled that a non-legislator can be made a Chief Minister or Minister under Article 164(1) only if he has qualifications for membership of the Legislature prescribed under Article 173 and is not disqualified from the membership thereof by reason of the disqualifications set out in Article 191. Bharucha, J. (as his Lordship then was), speaking for the majority, opined that as the second respondent therein had been convicted for offences punishable under Sections 13(1)(c), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and Sections 409 and 120-B of

the Indian Penal Code and sentenced to undergo rigorous imprisonment of three years, she was disqualified under Section 8(4) of the 1951 Act as the said respondent was disqualified to contest the election. In the said case, she was sworn in as the Chief Minister by the Governor. This Court was moved in by a writ of quo warranto that she was not eligible to hold the post of the Chief Minister. A submission was advanced that it was not open to the Court to read anything into Article 164, for a non-legislator could be sworn in as the Chief Minister, regardless of the qualifications or disqualifications. The Court placed reliance on Kesavananda Bharati's case and Minerva Mills' case and opined that if a non-legislator is made a Chief Minister under Article 164, then he must satisfy the qualification for membership of a legislator as prescribed under Article 173. A specific query was made by the Court that even when the person recommended, was, to the Governor's knowledge, a non-citizen or under-age or lunatic or discharged insolvent, could he be appointed as a Chief Minister. It was urged that he/she could only be removed by the vote of no-confidence in the Legislature or at the next election. Discarding the same, the Court opined that acceptance of such a submission would invite disaster. The Court further ruled that when a person is not qualified to become a Member in view of Article 173, he cannot be appointed as a Chief Minister under Article 164(1). Be it noted, there was disqualification in the Constitution and under the 1951 Act to become a Member of the State Legislature, and hence, the Court, appreciating the text and context, read the disqualification into Article 164(1) of the Constitution.

On a studied scrutiny of the ratio of the aforesaid decisions, we are of the convinced opinion that when there is no disqualification for a person against whom charges have been framed in respect of heinous or serious offences or offences relating to corruption to contest the election, by interpretative process, it is difficult to read the prohibition into Article 75(1) or, for that matter, into Article 164(1) to the powers of the Prime Minister or the Chief Minister in such a manner. That would come within the criterion of eligibility and would amount to prescribing an eligibility qualification and adding a disqualification which has not been stipulated in the Constitution. In the absence of any constitutional prohibition or statutory embargo, such disqualification, in our considered opinion, cannot be read into Article 75(1) or Article 164(1) of the Constitution.

PRINCIPLE OF CONSTITUTIONAL SILENCE OR ABEYANCE The next principle that can be thought of is constitutional silence or silence of the Constitution or constitutional abeyance. The said principle is a progressive one and is applied as a recognized advanced constitutional practice. It has been recognized by the Court to fill up the gaps in respect of certain areas in the interest of justice and larger public interest. Liberalization of the concept of locus standi for the purpose of development of Public Interest Litigation to establish the rights of the have-nots or to prevent damages and protect environment is one such feature. Similarly, laying down guidelines as procedural safeguards in the matter of adoption of Indian children by foreigners in the case of Laxmi Kant Pandey v. Union of India[40] or issuance of

guidelines pertaining to arrest in the case of D.K. Basu v. State of West Bengal[41] or directions issued in Vishakha and others v. State of Rajasthan and others[42] are some of the instances.

In this context, it is profitable to refer to the authority in Bhanumati and others v. State of Uttar Pradesh through its Principal Secretary and others[43] wherein this Court was dealing with the constitutional validity of the U.P. Panchayat Laws (Amendment) Act, 2007. One of the grounds for challenge was that there is no concept of no-confidence motion in the detailed constitutional provision under Part IX of the Constitution and, therefore, the incorporation of the said provision in the statute militates against the principles of Panchayati Raj institutions. That apart, reduction of one year in place of two years in Sections 15 and 28 of the Amendment Act was sought to be struck down as the said provision diluted the principle of stability and continuity which is the main purpose behind the object and reason of the constitutional amendment in Part IX of the Constitution. The Court, after referring to Articles 243-A, 243-C(1), (5), 243-D(4), 243-D(6), 243-F(1), (6), 243-G, 243-H, 243-I(2), 243-J, 243-K(2) and (4) of the Constitution and further taking note of the amendment, came to hold that the statutory provision of no-confidence is contrary to Part- IX of the Constitution. In that context, it has been held as follows: -

"49. Apart from the aforesaid reasons, the arguments by the appellants cannot be accepted in view of a very well-known constitutional doctrine, namely, the constitutional doctrine of silence. Michael Foley in his treatise on The Silence of Constitutions (Routledge, London and New York) has argued that in a Constitution "abeyances are valuable, therefore, not in spite of their obscurity but because of it. They are significant for the attitudes and approaches to the Constitution that they evoke, rather than the content or substance of their strictures". (P. 10)

50. The learned author elaborated this concept further by saying, "Despite the absence of any documentary or material form, these abeyances are real and are an integral part of any Constitution. What remains unwritten and indeterminate can be just as much responsible for the operational character and restraining quality of a Constitution as its more tangible and codified components." (P. 82)" The question that is to be posed here is whether taking recourse to this doctrine for the purpose of advancing constitutional culture, can a court read a disqualification to the already expressed disqualifications provided under the Constitution and the 1951 Act. The answer has to be in the inevitable negative, for there are express provisions stating the disqualifications and second, it would tantamount to crossing the boundaries of judicial review.

DOCTRINE OF CONSTITUTIONAL IMPLICATIONS The next principle that we intend to discuss is the principle of constitutional implication. We are obliged to discuss this principle as Mr. Dwivedi, learned amicus curiae, has put immense emphasis on the words "on the advice of the Prime Minister" occurring in Article 75(1) of the Constitution. It is his submission that these words are of

immense significance and apposite meaning from the said words is required to be deduced to the effect that the Prime Minister is not constitutionally allowed to advise the President to make a person against whom charge has been framed for heinous or serious offences or offences pertaining to corruption as Minister in the Council of Ministers, regard being had to the sacrosanctity of the office and the oath prescribed under the Constitution. Learned senior counsel would submit that on many an occasion, this Court has expanded the horizon inherent in various Articles by applying the doctrine of implication based on the constitutional scheme and the language employed in other provisions of the Constitution.

In this regard, inclusion of many a facet within the ambit of Article 21 is well established. In R. Rajagopal alias R.R. Gopal and another v. State of T.N. and others[44], right to privacy has been inferred from Article 21. Similarly, in Joginder Kumar v. State of U.P. and others[45], inherent rights under Articles 21 and 22 have been stated. Likewise, while dealing with freedom of speech and expression and freedom of press, the Court, in Romesh Thappar v. The State of Madras[46], has observed that freedom of speech and expression includes freedom of propagation of ideas.

There is no speck of doubt that the Court has applied the doctrine of implication to expand the constitutional concepts, but the context in which the horizon has been expanded has to be borne in mind. What is suggested by Mr. Dwivedi is that by taking recourse to the said principle, the words employed in Article 75(1) are to be interpreted to add a stage in the disqualification, i.e., framing of charges in serious and heinous criminal offences or offences relating to corruption. At this juncture, it is seemly to state that the principle of implication is fundamentally founded on rational inference of an idea from the words used in the text. The concept of legitimate deduction is always recognised. In Melbourne Corporation v Commonwealth[47], Dixon, J opined that constitutional implication should be based on considerations which are compelling. Mason, CJ, in Political Advertising Case[48], has ruled that there can be structural implications which are 'logically or practically necessary for the preservation of the integrity of that structure'. Any proposition that is arrived at taking this route of interpretation must find some resting pillar or strength on the basis of certain words in the text or the scheme of the text. In the absence of that, it may not be permissible for a Court to deduce any proposition as that would defeat the legitimacy of reasoning. A proposition can be established by reading number of articles cohesively, for that will be in the domain of substantive legitimacy.

Dixon, J, in Australian National Airways Pty Ltd. v Commonwealth[49], said:

> 'I do not see why we should be fearful about making implications'. The said principle has been approved in Lamshed v Lake[50], and thereafter, in Payroll Tax Case[51]. Thus, the said principle can be taken aid of for the purpose of interpreting constitutional provision in an expansive manner. But, it has its own limitations. The interpretation has to have a base in the Constitution. The Court cannot re-write a constitutional provision. In this context, we may fruitfully refer to Kuldip Nayar's case wherein the Court repelled the contention that a right to vote invariably carries an implied term, i.e., the right to vote in secrecy. The Court observed that where the Constitution thought it fit to do so, it has itself provided for elections by secret ballot

e.g., in the case of election of the President of India and the Vice-President of India. Thereafter, the Court referred to Articles 55(3) and 66(1) of the Constitution which provide for elections of the President and the Vice-President respectively, referring to voting by electoral colleges, consisting of elected Members of Parliament and Legislative Assembly of each State for the purposes of the former office and Members of both Houses of Parliament for the latter office and in both cases, it was felt necessary by the framers of the Constitution to provide that the voting at such elections shall be by secret ballot through inclusion of the words "and the voting at such election shall be by secret ballot". If the right to vote by itself implies or postulates voting in secrecy, then Articles 55(3) and 66(1) would not have required the inclusion of such words. The necessity for including the said condition in the said articles shows that "secret ballot" is not always implied. It is not incorporated in the concept of voting by necessary implication. Thereafter, the Court opined: -

"421. It follows that for "secret ballot" to be the norm, it must be expressly so provided. To read into Article 80(4) the requirement of a secret ballot would be to read the words "and the voting at such election shall be by secret ballot" into the provision. To do so would be against every principle of constitutional and statutory construction." Thus analysed, it is not possible to accept the submission of Mr. Dwivedi that while interpreting the words "advice of the Prime Minister" it can legitimately be inferred that there is a prohibition to think of a person as a Minister if charges have been framed against him in respect of heinous and serious offences including corruption cases under the criminal law.

OTHER RELEVANT CONSTITUTIONAL CONCEPTS – CONSTITUTIONAL MORALITY, GOOD GOVERNANCE AND CONSTITUTIONAL TRUST Though we have not accepted the inspired arguments of Mr. Dwivedi to add a disqualification pertaining to the stage into Article 75(1) of the Constitution, yet we cannot be oblivious of the three concepts, namely, constitutional morality, good governance and constitutional trust.

The Constitution of India is a living instrument with capabilities of enormous dynamism. It is a Constitution made for a progressive society. Working of such a Constitution depends upon the prevalent atmosphere and conditions. Dr. Ambedkar had, throughout the Debate, felt that the Constitution can live and grow on the bedrock of constitutional morality. Speaking on the same, he said: -

"Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people are yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic.[52]" The principle of constitutional morality basically means to bow down to the norms of the Constitution and not to act in a manner which would become violative of the rule of law or reflectible of action in an arbitrary manner. It actually works at the fulcrum and guides as a laser beam in institution building. The traditions and conventions have to

grow to sustain the value of such a morality. The democratic values survive and become successful where the people at large and the persons-in-charge of the institution are strictly guided by the constitutional parameters without paving the path of deviancy and reflecting in action the primary concern to maintain institutional integrity and the requisite constitutional restraints. Commitment to the Constitution is a facet of constitutional morality. In this context, the following passage would be apt to be reproduced: -

"If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.[53]" Regard being had to the aforesaid concept, it would not be out of place to state that institutional respectability and adoption of precautions for the sustenance of constitutional values would include reverence for the constitutional structure. It is always profitable to remember the famous line of Laurence H. Tribe that a Constitution is "written in blood, rather than ink"[54].

GOOD GOVERNANCE Having stated about the aspect of constitutional morality, we presently proceed to deal with the doctrine of good governance. In A. Abdul Farook v. Municipal Council, Perambalur and others[55], the Court observed that the doctrine of good governance requires the Government to rise above their political interest and act only in the public interest and for the welfare of its people.

In Patangrao Kadam v. Prithviraj Sayajirao Yadav Deshmukh and Ors.[56], the Court, referring to the object of the provisions relating to corrupt practices, elucidated as follows:

"Clean, efficient and benevolent administration are the essential features of good governance which in turn depends upon persons of competency and good character." In M.J. Shivani and others v. State of Karnataka and others[57], it has been held that fair play and natural justice are part of fair public administration; non-arbitrariness and absence of discrimination are hall marks for good governance under the rule of law. In State of Maharashtra and others v. Jalgaon Municipal Corporation and others[58], it has been ruled that one of the principles of good governance in a democratic society is that smaller interest must always give way to larger public interest in case of conflict. In U.P. Power Corporation Ltd. and Anr. v. Sant Steels & Alloys (P) Ltd. and Ors.[59], the Court observed that in this 21st century, when there is global economy, the question of faith is very important.

In a democracy, the citizens legitimately expect that the Government of the day would treat the public interest as primary one and any other interest secondary. The maxim Salus Populi Suprema Lex, has not only to be kept in view but also has to be revered. The faith of the people is embedded in the root of the idea of good governance which means reverence for citizenry rights, respect for Fundamental Rights and statutory rights in any governmental action, deference for unwritten constitutional values, veneration for institutional integrity, and inculcation of accountability to the collective at large. It also conveys that the decisions are taken by the decision making authority with solemn sincerity and policies are framed keeping in view the welfare of the people, and including all in a homogeneous compartment. The concept of good governance is not an Utopian conception or an abstraction. It has been the demand of the polity wherever democracy is nourished. The growth of democracy is dependant upon good governance in reality and the aspiration of the people basically is that the administration is carried out by people with responsibility with service orientation.

CONSTITUTIONAL TRUST Having stated about good governance, we shall proceed to deal with the doctrine of "constitutional trust". The issue of constitutional trust arises in the context of the debate in the Constituent Assembly that had taken place pertaining to the recommendation for appointment of a Minister to the Council of Ministers. Responding to the proposal for the amendment suggested by Prof. K.T. Shah with regard to the introduction of a disqualification of a convicted person becoming a Minister, Dr. B.R. Ambedkar had replied: -

"His last proposition is that no person who is convicted may be appointed a Minister of the State. Well, so far as his intention is concerned, it is no doubt very laudable and I do not think any Member of this House would like to differ from him on that proposition. But the whole question is this whether we should introduce all these qualifications and disqualifications in the Constitution itself. Is it not desirable, is it not sufficient that we should trust the Prime Minister, the Legislature and the public at large watching the actions of the Ministers and the actions of the Legislature to see that no such infamous thing is done by either of them? I think this is a case which may eminently be left to the good-sense of the Prime Minister and to the good sense of the Legislature with the general public holding a watching brief upon them. I therefore say that these amendments are unnecessary." [Emphasis supplied] The trust reposed in the Prime Minister is based on his constitutional status. In Rai Sahib Ram Jawaya Kapur and others v. The State of Punjab[60], B.K. Mukherjea, CJ, while referring to the scope of Article 74, observed that under Article 53(1) of the Constitution, the executive power of the Union is vested in the President but under Article 74, there is to be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The President has, thus been, made a formal or constitutional head of the executive and the real executive powers are vested in the Ministers or the Cabinet.

In Samsher Singh (supra), Ray, CJ, speaking for the majority, opined that the President as well as the Governor is the constitutional or the formal head and exercise the power and functions conferred on them by or under the Constitution on the aid and advice of the Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. The learned Chief Justice further observed that the satisfaction of the President or the Governor in the constitutional sense in the Cabinet system of Government is really the satisfaction of the Council of Ministers on whose aid and advice the President or the Governor generally exercises his powers and functions and, thereafter, it has been held that they are required to act with the aid and advice of the Council of Ministers and are not required by the Constitution to act personally without the aid and advice. Krishna Iyer, J., speaking for himself and Bhagwati,J., opined that under the Constitution, the President and Governor, custodian of all executive and other powers under various Articles, are to exercise their formal constitutional powers only upon and in accordance with the due advice of their Ministers, save in few well-known exceptional situations. The learned Judge has carved out certain exceptions with which we are really presently not concerned with.

In Supreme Court Advocates-on-Record Association and another v. Union of India[61], while discussing about constitutional functions, the Court observed that it is a constitutional requirement that the person who is appointed as Prime Minister by the President is the effective head of the Government and the other Ministers are appointed by the President on the advice of the Prime Minister and both the Prime Minister and the Ministers must continuously have the confidence of the House of the People, individually and collectively. The Court further observed that the powers of the President are exercised by him on the advice of the Prime Minister and the Council of Ministers which means that the said powers are effectively exercised by the Council of Ministers headed by the Prime Minister.

We have referred to these authorities singularly for the purpose that the Prime Minister has been conferred an extremely special status under the Constitution.

As the Prime Minister is the effective head of the Government, indubitably, he has enormous constitutional responsibility. The decisions are taken by the Council of Ministers headed by the Prime Minister and that is the Cabinet form of Government and our Constitution has adopted it. While discussing about the successful working of the Cabinet form of Government, H.M. Seervai, the eminent author of Constitutional Law[62], observed: -

“But as long as the political atmosphere remains what it is, the Constitution cannot be worked as it was intended to be worked. It has been said that the constitution confers power, but it does not guarantee that the power would be wisely exercised. It can be said equally that the Constitution confers power but it gives no guarantee that it will be worked by men of high character, capacity and integrity. If the Constitution

is to be successfully worked, an attempt must be made to improve the political atmosphere and to lay down and enforce standards of conduct required for a successful working of our Constitution." [Emphasis added] In Constitutional and Administrative Law[63], the learned authors while dealing with individual responsibility of Ministers, have said:-

"3. THE INIDIVIDUAL RESPONSIBILITY OF MINISTERS The individual responsibility of ministers illustrates further Professor Munro's continuum theory. Ministers are individually accountable for their own private conduct, the general running of their departments and acts done, or omitted to be done, by their civil servants; responsibility in the first two cases is clearer than in others. A minister involved in sexual or financial scandals particularly those having implications for national security, is likely to have to resign because his activities will so attract the attention of the press that he will be no longer able to carry out departmental duties." In Constitutional & Administrative Law[64], Hilaire Barnett, while dealing with the conduct of Ministers, referred to the Nolan Committee[65] which had endorsed the view that:-

"public is entitled to expect very high standards of behaviour from ministers, as they have profound influence over the daily lives of us all" In Constitutional Practice[66], Rodney Brazier has opined:-

"...a higher standard of private conduct is required of Ministers than of others in public life, a major reason for this today being that the popular press and the investigative journalism of its more serious rivals will make a wayward Minister's continuance in office impossible." Centuries back what Edmund Burke had said needs to be recapitulated: -

"All persons possessing a position of power ought to be strongly and awfully impressed with an idea that they act in trust and are to account for their conduct in that trust to the one great Master, Author and Founder of Society." This Court, in re Art. 143, Constitution of India and Delhi Laws Act (1912)[67], opined that the doctrine of constitutional trust is applicable to our Constitution since it lays the foundation of representative democracy. The Court further ruled that accordingly, the Legislature cannot be permitted to abdicate its primary duty, viz. to determine what the law shall be. Though it was stated in the context of exercise of legislative power, yet the same has signification in the present context, for in a representative democracy, the doctrine of constitutional trust has to be envisaged in every high constitutional functionary.

ANALYSIS OF THE TERM "ADVICE' UNDER ARTICLE 75 (1) Having dealt with the concepts of "constitutional morality", "good governance", "constitutional trust" and the special status enjoyed by the Prime Minister under the scheme of the Constitution, we are required to appreciate and interpret the words "on the advice of the Prime Minister" in the backdrop of the aforestated

concepts. As per the New Shorter Oxford English Dictionary, one of the meanings of the word "advice" is "the way in which a matter is looked at; opinion; judgment". As per P. Ramanatha Aiyer's Law Lexicon, 2nd Edition, one of the meanings given to the word "advice" is "counsel given or an opinion expressed as to the wisdom of future conduct" (Abbot L. Dict.). In Webster Comprehensive Dictionary, International Edition, one of the meanings given to the word "advice" is "encouragement or dissuasion; counsel; suggestion". Thus, the word "advice" conveys formation of an opinion. The said formation of an opinion by the Prime Minister in the context of Article 75(1) is expressed by the use of the said word because of the trust reposed in the Prime Minister under the Constitution. To put it differently, it is a "constitutional advice". The repose of faith in the Prime Minister by the entire nation under the Constitution has expectations of good governance which is carried on by Ministers of his choice. It is also expected that the persons who are chosen as Ministers do not have criminal antecedents, especially facing trial in respect of serious or heinous criminal offences or offences pertaining to corruption. There can be no dispute over the proposition that unless a person is convicted, he is presumed to be innocent but the presumption of innocence in criminal jurisprudence is something altogether different, and not to be considered for being chosen as a Minister to the Council of Ministers because framing of charge in a criminal case is totally another thing. Framing of charge in a trial has its own significance and consequence. Setting the criminal law into motion by lodging of an FIR or charge sheet being filed by the investigating agency is in the sphere of investigation. Framing of charge is a judicial act by an experienced judicial mind. As the Debates in the Constituent Assembly would show, after due deliberation, they thought it appropriate to leave it to the wisdom of the Prime Minister because of the intrinsic faith in the Prime Minister. At the time of framing of the Constitution, the debate pertained to conviction. With the change of time, the entire complexion in the political arena as well as in other areas has changed. This Court, on number of occasions, as pointed out hereinbefore, has taken note of the prevalence and continuous growth of criminalization in politics and the entrenchment of corruption at many a level. In a democracy, the people never intend to be governed by persons who have criminal antecedents. This is not merely a hope and aspiration of citizenry but the idea is also engrained in apposite executive governance. It would be apt to say that when a country is governed by a Constitution, apart from constitutional provisions, and principles constitutional morality and trust, certain conventions are adopted and grown. In Supreme Court Advocates-on-Record Association (supra), the Court reproduced a passage from K.C. Wheare's Book "The Statute of Westminster and Dominion Status" (fourth edition) and we quote: -

> "The definition of conventions may thus be amplified by saying that their purpose is to define the use of constitutional discretion. To put this in slightly different words, it may be said that conventions are non-legal rules regulating the way in which legal rules shall be applied." I. Jennings, in The Law and the Constitution[68], stated that a convention exists not only due to its non-enforceability but also because there is a reason for the rule.
>
> I. Lovehead, in Constitutional Law – A Critical Introduction[69], has said that the conventions provide a moral framework within which the government ministers or the monarch should exercise non-justiciable legal powers and regulate relations between the government and other constitutional authorities.

In the Constituent Assembly Debates, Dr. Rajendra Prasad, in his speech as President of the Constituent Assembly, while moving for the adoption of the Constitution of India, had observed: -

"Many things which cannot be written in a Constitution are done by conventions. Let me hope that we shall show those capacities and develop those conventions." CONCLUSION From the aforesaid, it becomes graphically vivid that the Prime Minister has been regarded as the repository of constitutional trust. The use of the words "on the advice of the Prime Minister" cannot be allowed to operate in a vacuum to lose their significance. There can be no scintilla of doubt that the Prime Minister's advice is binding on the President for the appointment of a person as a Minister to the Council of Ministers unless the said person is disqualified under the Constitution to contest the election or under the 1951 Act, as has been held in B.R. Kapur's case. That is in the realm of disqualification. But, a pregnant one, the trust reposed in a high constitutional functionary like the Prime Minister under the Constitution does not end there. That the Prime Minister would be giving apposite advice to the President is a legitimate constitutional expectation, for it is a paramount constitutional concern. In a controlled Constitution like ours, the Prime Minister is expected to act with constitutional responsibility as a consequence of which the cherished values of democracy and established norms of good governance get condignly fructified. The framers of the Constitution left many a thing unwritten by reposing immense trust in the Prime Minister. The scheme of the Constitution suggests that there has to be an emergence of constitutional governance which would gradually grow to give rise to constitutional renaissance.

87. It is worthy to note that the Council of Ministers has the collective responsibility to sustain the integrity and purity of the constitutional structure. That is why the Prime Minister enjoys a great magnitude of constitutional power. Therefore, the responsibility is more, regard being had to the instillation of trust, a constitutional one. It is also expected that the Prime Minster should act in the interest of the national polity of the nation-state. He has to bear in mind that unwarranted elements or persons who are facing charge in certain category of offences may thwart or hinder the canons of constitutional morality or principles of good governance and eventually diminish the constitutional trust. We have already held that prohibition cannot be brought in within the province of 'advice' but indubitably, the concepts, especially the constitutional trust, can be allowed to be perceived in the act of such advice.

Thus, while interpreting Article 75(1), definitely a disqualification cannot be added. However, it can always be legitimately expected, regard being had to the role of a Minister in the Council of Ministers and keeping in view the sanctity of oath he takes, the Prime Minister, while living up to the trust reposed in him, would consider not choosing a person with criminal antecedents against whom charges have been framed for heinous or serious criminal offences or charges of corruption to become a Minister of the Council of Ministers. This is what the Constitution suggests and that is the constitutional expectation from the Prime Minister. Rest has to be left to the wisdom of the Prime

Minister. We say nothing more, nothing less.

At this stage, we must hasten to add what we have said for the Prime Minister is wholly applicable to the Chief Minister, regard being had to the language employed in Article 164(1) of the Constitution of India.

Before parting with the case, we must express our unreserved and uninhibited appreciation for the assistance rendered by Mr. Rakesh Dwivedi, Mr. Andhyarjina and Mr. Parasaran, learned senior counsel.

The writ petition is disposed of accordingly without any order as to costs.

.....C.J.I. [R.M. Lodha] .....J. [Dipak Misra] .....J. [S.A. Bobde] New Delhi;

August 27, 2014 REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION WRIT PETITION (CIVIL) NO. 289 OF 2005 Manoj Narula .....Petitioner versus Union of India .....Respondent J U D G M E N T Madan B. Lokur, J.

1. While I agree with the draft judgment of my learned brother Justice Dipak Misra, I find it necessary to express my view on the issues raised.

2. The question in the amended writ petition filed under Article 32 of the Constitution is rather narrow, but the submissions were quite broad- based.

3. Two substantive reliefs have been claimed in the writ petition. The first relief is for a declaration that the appointment of Respondent Nos. 3 to 7 as Ministers in the Government of India is unconstitutional. This is based, inter alia, on the averment that these respondents have 'criminal antecedents'. Subsequently by an order passed on 24th March, 2006 these respondents (along with respondent No. 2) were deleted from the array of parties since the broad question before this Court was "about the legality of the persons with criminal background and/or charged with offences involving moral turpitude being appointed as ministers in Central and State Governments."

4. As far as the first substantive relief is concerned, the expressions 'criminal background' and 'criminal antecedents' are extremely vague. Nevertheless the legal position on the appointment of a Minister is discussed hereafter.

5. The second substantive relief is for the framing of possible guidelines for the appointment of a Minister in the Central or State Government. It is not clear who should frame the possible guidelines, perhaps this court.

6. As far as this substantive relief is concerned, it is entirely for the appropriate Legislature to decide whether guidelines are necessary, as prayed for, and the frame of such guidelines. No direction is required to be given on this subject.

7. For the sake of convenience, reference is made only to the relevant Articles of the Constitution and the law relating to the appointment and continuance of a Minister in the Central Government. The discussion, of course, would relate to both a Minister in the Central Government and mutatis mutandis in the State Government.

Qualifications and disqualifications for being a legislator

8. Article 84 of the Constitution negatively provides the qualification for membership of Parliament. This Article is quite simple and reads as follows:

> "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 authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;
>
> (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; and
>
> (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament."

9. The qualifications postulated by clause (c) of Article 84 have not yet been prescribed by law by Parliament. In this context, it is worth quoting the President of the Constituent Assembly Dr. Rajendra Prasad, who said on 26th November, 1949, before formally putting the motion moved by Dr. Ambedkar to vote, as follows:[70] "There are only two regrets which I must share with the honourable Members. I would have liked to have some qualifications laid down for members of the Legislatures. It is anomalous that we should insist upon high qualifications for those who administer or help in administering the law but none for those who made it except that they are elected. A law giver requires intellectual equipment but even more than that capacity to take a balanced view of things to act independently and above all to be true to those fundamental things of life – in one word – to have character (Hear, hear). It is not possible to devise any yardstick for measuring the moral qualities of a man and so long as that is not possible, our Constitution will remain defective. The other regret is that we have not been able to draw up our first Constitution of a free Bharat in an Indian language. The difficulties in both cases were practical and proved insurmountable. But that does not make the regret any the less poignant."

10. Hopefully, Parliament may take action on the views expressed by Dr. Rajendra Prasad, the first President of our Republic.

11. Article 102 provides the disqualifications for membership of either House of Parliament. This Article too is quite simple and straightforward and reads as follows:

> "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.

Explanation. - For the purposes of this clause a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule."

12. In S.R. Chaudhuri[71] the following question arose for consideration:

> Can a non-member, who fails to get elected during the period of six consecutive months, after he is appointed as a Minister or while a Minister has ceased to be a legislator, be reappointed as a Minister, without being elected to the Legislature after the expiry of the period of six consecutive months? This question arose in the context of Article 164 of the Constitution[72] and is mentioned here since one of the issues raised during submissions related to the permissibility of reading implied limitations in the Constitution. It was submitted that implied limitations can be read into the Constitution and this is an appropriate case in which this Court should read an implied limitation in the appointment of a Minister in the Government of India, the implied limitation being that a person with criminal antecedents or a criminal background should not be appointed a Minister.

13. In S.R. Chaudhuri this Court examined the law in England, Canada and Australia and by reading an implied limitation, answered the question in the negative. It was held that a non-elected person may be appointed as a Minister, but only for a period of six months. During that period the Minister would either have to get elected to the Legislature or quit his or her position. That person cannot again be appointed as a Minister unless elected. It was said:

"32. Thus, we find from the positions prevailing in England, Australia and Canada that the essentials of a system of representative government, like the one we have in our country, are that invariably all Ministers are chosen out of the members of the Legislature and only in rare cases, a non- member is appointed as a Minister, who must get himself returned to the Legislature by direct or indirect election within a short period. He cannot be permitted to continue in office indefinitely unless he gets elected in the meanwhile. The scheme of Article 164 of the Constitution is no different, except that the period of grace during which the non-member may get elected has been fixed as "six consecutive months", from the date of his appointment. (In Canada he must get elected quickly and in Australia, within three months.) The framers of the Constitution did not visualise that a non-legislator can be repeatedly appointed as a Minister for a term of six months each time, without getting elected because such a course strikes at the very root of parliamentary democracy. According to learned counsel for the respondent, there is no bar to this course being adopted on the "plain language of the article", which does not "expressly" prohibit reappointment of the Minister, without being elected, even repeatedly, during the term of the same Legislative Assembly. We cannot persuade ourselves to agree.

"33. Constitutional provisions are required to be understood and interpreted with an object-oriented approach. A Constitution must not be construed in a narrow and pedantic sense. The words used may be general in terms but, their full import and true meaning, has to be appreciated considering the true context in which the same are used and the purpose which they seek to achieve. Debates in the Constituent Assembly referred to in an earlier part of this judgment clearly indicate that a non-member's inclusion in the Cabinet was considered to be a "privilege" that extends only for six months, during which period the member must get elected, otherwise he would cease to be a Minister. It is a settled position that debates in the Constituent Assembly may be relied upon as an aid to interpret a constitutional provision because it is the function of the court to find out the intention of the framers of the Constitution. We must remember that a Constitution is not just a document in solemn form, but a living framework for the Government of the people exhibiting a sufficient degree of cohesion and its successful working depends upon the democratic spirit underlying it being respected in letter and in spirit. The debates clearly indicate the "privilege" to extend "only" for six months."

14. An implied limitation in the Constitution was also read in B. R. Kapur.[73] In that case, the second respondent was not even eligible to become a legislator (having earned a disqualification under Section 8 of the Representation of the People Act, 1951) and therefore the question of getting elected to the State Legislature did not arise. Nevertheless, having been projected as the Chief Ministerial nominee of the political party that obtained a majority in the elections, she was elected as its leader and appointed as the Chief Minister of the State. The question before this Court was: Whether a person who has been convicted of a criminal offence and whose conviction has not been suspended pending appeal can be sworn in and can continue to function as the Chief Minister of a State. Reliance was placed on the plain language of Article 164 of the Constitution.

15. Answering the question in the negative, this Court held in paragraph 30 of the Report:

> "We hold, therefore, that a non-legislator can be made a Chief Minister or Minister under Article 164 only if he has the qualifications for membership of the Legislature prescribed by Article 173 and is not disqualified from the membership thereof by reason of the disqualifications set out in Article 191."
>
> 16. This was reiterated by this Court in paragraph 45 of the Report in the following words:
>
> "Our conclusion, therefore, is that on the date on which the second respondent was sworn in as Chief Minister she was disqualified, by reason of her convictions under the Prevention of Corruption Act and the sentences of imprisonment of not less than two years, for becoming a member of the Legislature under Section 8(3) of the Representation of the People Act."
>
> 17. Finally, in paragraphs 50 and 51 of the Report, this Court held:
>
> "We are in no doubt at all that if the Governor is asked by the majority party in the Legislature to appoint as the Chief Minister a person who is not qualified to be a member of the Legislature or who is disqualified to be such, the Governor must, having due regard to the Constitution and the laws, to which he is subject, decline, and the exercise of discretion by him in this regard cannot be called in question.
>
> 51. If perchance, for whatever reason, the Governor does appoint as Chief Minister a person who is not qualified to be a member of the Legislature or who is disqualified to be such, the appointment is contrary to the provisions of Article 164 of the Constitution, as we have interpreted it, and the authority of the appointee to hold the appointment can be challenged in quo warranto proceedings. That the Governor has made the appointment does not give the appointee any higher right to hold the appointment. If the appointment is contrary to constitutional provisions it will be struck down. The submission to the contrary - unsupported by any authority - must be rejected."
>
> 18. Therefore, two implied limitations were read into the Constitution with regard to the appointment of an unelected person as a Minister.

Firstly, the Minister cannot continue as a Minister beyond a period of six months without getting elected, nor can such a person be repeatedly appointed as a Minister. Secondly, the person should not be under any disqualification for being appointed as a legislator. If a person is disqualified from being a legislator, he or she cannot be appointed as a Minister.

19. Implied limitations to the Constitution were also read in B.P. Singhal.[74] In that case, an implied limitation was read into the pleasure doctrine concerning the removal of the Governor of a

State by the President in terms of Article 156 of the Constitution. It was held that the pleasure doctrine as originally envisaged in England gave unfettered power to the authority at whose pleasure a person held an office. However, where the rule of law prevails, the "fundamentals of constitutionalism" cannot be ignored, meaning thereby that the pleasure doctrine does not enable an unfettered discretion to act arbitrarily, whimsically, or capriciously. It does not dispense with the need for a cause for withdrawal of the pleasure, which can only be for valid reasons.

20. Similarly, in Salil Sabhlok[75] integrity and competence were read as implied in the appointment of the Chairperson of the State Public Service Commission. It was held in paragraph 45 of the Report as follows:

> "I have already held that it is for the Governor who is the appointing authority under Article 316 of the Constitution to lay down the procedure for appointment of the Chairman and Members of the Public Service Commission, but this is not to say that in the absence of any procedure laid down by the Governor for appointment of Chairman and Members of the Public Service Commission under Article 316 of the Constitution, the State Government would have absolute discretion in selecting and appointing any person as the Chairman of the State Public Service Commission. Even where a procedure has not been laid down by the Governor for appointment of Chairman and Members of the Public Service Commission, the State Government has to select only persons with integrity and competence for appointment as Chairman of the Public Service Commission, because the discretion vested in the State Government under Article 316 of the Constitution is impliedly limited by the purposes for which the discretion is vested and the purposes are discernible from the functions of the Public Service Commissions enumerated in Article 320 of the Constitution. Under clause (1) of Article 320 of the Constitution, the State Public Service Commission has the duty to conduct examinations for appointments to the services of the State.

Under clause (3) of Article 320, the State Public Service Commission has to be consulted by the State Government on matters relating to recruitment and appointment to the civil services and civil posts in the State; on disciplinary matters affecting a person serving under the Government of a State in a civil capacity; on claims by and in respect of a person who is serving under the State Government towards costs of defending a legal proceeding; on claims for award of pension in respect of injuries sustained by a person while serving under the State Government and other matters. In such matters, the State Public Service Commission is expected to act with independence from the State Government and with fairness, besides competence and maturity acquired through knowledge and experience of public administration."

21. Thereafter in paragraph 99 of the Report, it was said:

> "While it is difficult to summarise the indicators laid down by this Court, it is possible to say that the two most important requirements are that personally the Chairperson of the Public Service Commission should be beyond reproach and his or her

appointment should inspire confidence among the people in the institution. The first "quality" can be ascertained through a meaningful deliberative process, while the second "quality" can be determined by taking into account the constitutional, functional and institutional requirements necessary for the appointment."

Conclusions on the first relief

22. Therefore, the position as it stands today is this:

To become a Member of Parliament, a person should possess the qualifications mentioned in Article 84 of the Constitution;

To become a Member of Parliament, a person should not suffer any of the disqualifications mentioned in Article 102 of the Constitution;

The Constitution does not provide for any limitation in a Member of Parliament becoming a Minister, but certain implied limitations have been read into the Constitution by decisions rendered by this Court regarding an unelected person becoming a Minister;

One implied limitation read into the Constitution is that a person not elected to Parliament can nevertheless be appointed as a Minister for a period of six months;

Another implied limitation read into the Constitution is that though a person can be appointed as a Minister for a period of six months, he or she cannot repeatedly be so appointed;

Yet another implied limitation read into the Constitution is that a person otherwise not qualified to be elected as a Member of Parliament or disqualified from being so elected cannot be appointed as a Minister;

In other words, any person, not subject to any disqualification, can be appointed a Minister in the Central Government.

Given this position in law, is it necessary to read any other implied limitation in the Constitution concerning the appointment of a person as a Minister in the Government of India, particularly any implied limitation on the appointment of a person with a criminal background or having criminal antecedents?

Issue of criminal antecedents

23. The expression 'criminal antecedents' or 'criminal background' is extremely vague and incapable of any precise definition. Does it refer to a person accused (but not charged or convicted) of an offence or a person charged (but not convicted) of an offence or only a person convicted of an offence? No clear answer was made available to this question, particularly in the context of the

presumption of innocence that is central to our criminal jurisprudence. Therefore, to say that a person with criminal antecedents or a criminal background ought not to be elected to the Legislature or appointed a Minister in the Central Government is really to convey an imprecise view.

24. The law does not hold a person guilty or deem or brand a person as a criminal only because an allegation is made against that person of having committed a criminal offence – be it in the form of an off-the-cuff allegation or an allegation in the form of a First Information Report or a complaint or an accusation in a final report under Section 173 of the Criminal Procedure Code or even on charges being framed by a competent Court. The reason for this is fundamental to criminal jurisprudence, the rule of law and is quite simple, although it is often forgotten or overlooked – a person is innocent until proven guilty. This would apply to a person accused of one or multiple offences. At law, he or she is not a criminal – that person may stand 'condemned' in the public eye, but even that does not entitle anyone to brand him or her a criminal.

25. Consequently, merely because a First Information Report is lodged against a person or a criminal complaint is filed against him or her or even if charges are framed against that person, there is no bar to that person being elected as a Member of Parliament or being appointed as a Minister in the Central Government.

26. Parliament has, therefore, in its wisdom, made a distinction between an accused person and a convict. For the purposes of the election law, an accused person is as much entitled to be elected to the Legislature as a person not accused of any offence. But, Parliament has taken steps to ensure that at least some categories of convicted persons are disqualified from being elected to the Legislature. A statutory disqualification is to be found in Section 8 of the Representation of the People Act, 1951.[76] The adequacy of the restrictions placed by this provision is arguable. For example, a disqualification under this Section is attracted only if the sentence awarded to a convict is less than 2 years imprisonment. This raises an issue: What if the offence is heinous (say an attempt to murder punishable under Section 307 of the Indian Penal Code (IPC) or kidnapping punishable under Section 363 of the IPC or any other serious offence not attracting a minimum punishment) and the sentence awarded by the Court is less than 2 years imprisonment. Can such a convict be a member of a Legislature? The answer is in the affirmative. Can this Court do anything about this, in the form of framing some guidelines?

27. In Municipal Committee, Patiala[77] this Court referred to Parent of a student of Medical College[78] and held that legislation is in the domain of the Legislature. It was said:

> "It is so well settled and needs no restatement at our hands that the legislature is supreme in its own sphere under the Constitution subject to the limitations provided for in the Constitution itself. It is for the legislature to decide as to when and in what respect and of what subject- matter the laws are to be made. It is for the legislature to decide as to the nature of operation of the statutes."

28. More recently, V.K. Naswa[79] referred to a large number of decisions of this Court and held that the Court cannot legislate or direct the Legislature to enact a law. It was said:

> "Thus, it is crystal clear that the court has a very limited role and in exercise of that, it is not open to have judicial legislation. Neither the court can legislate, nor has it any competence to issue directions to the legislature to enact the law in a particular manner."

29. However, a discordant note was struck in Gainda Ram[80] wherein this Court issued a direction to the Legislature to enact legislation before a particular date. It was so directed in paragraphs 70 and 78 of the Report in the following words:

> "70. This Court, therefore, disposes of this writ petition and all the IAs filed with a direction that the problem of hawking and street vending may be regulated by the present schemes framed by NDMC and MCD up to 30-6-2011. Within that time, the appropriate Government is to legislate and bring out the law to regulate hawking and hawkers' fundamental right. Till such time the grievances of the hawkers/vendors may be redressed by the internal dispute redressal mechanisms provided in the schemes.
>
> "78. However, before 30-6-2011, the appropriate Government is to enact a law on the basis of the Bill mentioned above or on the basis of any amendment thereof so that the hawkers may precisely know the contours of their rights. This Court is giving this direction in exercise of its jurisdiction to protect the fundamental rights of the citizens."[81]

30. The law having been laid down by a larger Bench than in Gainda Ram it is quite clear that the decision, whether or not Section 8 of the Representation of the People Act, 1951 is to be amended, rests solely with Parliament.

31. Assuming Parliament does decide to amend Section 8 of the Representation of the People Act, 1951 the content of the amended Section cannot be decided easily. Apart from the difficulty in fixing the quantum of sentence (adverted to above), there are several other imponderables, one of them being the nature of the offence. It has been pointed out by Rodney Brazier in "Is it a constitutional issue: fitness for ministerial office in the 1990s"[82] that there are four categories of offences. The learned author says:

> "But four types of crime may be distinguished. First, minor convictions would not count against a politician's worthiness for office. Minor driving offences, for example, are neither here nor there. Secondly, and at the other extreme, convictions for offences involving moral turpitude would dash any ministerial career. No one could remain in the Government who had been convicted of any offence of corruption, dishonesty, serious violence, or sexual misconduct. Thirdly, and most difficult, are offences the seriousness of which turn on the facts. A conviction for (say) assault, or driving with excess alcohol in the blood, could present a marginal case which would turn on its own facts. Fourthly, offences committed from a political motive might be condoned. Possibly a person who had refused to pay the poll tax might be considered

fit."

32. Therefore, not only is the quantum of sentence relevant but the nature of the offence that might disqualify a person from becoming a legislator is equally important. Perhaps it is possible to make out an exhaustive list of offences which, if committed and the accused having been found guilty of committing that offence, can be disqualified from contesting an election. The offences and the sentence to be awarded for the purpose of disqualifying a person from being elected to a Legislature are matters that Parliament may like to debate and consider, if at all it is felt necessary. Until then, we must trust the watchful eye of the people of the country that the elected representative of the people is worthy of being a legislator. Thereafter we must trust the wisdom of the Prime Minister and Parliament that the elected representative is worthy of being a Minister in the Central Government. In this context, it is appropriate to recall the words of Dr. Ambedkar in the Constituent Assembly on 30th December, 1948. He said:

> "His [Hon'ble K.T. Shah] last proposition is that no person who is convicted may be appointed a Minister of the State. Well, so far as his intention is concerned, it is no doubt very laudable and I do not think any Member of this House would like to differ from him on that proposition. But the whole question is this whether we should introduce all these qualifications and disqualifications in the Constitution itself. Is it not desirable, is it not sufficient that we should trust the Prime Minister, the Legislature and the public at large watching the actions of the Ministers and the actions of the legislature to see that no such infamous thing is done by either of them? I think this is a case which may eminently be left to the good-sense of the Prime Minister and to the good sense of the Legislature with the general public holding a watching brief upon them. I therefore say that these amendments are unnecessary."[83]

33. That a discussion is needed is evident from the material placed by the learned Additional Solicitor General. He referred to the 18th Report presented to the Rajya Sabha on 15th March, 2007 by the Department-Related Parliamentary Standing Committee On Personnel, Public Grievances, Law And Justice on Electoral Reforms (Disqualification Of Persons From Contesting Elections On Framing Of Charges Against Them For Certain Offences). The Report acknowledges the criminalization of our polity and the necessity of cleansing the political climate and had this to say:

> "At the same time, the Committee is deeply conscious of the criminalization of our polity and the fast erosion of confidence of the people at large in our political process of the day. This will certainly weaken our democracy and will render the democratic institutions sterile. The Committee therefore feels that politics should be cleansed of persons with established criminal background. The objective is to prevent criminalisation of politics and maintain probity in elections. Criminalization of politics is the bane of society and negation of democracy. But the arguments against the proposal of the Election Commission are overwhelming. As stated in the foregoing paras the Courts frame charges even when they are conscious that the case is ultimately bound to fail. Appreciation of evidence at the stage of framing charges

being more or less prohibited, charges are still framed even when the court is convinced that the prosecution will never succeed. There are many glaring illustrations which are of common knowledge and any criminal lawyer can multiply instances of such nature. Hence the proposal can not be accepted in its present form as the country has witnessed in the past misuse of MISA, TADA, POTA etc."

34. On the issue of criminalization of politics, the learned Additional Solicitor General also referred to the 244th Report of the Law Commission of India on "Electoral Disqualifications" presented in February, 2014. Though the Report concerns itself primarily with the disqualification to be a member of a Legislature, it does give some interesting statistics about the elected representatives of the people in the following words:

"In the current Lok Sabha, 30% or 162 sitting MPs have criminal cases pending against them, of which about half i.e. 76 have serious criminal cases. Further, the prevalence of MPs with criminal cases pending has increased over time. In 2004, 24% of Lok Sabha MPs had criminal cases pending, which increased to 30% in the 2009 elections.

The situation is similar across states with 31% or 1,258 out of 4,032 sitting MLAs with pending cases, with again about half being serious cases. Some states have a much higher percentage of MLAs with criminal records: in Uttar Pradesh, 47% of MLAs have criminal cases pending. A number of MPs and MLAs have been accused of multiple counts of criminal charges. In a constituency of Uttar Pradesh, for example, the MLA has 36 criminal cases pending including 14 cases related to murder.

From this data it is clear that about one-third of elected candidates at the Parliament and State Assembly levels in India have some form of criminal taint. Data elsewhere suggests that one-fifth of MLAs have pending cases which have proceeded to the stage of charges being framed against them by a court at the time of their election. Even more disturbing is the finding that the percentage of winners with criminal cases pending is higher than the percentage of candidates without such backgrounds. While only 12% of candidates with a "clean" record win on average, 23% of candidates with some kind of criminal record win. This means that candidates charged with a crime actually fare better at elections than 'clean' candidates. Probably as a result, candidates with criminal cases against them tend to be given tickets a second time. Not only do political parties select candidates with criminal backgrounds, there is evidence to suggest that untainted representatives later become involved in criminal activities. The incidence of criminalisation of politics is thus pervasive making its remediation an urgent need." While it may be necessary, due to the criminalization of our polity and consequently of our politics, to ensure that certain persons do not become Ministers, this is not possible through guidelines issued by this Court. It is for the electorate to ensure that suitable (not merely eligible) persons are elected to the Legislature and it is for the Legislature to enact or not enact a more restrictive law.

Conclusions on the second relief

35. The discussion leads to the following conclusions:

To become a legislator and to continue as a legislator, a person should not suffer any of the disqualifications mentioned in Section 8 of the Representation of the People Act, 1951;

There does seem to be a gap in Section 8 of the Representation of the People Act, 1951 inasmuch as a person convicted of a heinous or a serious offence but awarded a sentence of less than two years imprisonment may still be eligible for being elected as a Member of Parliament;

While a debate is necessary for bringing about a suitable legislation disqualifying a person from becoming a legislator, there are various factors that need to be taken into consideration;

That there is some degree of criminalization of politics is quite evident;

It is not for this Court to lay down any guidelines relating to who should or should not be entitled to become a legislator or who should or should not be appointed a Minister in the Central Government;

36. The range of persons who may be elected to a Legislature is very wide and amongst those, who may be appointed a Minister in the Central Government is also very wide, as mentioned above. Any legislator or non- legislator can be appointed as a Minister but must quit as soon as he or she earns a disqualification either under the Constitution or under Section 8 of the Representation of the People Act, 1951.[84] In B.P. Singhal this Court observed that "a Minister is hand-picked member of the Prime Minister's team. The relationship between the Prime Minister and a Minister is purely political."

37. In addition to the above, how long a Minister should continue in office is best answered by the response to a question put to the British Prime Minister John Major who was asked to "list the circumstances which render Ministers unsuitable to retain office." His written reply given to the House of Commons on 25th January, 1994 was: "There can be a variety of circumstances but the main criterion should be whether the Minister can continue to perform the duties of office effectively."[85]

38. This being the position, the burden of appointing a suitable person as a Minister in the Central Government lies entirely on the shoulders of the Prime Minister and may eminently be left to his or her good sense. This is what our Constitution makers intended, notwithstanding the view expressed by Shri H.V. Kamath in the debate on 30th December, 1948. He said:

> “My Friend, Prof. Shah, has just moved amendment No.1300 comprising five sub-clauses. I dare say neither Dr. Ambedkar nor any of my other honourable Friends in this House will question the principle which is sought to be embodied in Clause (2E) of amendment No. 1300 moved by Prof. Shah. I have suggested my amendment No. 46 seeking to delete all the words occurring after the words "moral turpitude" because I think that bribery and corruption are offences which involve moral turpitude. I think that moral turpitude covers bribery, corruption and many other cognate offences as well. Sir, my friends here will, I am sure, agree with me that it will hardly redound to the credit of any government if that government includes in its fold any minister who has had a shady past or about whose character or integrity there is any widespread suspicion. I hope that no such event or occurrence will take place in our country, but some of the recent events have created a little doubt in my mind. I refer, Sir, to a little comment, a little article, which appeared in the Free Press Journal of Bombay dated the 8th September 1948 relating to the **** Ministry. The relevant portion of the article runs thus:
>
> "The Cabinet (the * * * * Cabinet) includes one person who is a convicted black marketeer, and although it is said that his disabilities, resulting from his conviction in a Court of Law, which constituted a formidable hurdle in the way of his inclusion in the interim Government, were graciously removed by the Maharaja."[86]

39. In this respect, the Prime Minister is, of course, answerable to Parliament and is under the gaze of the watchful eye of the people of the country. Despite the fact that certain limitations can be read into the Constitution and have been read in the past, the issue of the appointment of a suitable person as a Minister is not one which enables this Court to read implied limitations in the Constitution.

Epilogue

40. It is wise to remember the words of Dr. Ambedkar in the Constituent Assembly on 25th November, 1949. He had this to say about the working of our Constitution:

> “As much defence as could be offered to the Constitution has been offered by my friends Sir Alladi Krishnaswami Ayyar and Mr. T.T. Krishnamachari. I shall not therefore enter into the merits of the Constitution. Because I feel, however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of State such as the Legislature, the Executive and the Judiciary. The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics. Who can say how the people of India and their purposes or will they prefer revolutionary methods of achieving

> them? If they adopt the revolutionary methods, however good the Constitution may be, it requires no prophet to say that it will fail. It is, therefore, futile to pass any judgement upon the Constitution without reference to the part which the people and their parties are likely to play."[87]

41. This sentiment was echoed in the equally memorable words of Dr. Rajendra Prasad on 26th November, 1949. He had this to say:

> "Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. That will depend upon the men who administer it. It is a trite saying that a country can have only the Government it deserves. Our Constitution has provision in it which appear to some to be objectionable from one point or another. We must admit that the defects are inherent in the situation in the country and the people at large. If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country. After all, a Constitution like a machine is a lifeless thing. It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them."[88]

42. The writ petition is disposed of but with no order as to costs. It must, however, be stated that all learned counsels appearing in the case have rendered very useful and able assistance on an issue troubling our polity.

.....J (Madan B. Lokur) New Delhi;

August 27, 2014

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

WRIT PETITION (CIVIL) NO. 289 OF 2005

MANOJ NARULA … PETITIONER (S)

VERSUS

UNION OF INDIA … RESPONDENT (S)

KURIAN, J.:

I agree with the beautiful and erudite exposition of law made by my esteemed brother. Yet why to pen something more, one may naturally ask. The only answer is: in Kerala, there is a saying: when you make a special tea, even if you add a little more milk, don't reduce even a bit of sugar! The surviving prayer in the public interest litigation reads as follows:

> "(c) Issue appropriate writ/writs, order/orders, direction/directions, including the writ of mandamus and frame possible guidelines, for appointment of Minister for the UOI as well as for the State, especially, in view of the provisions, terms of schedule III, Article 75(4), 164(3), basic features, aims and objects of the Constitution etc. as the Hon'ble Court may deem fit and proper for the perseverance and protection of the Constitution of India in both letters and spirit." Court is the conscience of the Constitution of India. Conscience is the moral sense of right and wrong of a person (Ref.: Oxford English Dictionary). Right or wrong, for court, not in the ethical sense of morality but in the constitutional sense. Conscience does not speak to endorse one's good conduct; but when things go wrong, it always speaks; whether you listen or not. It is a gentle and sweet reminder for rectitude. That is the function of conscience. When things go wrong constitutionally, unless the conscience speaks, it is not good conscience; it will be accused of as numb conscience.
>
> One cannot think of the Constitution of India without the preambular principle of democracy and good governance. Governance is mainly in the hands of the Executive. The executive power of the Union under Article 53 and that of the States under Article 154 vests in the President of India and the Governor of the State, respectively. Article 74 for the Union of India and Article 163 for the State have provided for the Council of Ministers to aid and advise the President or the Governor, as the case may be. The executive power extends to the respective legislative competence.
>
> Before entering office, a Minister has to take oath of office (Article 75/164). In form, except for the change in the words 'Union' or particular 'State', there is no difference in the form of oath. Ministers take oath to ... "faithfully and conscientiously discharge ..." their duties and .... "do right to all manner of people in accordance with Constitution and the law, without fear or favour, affection or ill-will".
>
> Allegiance to the Constitution of India, faithful and conscientious discharge of the duties, doing right to people and all these without fear or favour, affection or ill-will, carry heavy weight. 'Conscientious' means "wishing to do what is right, relating to a person's conscience" (Ref.:
>
> Concise Oxford English Dictionary). The simple question is, whether a person who has come in conflict with law and, in particular, in conflict with law on offences involving moral turpitude and laws specified by the Parliament under Chapter III of The Representation of the People Act, 1951, would be in a position to conscientiously and faithfully discharge his duties as Minister and that too, without any fear or favour?

When does a person come in conflict with law? No quarrel, under criminal jurisprudence, a person is presumed to be innocent until he is convicted. But is there not a stage when a person is presumed to be culpable and hence called upon to face trial, on the court framing charges?

Under Section 228 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.PC'), charge is framed by the court only if the Judge (the Magistrate – under Section 240 Cr.PC) is of the opinion that there is ground for presumption that the accused has committed an offence, after consideration of opinion given by the police under Section 173(2) Cr.PC (challan/police charge-sheet) and the record of the case and documents. It may be noted that the prosecutor and the accused person are heard by the court in the process. Is there not a cloud on his innocence at that stage? Is it not a stage where his integrity is questioned? If so, is it not a stage where the person has come in conflict with law, and if so, is it desirable in a country governed by rule of law to entrust the executive power with such a person who is already in conflict with law? Will any reasonably prudent master leave the keys of his chest with a servant whose integrity is doubted? It may not be altogether irrelevant to note that a person even of doubtful integrity is not appointed in the important organ of the State which interprets law and administers justice; then why to speak of questioned integrity! What to say more, a candidate involved in any criminal case and facing trial, is not appointed in any civil service because of the alleged criminal antecedents, until acquitted.

Good governance is only in the hands of good men. No doubt, what is good or bad is not for the court to decide: but the court can always indicate the constitutional ethos on goodness, good governance and purity in administration and remind the constitutional functionaries to preserve, protect and promote the same. Those ethos are the unwritten words in our Constitution. However, as the Constitution makers stated, there is a presumption that the Prime Minister/Chief Minister would be well advised and guided by such unwritten yet constitutional principles as well. According to Dr. B. R. Ambedkar, as specifically referred to by my learned brother at pargraph-70 of the leading judgment, such things were only to be left to the good sense of the Prime Minister, and for that matter, the Chief Minister of State, since it was expected that the two great constitutional functionaries would not dare to do any infamous thing by inducting an otherwise unfit person to the Council of Ministers. It appears, over a period of time, at least in some cases, it was only a story of great expectations. Some of the instances pointed out in the writ petition indicate that Dr. Ambedkar and other great visionaries in the Constituent Assembly have been bailed out. Qualification has been wrongly understood as the mere absence of prescribed disqualification. Hence, it has become the bounden duty of the court to remind the Prime Minister and the Chief Minister of the State of their duty to act in accordance with the constitutional aspirations. To quote Dr. Ambedkar:

"However, good a Constitution may be, it is sure to turn out bad because those who are called to work it happen to be a bad lot. However, bad a Constitution may be, it may turn out to be good if those who are called to work it happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution." Fortunately for us, our Constitution has stood the test of time and is acclaimed to be one of the best in the world. Problem has been with the other part, though sporadically. Kautilya, one of the great Indian exponents of art of government, has dealt with qualification of king and his councillors at Chapter IX in Arthasastra, said to be compiled between BC 321-296. To quote relevant portion:

"CHAPTER IX THE CREATION OF COUNCILLORS AND PRIESTS NATIVE, born of high family, influential, well trained in arts, possessed of foresight, wise, of strong memory, bold, eloquent, skilful, intelligent, possessed of enthusiasm, dignity and endurance, pure in character, affable, firm in loyal devotion, endowed with excellent conduct, strength, health and bravery, free from procrastination and ficklemindedness, affectionate, and free from such qualities as excite hatred and enmity-these are the qualifications of a ministerial officer." The attempt made by this court in the above background history of our country and Constitution is only to plug some of the bleeding points in the working of our Constitution so that the high constitutional functionaries may work it well and not wreck it. Beauty of democracy depends on the proper exercise of duty by those who work it.

No doubt, it is not for the court to issue any direction to the Prime Minister or the Chief Minister, as the case may be, as to the manner in which they should exercise their power while selecting the colleagues in the Council of Ministers. That is the constitutional prerogative of those functionaries who are called upon to preserve, protect and defend the Constitution. But it is the prophetic duty of this Court to remind the key duty holders about their role in working the Constitution. Hence, I am of the firm view, that the Prime Minister and the Chief Minister of the State, who themselves have taken oath to bear true faith and allegiance to the Constitution of India and to discharge their duties faithfully and conscientiously, will be well advised to consider avoiding any person in the Council of Ministers, against whom charges have been framed by a criminal court in respect of offences involving moral turpitude and also offences specifically referred to in Chapter III of The Representation of the People Act, 1951.

.....J. (KURIAN JOSEPH) New Delhi;

August 27, 2014.

AIR 1975 SC 2299

[2] (1995) 4 SCC 611
[3] AIR 2006 SC 3127
[4] (2013) 10 SCC 1
[5] (1978) 1 SCC 405
[6] AIR 1980 SC 1362
[7] (2002) 5 SCC 294
[8] (1997) 4 SCC 306
[9] (1997) 6 SCC 1
[10] AIR 2005 SC 688
[11] (2013) 4 SCC 642

[12] Writ Petition (Civil) No. 38 of 1997 etc. pronounced on May 06, 2014 [13] (2013) 7 SCC 653 [14] (1973) 4 SCC 225 [15] (2011) 4 SCC 1 [16] (2009) 7 SCC 1 [17] (2006) 11 SCC 356 [18] (2014) 2 SCC 609 [19] (2013) 5 SCC 1 [20] (2005) 8 SCC 202 [21] (1974) 2 SCC 831 [22] (2001) 7 SCC 231 [23] (2004) 8 SCC 788 [24] 1981 Supp SCC 87 [25] (2006) 8 SCC 212 [26] (1971) 2 SCC 63 [27] (1972) 3 SCC 717 [28] (2006) 2 SCC 682 [29] (2004) 10 SCC 699 [30] (2005) 5 SCC 294 [31] (2011) 2 SCC 83 [32] (2011) 4 SCC 324 [33] (2012) 2 SCC 34 [34] 1936 AC 578 [35] 1965 AC 172 [36] 23 CLR 457 [37] (1967) 2 SCR 109 [38] (1980) 3 SCC 625 [39] (2007) 2 SCC 1 [40] AIR 1987 SC 232 [41] AIR 1997 SC 610 [42] (1997) 6 SCC 241 [43] (2010) 12 SCC 1 [44] (1994) 6 SCC 632 [45] AIR 1994 SC 1349 [46] AIR 1950 SC 124 [47] (1974) 74 CLR 31 [48] (1992) 177 CLR 106 [49] (1945) 71 CLR 29, 85 [50] (1958) 99 CLR 132, 144-5 [51] (1971) 122 CLR 353, 401 [52] Constituent Assembly Debates 1989: VII, 38.

[53] James Madison as Publius, Federalist 51 [54] Laurance H. Tribe, THE INVISIBLE CONSTITUTION 29 (2008) [55] (2009) 15 SCC 351 [56] (2001) 3 SCC 594 [57] (1995) 6 SCC 289 [58] (2003) 9 SCC 731 [59] AIR 2008 SC 693 [60] AIR 1955 SC 549 [61] AIR 1994 SC 268 [62] H.M. Seervai, Constitutional Law of India, vol. 2, 4th Ed. Pg. 2060 [63] Constitutional and Administrative Law, 2nd Ed. Pg 368-370, David Polland, Neil Parpworth David Hughs [64] 5th Edition, pg 297-305 [65] Nolan Report, Standards in Public Life, Cm 2850-I, 1995, Lodon HMSO, Chapter 3, para 4.

[66] Constitutional Practice (Second Edition) (pg. 146-148) [67] AIR 1951 SC 332 [68] I. Jennings, The law and the Constitution (5th Edn., ELBS: London, 1976) in his Chapter “Conventions” at 247.

[69] I. Lovehead, Constitutional Law-A Critical Introduction (2nd edn., Butterworths: London, 2000) at 247 [71]http://parliamentofindia.nic.in/ls/debates/vol11p12.htm [73] S.R. Chaudhuri v. State of Punjab, (2001) 7 SCC 126 [75] 164. Other provisions as to Ministers.—(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor:

Provided that in the States of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha, there shall be a Minister in charge of tribal welfare who may in addition be in charge

of the welfare of the Scheduled Castes and backward classes or any other work.

(1-A) The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of that State:

Provided that the number of Ministers, including the Chief Minister, in a State shall not be less than twelve:

Provided further that where the total number of Ministers, including the Chief Minister, in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent or the number specified in the first proviso, as the case may be, then, the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date as the President may by public notification appoint.

(1-B) A member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under Paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier.

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.

Note: The Article is reproduced as it is today.

[77] B.R. Kapur v. State of Tamil Nadu, (2001) 7 SCC 231 [79] B.P. Singhal v. Union of India, (2010) 6 SCC 331 [81] State of Punjab v. Salil Sabhlok, (2013) 5 SCC 1 [83] 8. Disqualification on conviction for certain offences.—(1) A person convicted of an offence punishable under—(a) Section 153-A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or Section 171-E (offence of bribery) or Section 171-F (offence of undue influence or personation at an election) or sub- section (1) or sub-section (2) of Section 376 or Section 376-A or Section 376-B or Section 376-C or Section 376-D (offences relating to rape) or Section 498-A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of Section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code (45 of 1860); or

(b) the Protection of Civil Rights Act, 1955 (22 of 1955), which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or

(c) Section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (52 of 1962); or

(d) Sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or

(e) the Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or

(f) the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(g) Section 3 (offence of committing terrorist acts) or Section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(h) Section 7 (offence of contravention of the provisions of Sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or

(i) Section 125 (offence of promoting enmity between classes in connection with the election) or Section 135 (offence of removal of ballot papers from polling stations) or Section 135-A (offence of booth capturing) or clause (a) of sub-section (2) of Section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act, or

(j) Section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991, or

(k) Section 2 (offence of insulting the Indian National Flag or the Constitution of India) or Section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971) or,

(l) the Commission of Sati (Prevention) Act, 1987 (3 of 1988); or

(m) the Prevention of Corruption Act, 1988 (49 of 1988); or

(n) the Prevention of Terrorism Act, 2002 (15 of 2002); 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;

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

(2) A person convicted for the contravention of—

(a) any law providing for the prevention of hoarding or profiteering; or

(b) any law relating to the adulteration of food or drugs; or

(c) any provisions of the Dowry Prohibition Act, 1961 (28 of 1961); and sentenced to imprisonment for not less than six months, shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub- section (1) or sub-section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(4) Held unconstitutional in Lily Thomas v. Union of India, (2013) 7 SCC 653 Notwithstanding anything in sub-section (1), sub-section (2) or sub- section (3) a disqualification under either sub-section shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.

Explanation.—In this section—

(a) “law providing for the prevention of hoarding or profiteering” means any law, or any order, rule or notification having the force of law, providing for—

(i) the regulation of production or manufacture of any essential commodity;

(ii) the control of price at which any essential commodity may be bought or sold;

(iii) the regulation of acquisition, possession, storage, transport, distribution, disposal, use or consumption of any essential commodity;

(iv) the prohibition of the withholding from sale of any essential commodity ordinarily kept for sale;

(b) “drug” has the meaning assigned to it in the Drugs and Cosmetics Act, 1940 (23 of 1940);

(c) “essential commodity” has the meaning assigned to it in the Essential Commodities Act, 1955 (10 of 1955);

(d) “food” has the meaning assigned to it in the Prevention of Food Adulteration Act, 1954 (37 of 1954).

[85] Municipal Committee, Patiala v. Model Town Residents Association, (2007) 8 SCC 669 [87] State of Himachal Pradesh v. Parent of a student of Medical College, (1985) 3 SCC 169. This was a judgment delivered by a Bench of three learned Judges.

[89] V.K. Naswa v. Union of India, (2012) 2 SCC 542 [91] Gainda Ram v. MCD, (2010) 10 SCC 715. This was a judgment delivered by a Bench of two learned Judges.

[93] The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill was eventually passed and notified as an Act in 2014.

[95] Public Law 1994, Aut, 431-45 [97] Constituent Assembly Debates, Volume VII [99] Lily Thomas v. Union of India, (2013) 7 SCC 653 [101]http://hansard.millbanksystems.com/written_answers/1994/jan/25/ministers-unsuitability-for office#S6CV0236P0_19940125_CWA_172 [103] Constituent Assembly Debates, Volume VII [105] http://parliamentofindia.nic.in/ls/debates/vol11p11.htm [107] http://parliamentofindia.nic.in/ls/debates/vol11p12.htm

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