

IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRA ORDINARY WRIT JURISDICTION)

CM NO. _____ OF 2019

IN

WRIT PETITION (CIVIL) NO. 6483 OF 2019

IN THE MATTER OF:

ASHWINI KUMAR
UPADHYAY

..... PETITIONER

VERSUS

UNION OF INDIA AND ANR.

..... RESPONDENTS

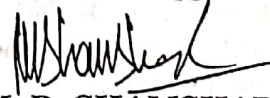
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Filed by:

Applicant

Through


(M. R. SHAMSHAD)

Advocate for the Petitioner

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New Delhi

Dated: 23.08.2019

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NOTICE OF MOTION

1. Union of India
through the Secretary
Ministry of Home Affairs
North Block, New Delhi 110001
2. Law Commission of India
Through the Chairman/Secretary
4th Floor, Loknayak Bhawan,
Khan Market, New Delhi 110003

Sirs,

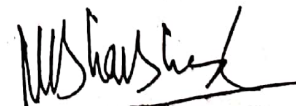
Please find enclosed copy of applications and documents accompanying the said documents for your record and reference. Please be notified that the matter will be listed before the Hon'ble Court on or about 26th August, 2019.

Sincerely yours,

Filed by:

Applicant

Through



(M. R. Shamshad)

Advocate for the Petitioner

D/1349/2000

B-4, {LGF} Jangpura Extension,

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URGENT APPLICATION

To,

The Registrar,
Delhi High Court,
Delhi.

Sir,

Please list the accompanying Application on urgent basis as an urgent one in accordance with the High Court Rules and Orders.

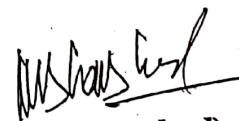
Please list the same on 26th August, 2019.

Yours faithfully,

Filed by:

Applicant

Through



(M. R. Shamshad)

Advocate for the Petitioner

D/1349/2000

B-4, {LGF} Jangpura Extension,
New Delhi - 110014

Ph: 011 43658425/24375842

New Delhi

Dated: 23.08.2019

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AND IN THE MATTER OF:

ALL INDIA MUSLIM
PERSONAL LAW BOARD

.....APPLICANT

76 A/1, Main Market, Okhla
Village Jamia Nagar, New
Delhi - 110025 (India)

**APPLICATION UNDER PRINCIPLE
ANALOGUS TO ORDER I RULE 8A
SEEKING IMPLEADMENT AS PARTY-
RESPONDENT ON BEHALF OF 'ALL INDIA
MUSLIM PERSONAL LAW BOARD'**

TO

HON'BLE THE CHIEF
JUSTICE AND HIS
COMPANION JUDGES OF
THE HON'BLE HIGH
COURT OF DELHI AT NEW
DELHI

THE HUMBLE APPLICATION
OF THE APPLICANT NAMED
HEREINABOVE

MOST RESPECTFULLY SHOWETH:

1. That the present Civil Writ Petition has been filed by the
Petitioner against the Respondents under Article 226 of the
Constitution of India seeking the following reliefs:

*'(a) Direct the Union of India to constitute a Judicial
Commission or a High Level Expert Committee, to draft
a Uniform Civil Code in spirit of Article 44 of the*

Constitution within three months, while considering the best practices of all religions and sects, Civil Laws of developed countries and international conventions; and publish it on the website for at least 60 days for extensive public debate and feedback;

b) in the alternative, direct the Law Commission of India to draft a Uniform Civil Code in spirit of Article 44 of the Constitution within three months, while considering the best practices of all religions and sects, Civil Laws of developed countries and international conventions; and publish it on the website for at least 60 days for wide public debate and feedback;

c) pass such other order(s) or direction(s) as this Hon'ble Court may deem fit and proper to effectuate Article 44 of the Constitution of India and secure gender justice, gender equality and dignity of women.'

2. That the present Applicant, the All India Muslim Personal Law Board (AIMPLB) is a non-government organization constituted in 1973 to adopt suitable strategies for the protection and continued applicability of Muslim Personal Law in India, most importantly, the Muslim Personal Law (Shariat) Application Act of 1937, providing for the application of the Islamic Law Code of Shariat to Muslims in India in personal affairs.
3. That the Applicant, is a society registered under the provisions of the Societies Registration Act, 1860 and works towards- protecting Muslim personal laws, liaise with the Government of India and guide the general public about crucial issues concerning Islam, its followers and its practice in India. The board has a Working Committee of 51 *ulama* representing the various schools of thought in Islam. In addition to this, it also has a General Body of 201 persons, comprising of *ulama* as well as scholars, lawyers and laymen, including about 25 women.
4. That the Applicant has in the past intervened or been made party to actions brought before this Hon'ble Court and the Hon'ble

Supreme Court of India and has assisted the Courts to the best of its ability to ensure that justice, equity and above all, the ethos and ideas enshrined in the Constitution of India prevails. Few of the matters, wherein the present applicant has assisted the Hon'ble Supreme Court of India is as under:

- a. Writ Petition (Civil) No. 386 of 2005 titled '*Vishwa Lochan Madan vs Union Of India & Ors*' on the issue of enforceability or lack thereof of *fatwas*.
- b. Civil Appeal No. 10972 of 2013 titled '*Suresh Kumar Koushal and another v. NAZ Foundation and Ors.*' on the issue of homosexuality and S. 377 of the IPC.
- c. Writ Petition (C) No. 118 of 2016 titled '*Shayara Bano vs. Union of India and Ors.*' on the issue of Triple Talaq.
- d. Writ Petition (Civil) No. 472 of 2019 titled '*Yasmeen Zuber Ahmad Peerzade Vs. Union Of India*' on the issue of women being allowed to offer Namaz in Mosques.

Apart from the above matters, there have been many other cases where the Applicant has joined the proceedings in the Hon'ble Supreme Court and High Courts.

5. That recently, it has come to the Applicant's attention that the present Petitioner, has sought to re-agitate the issue of a Uniform Civil Code before this Hon'ble Court as this news was reported in various news outlets. A true typed copy of news report dated is annexed herewith and marked as ANNEXURE A-1^(a/b) (Pages 13. to 25...).
6. That the present Applicant opposes the prayers made in the present writ petition in the manner and the nature of the petition itself.

7

7. It is submitted that the prayers of the present writ petition seem to be framed in a manner that seems to suggest that the Legislature is subordinate to the Union Judiciary, rather than being equal pillars of the sovereign, socialist, secular, democratic, Republic of India. Needless to say, the doctrine of separation of powers has been held to be part of the basic structure of the Constitution of India in *His Holiness Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr.* [(1973) 4 SCC 225], by the Hon'ble Supreme Court of India.
8. It is submitted that it is well settled that no writ of mandamus lies towards the exigency, action or inaction of the legislature. The catena of judgements on the issue of, whether a writ of mandamus can be issued directing the legislature to pass a law, was recently relied upon and reiterated by the Hon'ble Supreme Court of India, in *State of H.P. v. Satpal Saini*, [(2017) 11 SCC 42], the Hon'ble Apex Court, after reiterating the case law on the issue in paras, 7-9, went on to observe as hereinunder:

"12. The judiciary is one amongst the three branches of the State; the other two being the executive and the legislature. Each of the three branches is co-equal. Each has specified and enumerated constitutional powers. The judiciary is assigned with the function of ensuring that executive actions accord with the law and that laws and executive decisions accord with the Constitution. The courts do not frame policy or mandate that a particular policy should be followed. The duty to formulate policies is entrusted to the executive whose accountability is to the legislature and, through it, to the people. The peril of adopting an incorrect policy lies in democratic accountability to the people. This is the basis and rationale for holding that the court does not have the power or function to direct the executive to adopt a particular policy or the legislature to convert it into enacted law. It is wise to remind us of these limits and wiser still to enforce them without exception."

9. That the present writ petition is not maintainable in law, in view of the judgement of the Hon'ble Supreme Court, in *State of H.P. v. Satpal Saini (supra)* and as such is liable of being dismissed with exemplary costs, given the facts and circumstances of the Petitioner herein and the pleadings and the prayer in the present Writ Petition.

10. That in *Dattaraj Nathuji Thaware v. State of Maharashtra*, (2005) 1 SCC 590, the Hon'ble Supreme Court laid down as under:

'12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.'

[emphasis supplied]

11. It is submitted that the present petition falls in the category of PILs described by the Hon'ble Supreme Court of India in *Dattaraj Nathuji Thaware v. State of Maharashtra*, (2005) 1 SCC 590, and as such ought to be dismissed with costs, exemplary in nature.

12. That the Hon'ble Supreme Court of India in *State of Uttaranchal v. Balwant Singh Chaufal*, (2010) 3 SCC 402 held as under:

"173. When we revert to the facts of the present case then the conclusion is obvious that this case is a classic case of the abuse of the process of the court. In the present case a practising lawyer has deliberately abused the process of the court. In that process, he has made a serious attempt to demean an important constitutional office. The petitioner ought to have known that the controversy which he has been raising in the petition stands concluded half a century ago by a Division Bench judgment of the Nagpur High Court in *Karkare* [AIR 1952 Nag 330] and the said case was approved by a Constitution Bench of this Court. The controversy involved in this case is no longer *res integra*. It is unfortunate that even after such a clear enunciation of the legal position, a large number of similar petitions have been filed from time to time in various High Courts. The petitioner ought to have refrained from filing such a frivolous petition.

174. A degree of precision and purity in presentation is a *sine qua non* for a petition filed by a member of the Bar under the label of public interest litigation. It is expected from a member of the Bar to at least carry out the basic research whether the point raised by him is *res integra* or not. The lawyer who files such a petition cannot plead ignorance.

...

176. On consideration of the totality of the facts and circumstances of the case, we allow the appeals filed by the State and quash the proceedings of Civil Miscellaneous Writ Petition No. 689 (M/B) of 2001 filed in the Uttaranchal High Court. We further direct that the respondents (who were the petitioners before the High Court) to pay costs of Rs 1,00,000 (Rupees one lakh) in the name of Registrar General of the High Court of Uttarakhand. The costs to be paid by the respondents within two months. If the costs are not deposited within two months, the same would be recovered as the arrears of the land revenue."

13. It is submitted that for the sake of justice and to ensure that the pristine nature of the extra ordinary jurisdiction that this Hon'ble has been Constitutionally granted must not be let to be tarnished by entertaining the present petition and that the principles of *State of Uttaranchal v. Balwant Singh Chaufal*, (*supra*) must be followed.

14. That as per the publicly available information of the Petitioner as is available on the internet, it seems that the Petitioner is in the habit of filing frivolous petitions. On at least two occasions, no less than the Hon'ble Chief Justice of India, himself seems to have rebuked the present petitioner for filing frivolous petitions on two occasions. A true copy of the News Report dated 12.11.2018 is annexed herewith and marked as ANNEXURE A-2 (Pages. 21 to 23....). A true copy of the News Report dated 25.02.2019 is annexed herewith and marked as ANNEXURE A-3 (Pages. 24 to 24....).
15. It is submitted that the present Petitioner on his Twitter handle claims to be a BJP spokesperson. A true copy of the Twitter profile of the Petitioner herein is annexed herewith and marked as ANNEXURE A-4 (Pages. 25 to 25....).
16. It is submitted that the present petition is frivolous in nature and concerns an issue that is no longer res integra. The present issue was dealt with by the Supreme Court of India, as far back as in the year 2003. It is reiterated that the principles on dismissals of frivolous PILs by imposing exemplary costs may be followed in the present matter.
17. It is submitted that the present Applicant is concerned with the impact that such a UCC law may have on the practical aspects of personal laws of the Indian Muslim. As such, the present Applicant is apprehensive that the present status quo (wherein Islamic Religious Law governs the personal matters of the Indian Muslim), is sought to be attacked under the garb of the present mischievous petition.

18. It is categorically submitted that the Shariat Application Act, 1937, in terms of S. 2 thereof, only applies Islamic Law to personal laws i.e. law governing the regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law. marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments).
19. That the present application is bonafide and in the interest of justice, equity and Constitutional principles.

PRAYER

In the facts and circumstances as stated hereinabove, the Applicant most humbly prays that this Hon'ble Court may be pleased to:

- a. ALLOW the Impleadment of the present Applicant as Party-Respondent; OR

IN THE ALTERNATIVE

- b. DISMISS the present Writ Petition with exemplary costs; AND/OR
- c. PASS any such further Order(s) against the Petitioner herein.

AND FOR THIS ACT OF KINDNESS THE APPLICANT DUTY BOUND SHALL EVER PRAY

Applicant

Through


[M R Shamshad]

Filed on : 23.08.2019

Advocate for the Applicant

NEW DELHI

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..... RESPONDENTS

AFFIDAVIT

I, Md. Wali Rahmani, aged about 77 years, son of Late Minnatullah Rahmani, am the General Secretary of the All India Muslim Personal Law Board with offices at 76 A/1, Main Market, Okhla Village Jamia Nagar, New Delhi - 110025 (India), presently at New Delhi, do hereby solemnly affirm and state as under:-

1. That I am the General Secretary of the Applicant Organization as stated above and in terms of the By Laws thereof, I am fully competent and authorized to swear and depose this affidavit.
2. That I have read the contents of the accompanying Application seeking Impleadment and state that the contents thereof have been drafted on my instructions. All the paras thereto are based on personal knowledge except para nos. 1, 7-13 and 16 which are based on legal advice received from Counsel.
3. That it is stated that the accompanying Annexures A1 to A-4 are true copies of their respective originals.

DEPONENT

VERIFICATION:

I, above named deponent, do hereby verify that contents of the above affidavit mentioned para 1, 2 and 3 of the affidavit are true as per my knowledge and belief and as per the record maintained by the Petitioner and nothing material has been concealed therefrom.

Verified at New Delhi on this 23rd day of August, 2018.

DEPONENT

ANNEXURE - A3

SC raps serial petitioner Upadhyay yet again on plea seeking 2 child moratorium

February 21, 2019

By Punit Mishra

It has become the norm rather than the exception that PILs filed by serial petitioner Ashwini Kumar Upadhyay gets dismissed more often. Today it happened again when his plea seeking debarment of candidates who have more than two children from contesting elections was dismissed.

Dismissing the plea, the bench comprising Chief Justice Ranjan Gogoi and Justice Sanjiv Khanna said: "How can a constitutional court debar a candidate having more than two children from contesting the elections."

Upadhyay is known in legal circles as a serial petitioner and has often been pulled up by the apex court for filing meaningless or frivolous petitions. Last November, the apex court went to the extent of saying that it might even consider banning him from filing PILs in the future.

This followed Upadhyay filing a plea seeking a direction to the Centre to impose an upper limit of Rs 2,000 per person per year on political donations in cash. A bench, headed by Chief Justice Ranjan Gogoi slammed Upadhyay for filing a number of petitions regarding election issues, and said, "Just because we have heard some matters of this gentleman, three PILs are filed every day and all regarding election issues. Three PILs are coming tomorrow and one was mentioned today."

"We should ban certain people from filing PILs. This petition is without any meaning. If some petitions are allowed, one cannot file a petition every day. Caution your client, one more improper petition and we will ban him," the apex court had told the counsel, representing Upadhyay in the case.

"If your client files one more improper PIL we will ban him," the Supreme Court had said. Chief Justice Ranjan Gogoi and Justice S K Kaul came down heavily on Upadhyay asking his lawyer, "With all sense of responsibility, why should we get into it? Is it our domain? Just look to your prayers."

The BJP leader had also prayed that the exemption under Section 13A of the Income Tax Act of 1961 be given only to those political parties that contest elections and win seats in the legislatures in accordance with the recommendations of the Election Commission.

Upadhyay was also chastised by the court for filing PILs incessantly in context of the elections.

But Upadhyay's own website says he has filed more than 50 PILs in the Supreme Court and different High Courts of India in the public interest and in pursuance of the fight for social economic and political justice, particularly for vulnerable, socially, economically disadvantaged sections of society. "He is unwaveringly committed to fight for the defense of the freedom of expression and the protection of human rights. He is always on his mettle to fight for the sanctity of the constitution and law of the land. A stalwart in his own right, Upadhyay is reckoned to be an admiring figure for PIL activists and known as the PIL Man. Besides Electoral Reform, Education Reform, Police Reform and Judicial Reform, Upadhyay is also striving for Gender Justice, Gender Equality and Dignity of Women," the website claims.

(True Copy)

**Ashwini Upadhyay** ✓

5,798 Tweets

25

**Ashwini Upadhyay** ✓

@AshwiniBJP

Spokesperson-BJP, Advocate-Supreme Court. Let's make a United Integrated Developed Bharat, Free from Corruption Crime Casteism Communalism Con Nepotism

📍 New Delhi, India 🌐 ashwiniupadhyay.in 🕒 Born March 17
📅 Joined June 2013

278 Following 62.4K Followers

Followed by Shekhar Gupta, Live Law, and Bar & Bench

Tweets

Tweets & replies

Media

Ashwini Upadhyay ✓ @AshwiniBJP · 4m

जौनपुर : जिला प्रशासन की नाकामी के कारण पूर्व DGP का मंदिर की भूमि पर बरकरार

breakingtube.com/news/police-fo...@CMOfficeUP @myogiadityanath @drdineshbjp @swatantrabjp
@sunilbansalbjp @ChiefSecyUP @dgpup @adgzonevaranasi @jau
@DMjaunpur

MSL