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SYNOPSIS & LIST OF DATES

Political parties choose contesting candidates in a very undemocratic manner without consulting electors that is why many times people in constituency are totally discontented with candidates presented before them. This problem can be solved by holding a fresh election if maximum votes are polled in favour of NOTA. In such situation, the contesting candidates should be considered as rejected and not be allowed in fresh election. Right to reject and elect new candidate will give power to the people to express their discontent. If voters are dissatisfied with background of the contesting candidate, they will opt NOTA to reject such candidate and elect a new candidate.

Right to reject will check corruption criminalization casteism communalism linguisim regionalism, the 7 menace of democracy, as the political parties would be forced to give tickets to honest and patriotic candidates. If candidates on whom political parties spend crores of rupees are rejected, they would abstain from doing so. Right to reject contesting candidates would mean true democracy as the people would be able to elect their representatives in true sense. It'll make contesting candidates accountable in their functioning as if electors will reject them, they won't get next chance of contesting.

Right to Reject was first proposed by the Law Commission in its 170th Report in 1999. It also suggested that the contesting

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candidates should be declared elected only if they have obtained 50%+1 of the valid votes cast. Similarly, the Election Commission endorsed 'Right to Reject', first in 2001, under Mr. James Lyngdoh (the then CEC), and then in 2004 under Mr. TS Krishnamurthy (the then CEC), in its Proposed Electoral Reforms. The ECI also proposed a legislative amendment to Rule 22 and 49-B of the Election Rules to introduce the NOTA and protect secrecy of voting. Likewise, *'Background Paper on Electoral Reforms'*, prepared by the Ministry of Law in 2010, proposed that if certain percentage of the vote is negative, then election result should be nullified and new election should be held. It propose: *"Both the Election Commission and Law Commission recommend that a negative or neutral voting option be created. Negative or neutral voting means allowing voters to reject all of the candidates on the ballot by selection of a 'none of the above' option instead of the name of a candidate on the ballot. In such a system there could be a provision whereas if a certain percentage of the vote is negative or neutral, then the election results could be nullified and a new election conducted".*

Given the inaction on the government's part, the People's Union for Civil Liberties filed a PIL on this issue in 2004 and in 2013 the Supreme Court struck down Rules 41(2) and (3) and 49-O of the Election Rules as being ultra vires Section 128 of the

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Representation of the People Act 1951 and Article 19(1)(a) of the Constitution to the extent they violated the secrecy of voting. Citing Section 128, RPA and Rules 39(1), 41, 49M and 49O of the Election Rules, the Court noted that the *"secrecy of casting vote is duly recognized and is necessary for strengthening democracy"* to maintain the purity of elections. Consequently, given that the right to vote and the right not to vote had been statutorily recognized, the Apex Court held that secrecy had to be maintained regardless of whether voters decide to cast or not cast their votes. The Apex Court also relied on international principles governing the right to secrecy as an integral part of voting and free elections under Article 21(3) of the Universal Declaration of Human Rights and Article 25(b) of the International Covenant on Civil and Political Rights ICCPR. It therefore ruled that voters should have the option of rejecting all candidates who were standing for elections in their constituency and directed the ECI to include the option of NOTA in all Electronic Voting Machines.

The premise of the Supreme Court's decision was that secrecy of voting is crucial to maintain the purity of the electoral system. Consequently, introducing NOTA, by guaranteeing the secrecy in casting a negative/neutral vote, would increase public participation in the electoral process, which is fundamental to the *"strength of*

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democracy." Given that democracy is *"all about choice"* and voting constitutes its very "essence", nonparticipation in the election can cause *"frustration and disinterest".* Thus, the Supreme Court opined that NOTA would empower the people, thereby accelerating effective political participation, since people could abstain and register their discontent with the low quality of candidates without fear of reprisal; simultaneously, it would foster the purity of the election process by eventually compelling parties to field better candidates, thereby improving the current situation.

However, the existing NOTA system is not the same as the right to reject. For example where even if there are 99 votes cast in favour of NOTA, out of a total 100, the candidate who got only vote will be declared the winner, for having obtained the most number of valid votes. The Election Commission issued a similar clarification that no re-elections will be called based on a cumulative reading of Rule 64(a) of the Election Rules and Sections 53(2) and 65, RPA. This is because the stated reason for ECI's demanding the introduction of NOTA was apparently to ensure the secrecy to the voter casting a negative vote and to prevent a bogus vote in their place; the right to reject did not figure in their original demands. This is evident in the Supreme Court's judgment – in terms of its emphasis on secrecy described above and the lack of any discussion

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on the right to reject, which was not prayed for by the PUCL. Instead, the Supreme Court focused on how it hoped that NOTA would eventually pressurize parties to field sound candidates. In is necessary to state that Columbia, wherein if the blank vote gets a majority (50%+1), the election needs to be repeated and the earlier candidates in the invalidated election cannot stand again.

Good governance, which is purportedly the motivating factor behind the right to reject, cannot be successfully achieved without nullifying the election if NOTA gets maximum votes. Centre should also implement the suggestions of the Venkatchaliah Commission and Law Commission of India on decriminalizing the politics and increasing political awareness; and introduce other provisions such as inner party transparency and election finance reform.

The Supreme Court in PUCL v. UOI [(2013) 10 SCC 1], has held that "a provision of negative voting would be in the interest of promoting democracy as it would send clear signals to political parties and their candidates as to what the electorate thinks about them" and directed the ECI to provide option of NOTA in all EVMs.

The democracy is all about choice and voting constitutes its very essence but non-participation in election causes frustration and disinterest. Therefore, electors must have the option of rejecting the contesting candidates and elect a new candidate. The right to reject

and elect new candidate will empower the people and accelerate their participation since they could abstain and register their discontent with low quality candidates without fear of reprisal. It would foster purity of election process by eventually compelling the parties to field better candidates thus control the criminalization. Moreover, the transparency and accountability in functioning of Legislators can be easily achieved, if voters have the right to reject the candidates and elect a new candidate. There are many countries, wherein if the blank or negative vote gets a majority, the election is held once again and the candidates, which had participated in the invalidated election cannot contest the next election.

Now days, every political party imposes candidates with corruption criminal communal background upon public. This gives electors no choice but to exercise very limited options that is to choose a corrupt, criminal or communal candidate or opt the NOTA. In spite of all the efforts of the Supreme Court and Election Commission, election scenario has become dire. In such situation, introduction of right to reject the candidates and elect new candidate will prove to be a breather for masses and ensure free-fair election. Electors gets highly frustrated when they go to cast their vote and come to know that contesting candidates are either corrupt criminal or communal. But they cannot elect a new candidate and forced to choose a unfit

candidate and waste their vote. Therefore, if NOTA gets majority of votes, then election to that constituency should be cancelled and a fresh election should be held within particular time. The candidates rejected in nullified elections should not be allowed to participate in the fresh election. The right to reject the contesting candidates and elect a new candidate, if the NOTA gets maximum votes, is not only necessary to ensure free-fair election but also essential for de-criminalization and de-communalization of polity. But, Centre is unwilling to implement it. Hence, the Court is the only hope.

Maintaining the purity of elections requires multi-pronged approach which includes removing the influence of money and muscle power, expediting the disposal of election petitions, introducing the internal democracy and financial transparency in functioning of political parties, strengthening the ECI and regulating the opinion polls and paid news. These issues have plagued our electoral system over the decades, eroded the trust of citizens. Since 1990, many commissions & committees have examined the challenges and issues affecting electoral system and made suggestions. The Law Commission in its 170th, 244th, 255th Report and ECI in its Proposed Electoral Reforms 2004 & 2016 have addressed many challenges. Goswami Committee on Electoral Reforms (1990), Vohra Committee on Criminalization of Politics (1993), Indrajit Gupta Committee on State Funding

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(1998), National Commission to Review the Working of the Constitution (2002) and Second Administrative Reform Commission (2008) also submitted their reports. But, their recommendations were not implemented, though, required for the enhancement of the quality of democracy, by reducing the influence of money and muscle power in politics and ensuring free-fair elections. Therefore, the Supreme Court should allow the instant writ petition.

7.9.1974: Jaya Prakash Narayan Committee consisting Mr. EPW Decosta, AG Noorani, RD Desai, PH Mavalankar, MR Masani and VM Tarkunde recommended many steps for electoral reforms but Centre did nothing.

20.5.1990: Goswami Committee suggested various steps to ensure free-fair election and improve transparency but Centre did nothing to implement those suggestions.

5.10.1993: Vohra Committee submitted report on criminals and Politicians' nexus but Centre did nothing to prosecute.

20.3.1997: SC directed Centre to prosecute the accused referred to in Vohra Report but Centre failed to do so.

29.5.1999: 'Right to Reject' was proposed by the Law Commission in 170th Report but Centre did nothing to implement it.

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22.11.1999: ECI endorsed 'Right to Reject'. But, Centre did nothing.

10.12.2001: The ECI again reminded the Government to implement "Right to Reject". But, Centre did nothing.

31.3.2002: The NCRWC submitted detailed proposals on election reform but Centre did nothing to implement them.

5.7.2004: The ECI once again reiterated its proposal to execute "Right to Reject" but Centre did nothing.

8.12.2010: Core-Committee on Electoral Reforms, Ministry of Law & Justice endorsed the NOTA with 'Right to Reject'.

27.9.2013: Apex Court pronounced NOTA Judgment

24.2.2014: The Law Commission submitted its 244th report on decriminalization of politics, but Centre did nothing.

12.3.2015: Law Commission submitted its 255th report on Electoral Reform but Centre did nothing to implement them.

5.12.2016: ECI again suggested steps for electoral and democratic reform, but Centre did not implement them till date.

24.11.2017: Withdraw WP(C)1120/2017 to approach Centre & ECI

27.11.2017: Submitted Representation to Centre-ECI

25.9.2018: Apex Court held that criminalization of polity is termite for our democracy but Centre has not made the Law.

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4.11.2020: Apex Court directed High Courts to setup Special Court to complete the trial of Legislators within year.

20.11.2020: Right to reject, elect new candidate isn't only necessary to ensure free-fair election but also essential to control corruption crime casteism communalism regionalism linguism & nepotism, the seven menaces of democracy but Centre & ECI did nothing till date. Hence, this PIL.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO ……. OF 2020

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Verses

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

…Respondents

PIL UNDER ARTICLE 32 SEEKING DIRECTION TO THE ECI TO USE ITS PLENARY POWER TO NULLIFY THE ELECTION RESULT AND HOLD FRESH ELECTION, IF MAXIMUM VOTES HAVE BEEN POLLED IN FAVOUR OF NOTA IN A PARTICULAR CONSTITUENCY; AND, RESTRICT THE CONTESTING CANDIDATES FROM TAKING PART IN THE FRESH ELECTION, WHO HAVE PARTICIPATED IN THE NULLIFIED ELECTION.

To,

THE HON'BLE CHIEF JUSTICE OF INDIA

AND THE LORDSHIP'S COMPANION JUSTICES

OF THE HON'BLE SUPREME COURT OF INDIA

HUMBLE PETITION OF ABOVE-NAMED PETITIONER

THE MOST RESPECTFULLY SHOWETH AS THE UNDER:

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1. Petitioner is filing this writ petition as a PIL under Article 32 seeking direction to the Election Commission to use its plenary power to nullify the election result and hold fresh election, if maximum votes have been polled in favour of NOTA in a particular constituency**;** and, restrict the contesting candidates from taking part in the fresh election, who have participated in the nullified election.
2. Alternatively, being custodian of the Constitution and protector of the fundamental rights, the Court may declare that *"if NOTA gets maximum votes, then election to that constituency shall be nullified and a fresh election shall be held within six months; and the contesting candidates rejected in the nullified elections, shall not be allowed to participate in the fresh election"*;
3. Petitioner has not filed any other petition either in the Court or in any other Court seeking same/similar directions as prayed except WP(C)1120/2017, which was withdrawn (**Annexure P-1,** pg. 47).
4. The facts constituting cause of action accrued on 1.7.2019 and continue when petitioner came to know that 43% MPs have criminal cases. ADR analyzed self-sworn affidavits of 539 out of 542 MPs of the present LokSabha. Election in Vellore constituency was cancelled and 3 MPs were not analyzed due to unavailability complete affidavits on ECI website at the time of analysis.

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5. Out of 539 MPs, 233(43%) MPs have declared criminal cases against themselves. Out of 542 winners analyzed after 2014 election, 185 (34%) had declared criminal cases against themselves and out of 543 winners analyzed after 2009 LokSabha election, 162 (30%) had declared criminal cases against themselves. There is an increase of 44% in the number of Loksabha MPs with declared criminal cases against themselves since 2009, and the root cause of this bizarre situation is the use of political party symbol on Ballot Paper and EVM. Presently 159(29%) MPs have declared serious cases including cases related to rape, murder, attempt to murder, kidnapping, crimes against women etc. Out of 542 winners analyzed after 2014 LokSabha election, 112 (21%) had declared serious cases against themselves. Out of 543 winners analyzed after 2009 LokSabha election, 76 (14%) had declared serious criminal cases against themselves. Thus, there is an increase of 109% in the number of Legislators with declared serious criminal cases since 2009. Winner from Idukki Constituency has 204 declared criminal cases including cases related to culpable homicide, house trespass, robbery, criminal intimidation etc. Total 30 MPs have declared cases of attempt to murder (S.307), 19 MPs have declared cases related to crimes against women and out of 19 MPs, 3 MPs have declared cases related to rape (S.376). Total 29 MPs have declared cases related to

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hate speech. ADR Report indicates that the chances of winning with criminal cases in 2019 election was 15.5% whereas for a candidate with clean background was merely 4.7%. Total 116 (39%) out of 301 winners from BJP, 29 (57%) out of 51 from INC, 10 (43%) out of 23 winners from DMK, 9 (41%) out of 22 winners of AITC, 13 (81%) out of 16 winners of JD(U) have declared criminal cases against themselves. Total 87(29%) out of 301 winners from BJP, 19 (37%) out of 51 winners from INC, 6 (26%) out of 23 winners from DMK, 4 (18%) out of 22 winners from AITC and 8 (50%) out of 16 winners from JD(U) have declared serious criminal cases against themselves. Out of 539 MPs analyzed in 2019, 475 (88%) are crorepatis. Out of 542 winners analyzed in 2014 election, 443 (82%) were crorepatis. Out of 543 winners analyzed in 2009 election, 315 (58%) were crorepatis. Total 265 (88%) out of 301 MPs of BJP, 43 (84%) out of 51 MPs of INC, 22 (96%) out of 23 MPs of DMK, 20 (91%) out of 22 MPs of AITC, 19 (86%) out of 22 MPs of YSRCP, 18 (100%) MPs of Shiv Sena have declared assets worth more than Rs. 1 crore. Chance of winning for a crorepati candidate in 2019 is 21%, whereas chance of winning for a candidate with assets less than Rs. 1 crore is 1%. Total 4 out of 539 winners analyzed in 2019 have not declared their PAN details. Average asset of the 225 re-elected MPs in 2019 is Rs 21.94 Crores and average assets of 225 re-elected

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MPs in 2014 were Rs 17.07 Crores. Average asset growth for 225 re-elected MPs, between 2014 and 2019 is Rs 4.87 Crores. Average % growth in assets for 225 re-elected MPs is 29%. Presently, 128(24%) MPs have declared their educational qualification to be between 5th and 12th, while 392(73%) MPs have declared educational qualification of graduate and above. One MP declared himself to be just literate and One MP is illiterate in 21st century.

6. This is a matter of serious concern to both– the democracy and rule of law, because 43% MPs have criminal cases against them. This is causing irreversible harm to both– noble profession, public interest. Oath of Affirmation, which Legislator makes under Third Schedule, obliges him to faithfully discharge the duty upon which he enters. Needless to say that a convicted and imprisoned Legislator cannot faithfully discharge his duty, which requires fulltime involvement. This would amount to violation of the constitutional Oath and can be control up to great extent by introducing right to reject.

7. What is alarming is that the percentage of candidates with criminal antecedents and their chances of winning have actually increased steadily over the years. Analysis shows that where charges against a candidate are serious, the probability of his winning the election is also high. Criminals who helped politicians in hope of getting favours have cut out 'middle man' and are contesting themselves.

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

8. The injury caused to public is extremely large and continue till date, as the right to reject is integral part of Article 19 but Centre and ECI did nothing to declare the election result invalid and hold fresh election, if maximum votes are polled in favour of NOTA.

9. Petitioner has no personal interests, individual gain, private motive or oblique reasons in filing this PIL. It is not guided for gain of any other individual person, institution or body.

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

11. Petitioner submitted Representation to ECI and Centre on 27.11.2017 [**Annex P-2,** pg. 48-50, **Annex P-3,** pg. 51-53] but they did nothing.

12. There is no need to approach ECI and Centre again because they did nothing on the Representation dated 27.11.2017. There is no remedy available except approaching this Court again under Article 32.

13. Political parties choose contesting candidates in a very undemocratic manner without consulting electors that is why many times people

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in constituency are totally discontented with candidates presented before them. This problem can be solved by holding a fresh election if maximum votes are polled in favour of NOTA. In such situation, the contesting candidates should be considered as rejected and not be allowed in fresh election. Right to reject and elect new candidate will give power to the people to express their discontent. If voters are dissatisfied with background of the contesting candidate, they will opt NOTA to reject such candidate and elect a new candidate.

14. Right to reject will control corruption criminalization casteism communalism linguisim regionalism nepotism, the 7 menaces of our democracy, as the political parties would be forced to give tickets to good candidates. If candidates on whom political parties spend crores of rupees are rejected, they would abstain from doing so.

15. Right to reject contesting candidates would mean true democracy as the people would be able to elect their representatives in true sense. It'll make contesting candidates accountable in their functioning as if electors will reject them, they won't get next chance of contesting.

16. Right to Reject was first proposed by Law Commission in its 170th Report in 1999. It also suggested that contesting candidates should be declared elected only if they have obtained 50%+1 of valid votes. Similarly, the Election Commission endorsed 'Right to Reject', first in 2001, under Mr. James Lyngdoh and then in 2004 under Mr. TS

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Krishnamurthy (the then CEC), in its Proposed Electoral Reforms. The ECI also proposed a legislative amendment to Rule 22 and 49-B of Election Rules to introduce NOTA and protect secrecy of voting.

17. Likewise, *'Background Paper on Electoral Reforms'*, prepared by the Ministry of Law in 2010, proposed that if certain percentage of the vote is negative, then election result should be nullified and new election should be held. It propose: *"Both the Election Commission and Law Commission recommend that a negative or neutral voting option be created. Negative or neutral voting means allowing voters to reject all of the candidates on the ballot by selection of a 'none of the above' option instead of the name of a candidate on the ballot. In such a system there could be a provision whereas if a certain percentage of the vote is negative or neutral, then the election results could be nullified and a new election conducted".*

18. Due to Centre's inaction, PUCL filed a PIL in 2004 and in 2013 the Court struck down Rules 41(2) and (3) and 49-O of the Election Rules as being ultra vires Section 128 of the RPA and Article 19(1)(a) to the extent they violated the secrecy of voting. Citing Section 128, RPA and Rules 39(1), 41, 49M and 49O of the Election Rules, the Court noted that the *"secrecy of casting vote is duly recognized and is necessary for strengthening democracy"* to

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maintain the purity of elections. Consequently, given that right to vote and the right not to vote had been statutorily recognized. The Court held that secrecy had to be maintained regardless of whether voters decide to cast or not cast their votes. The Court also relied on international principles governing the right to secrecy as an integral part of voting and free elections under Article 21(3) of the Universal Declaration of Human Rights and Article 25(b) of the ICCPR. The Court therefore ruled that voters should have the option of rejecting all candidates who were standing for elections in their constituency and directed the ECI to include the option of NOTA in Electronic Voting Machines.

19. The premise of the Supreme Court's decision was that secrecy of voting is crucial to maintain the purity of the electoral system. Consequently, introducing NOTA, by guaranteeing the secrecy in casting a negative/neutral vote, would increase public participation in the electoral process, which is fundamental to the *"strength of democracy."* Given that democracy is *"all about choice"* and voting constitutes its very "essence", nonparticipation in the election can cause *"frustration and disinterest"*. Thus, the Supreme Court opined that NOTA would empower the people, thereby accelerating effective political participation, since people could abstain and register their discontent with the low quality of candidates without

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fear of reprisal; simultaneously, it would foster the purity of the election process by eventually compelling parties to field better candidates, thereby improving the current situation.

20. However, the existing NOTA system is not the same as the right to reject. For example where even if there are 99 votes cast in favour of NOTA, out of a total 100, the candidate who got only vote will be declared the winner, for having obtained the most number of valid votes. The Election Commission issued a similar clarification that no re-elections will be called based on a cumulative reading of Rule 64(a) of the Election Rules and Sections 53(2) and 65, RPA. This is because the stated reason for ECI's demanding the introduction of NOTA was apparently to ensure the secrecy to the voter casting a negative vote and to prevent a bogus vote in their place; the right to reject did not figure in their original demands. This is evident in the Supreme Court's judgment – in terms of its emphasis on secrecy described above and the lack of any discussion on the right to reject, which was not prayed for by the PUCL. Instead, the Supreme Court focused on how it hoped that NOTA would eventually pressurize parties to field sound candidates. In is necessary to state that Columbia, wherein if the blank vote gets a majority (50%+1), the election needs to be repeated and the earlier candidates in the invalidated election cannot stand again.

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21. Good governance, which is purportedly the motivating factor behind the right to reject, cannot be successfully achieved without nullifying the election if NOTA gets maximum votes. Centre should also implement the suggestions of the Venkatchaliah Commission and Law Commission of India on decriminalizing the politics and increasing political awareness; and introduce other provisions such as inner party transparency and election finance reform.

22. The Supreme Court in PUCL v. UOI [(2013) 10 SCC 1], has held that *"a provision of negative voting would be in the interest of promoting democracy as it would send clear signals to political parties and their candidates as to what the electorate thinks about them"* and directed the ECI to provide option of NOTA in all EVMs.

23. The democracy is all about choice and voting constitutes its very essence and nonparticipation in election causes frustration disinterest. Therefore, electors must have the option of rejecting the contesting candidates and elect a new candidate. Right to reject and elect new candidate will empower the people and accelerate their participation since they could abstain and register their discontent with criminal and communal candidates without fear of reprisal. It would foster purity of election process by eventually compelling the political parties to field good candidate thus control criminalization. Moreover, transparency and accountability in the functioning of

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Legislators can be easily achieved, if voters have the right to reject the candidates and elect a new candidate. There are many countries including Columbia wherein if blank/negative vote gets majority, the election is held once again and candidates, who had participated in the invalidated election, cannot contest the next election.

24. Now days, every political party imposes candidates with corruption criminal communal background upon public. This gives electors no choice but to exercise very limited options that is to choose a corrupt, criminal or communal candidate or opt the NOTA. In spite of the efforts of the Supreme Court and Election Commission, election scenario has become dire. In such situation, introduction of right to reject the candidates and elect new candidate will prove to be a breather for masses and ensure free-fair election. Electors gets highly frustrated when they go to cast their vote and come to know that contesting candidates are either corrupt criminal or communal. But they cannot elect a new candidate and forced to choose a unfit candidate and waste their vote. Therefore, if NOTA gets majority of votes, then election to that constituency should be cancelled and a fresh election should be held within particular time. The candidates rejected in nullified elections should not be allowed to participate in the fresh election. Right to reject the contesting candidates and elect new candidate, if NOTA gets maximum votes, is not only necessary

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to ensure free-fair election but also essential for de-criminalization and de-communalization of politics. However, Centre and ECI have not taken steps to implement it. Hence, the Court is the only hope.

25. Maintaining the purity of elections requires multi-pronged approach which includes removing the influence of money and muscle power, expediting the disposal of election petitions, introducing the internal democracy and financial transparency in functioning of political parties, strengthening ECI and regulating opinion poll & paid news. These issues have plagued our electoral system over the decades, eroded the trust of citizens. Since 1990, many Commissions and Committees have examined the challenges and issues affecting electoral system and made suggestions. The Law Commission in its 170th, 244th, 255th Report and ECI in its Proposed Electoral Reforms 2004 and 2016 have addressed many challenges. Goswami Committee on Electoral Reform (1990), Vohra Committee on Criminalization of Politics (1993), Indrajit Gupta Committee on State Funding (1998), National Commission to Review the Working of the Constitution (2002) and Second Administrative Reform Commission (2008) also submitted their reports. But, the suggestions were not implemented, though, required for the enhancement of the quality of democracy by reducing the influence

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of money-muscle power in politics, ensuring free-fair elections. Hence, the Court should allow the PIL.

26. When the framers opted parliamentary system of democracy based on '*adult franchise'*, they had not bargained for the *'law breakers becoming law makers'* but ADR reports confirm that the trend for last 25 year has been increasingly towards criminalization, and now 43% of MPs have criminal cases. Many MPs are facing serious criminal charges like rape, murder, kidnapping, extortion, fraud and theft and still they not only participate in law making but also interfere in investigations to perpetrate their criminal empire.

27. Our democracy is suffering from seven menaces- Corruption, Criminalization, Casteism, Communalism, Lingusism, Regionalism and Nepotism and the best solution to weed these menaces is to introduce right to reject and re-elect new candidates. **(a)** It will help electors to elect intelligent diligent honest candidates, which is not possible in today's scenario. **(b)** It will not only weed out casteism and communalism but also control black money-benami transaction in election. **(c)** It will control dictatorship of political party bosses in ticket distribution and forced them to give ticket to those who religiously work for people's welfare **(d)** Our democracy will be free from the grip of political party bosses **(e)** It will control nepotism and favoritism, the gravest menace to our democracy **(f)** Political

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parties will be forced to give tickets to local candidates rather than parachute candidates. **(g)** It will not only control the criminalization but also keep check on middle-man and political brokers. **(h)** It will open gateway for social activists, educationists' jurists intellectuals and public welfare spirited honest people to enter into politics and work for betterment of society **(i)** The entry of honest and diligent people in Parliament and State Assemblies will lead to formation of better laws for people's welfare **(j)** Intelligent diligent and honest MPs will utilize MPLAD funds more effectively **(k)** Efficiency of the Parliament and State Assemblies will increase ten times **(l)** It will control regionalism-linguism, which have become a serious threat to our democracy **(m)** Long pending reforms i.e. election reform, police reform, judicial reform, education reform, administrative reform, industrial reform, agriculture reform, labor reform, tax reform and constitutional reform will be done within one year.

28. NOTA without Right to Reject, breaches the rights guaranteed under Articles 14 and 19 read with Articles 325-326: **(i)** It prevents free exercise of right to vote **(ii)** It affects ordinary citizen's rights to get elected **(iii)** It enables criminal backgrounds to buy ticket from National and State recognized political parties and contest election.

29. In present scenario, a person guilty of rape, extortion, kidnapping and murder can become candidate of recognized parties. Take the

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case of 2G, CWG, Coal scam accused coming back to election arena through National and State recognized parties. Would they not affect the elections with money and muscle power, offsetting the valuable *freedom to vote without fear or favour*? The question to be asked is in the context of *'little man's audit'*, will such an audit be free? The answer is clearly no, as it cannot be. Principle of 'One Man One Vote' is based on freedom to vote in a fair election and 'fair' denoting equal opportunity, which is impossible without introducing NOTA with Right to Reject and reelect new candidates.

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

31. Consequences of permitting criminals to contest and become legislators are extremely serious for our democracy: **(i)** during electoral process itself, not only do they deploy *'enormous amounts of illegal money'* to interfere with the outcome but also intimidate

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voters and rival candidates **(ii)** Thereafter, in our weak rule-of-law context, once they gain entry in governance as legislator they interfere with and influence, the functioning of government in favor of themselves and their organization by corrupting government officers and where that doesn't work, by using their contacts with Ministers to make threats of transfer and initiation of disciplinary proceedings. Many become Ministers, which worsens the situation **(iii)** Criminal attempt to subvert the administration of justice and attempt by hook or crook to prevent cases against themselves from being concluded & where possible, to obtain acquittals. Long delays in disposal and low conviction are testimony to their influence. Current framework: **(a)** interferes with purity and integrity of the electoral process **(b)** violates the right to choose candidate and, therefore, freedom of expression under Article 19(1); **(c)** amounts to a subversion of democracy, which is part of the basic structure; and, **(d)** is antithetical to the rule of law, which is at core of Article 14.

32. There is good reason why citizen's must have right to reject. A host of reports including ECI's *Proposed Electoral Reforms* (2004), Law Commission 170th and 244th Report (1999 and 2014), NCRWC Recommendations (2002), Administrative Reform Commission (2009), Vohra Committee Report (1993) have drawn attention to the severity of criminalization and have suggested electoral reforms to

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stem the tide of criminals flowing into polity but Centre did nothing. Taking note of these reports, the Court has in a series of decisions taken various steps to address the problem including: **(i)** recommending the setting up a high level committee to consider Vohra Report in *Dinesh Trivedi Case* (1994) 4 SCC 306 **(ii)** directing the ECI to ensure that candidates file affidavits along with their nomination papers setting out criminal cases pending against them in ADR Case (2002) 5 SCC 294 **(iii)** holding that the disqualification under S.8,RPA would apply even where sentences run consecutively beyond 02 years in *Prabhakaran Case* (2005) 1 SCC 754 **(iv)** striking down S.8(4),RPA which permitted sitting Legislators to continue in office if they have filed an appeal within a period of three months after conviction in *Lily Thomas Case* (2013) 7 SCC 653]; and (iv) recently, in WP(C)699/2016 directing States to setup Special Courts.

33. In the context of ethnic divisions, caste-religious cleavages, criminals are able to get votes based on their caste or religious affiliation, their money power, their perceived willingness to 'bend', if not break the law to favor their constituents and also because of coercion-intimidation including of their rivals. They have no interest in standing as independents and contest from recognized parties. Criminals want to stand as candidates of political parties because

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

34. The Framers opted parliamentary system of democracy based on *'universal adult suffrage' and* conferred a valuable constitutional status on the most marginal voter at par with those having money and muscle power. *'One man one vote'* was the motto emanating from Articles 325-326, irrespective of his race, caste, sex and status. Therefore, right to vote freely is not only the most valuable right but also the greatest egalitarian principle enshrined in the Constitution.

35. When we analyze right to vote in context of constitutional scheme: **(i)** It confers equality of status on the most marginalized citizen at par with the most powerful **(ii)** It fully subserves the ideals of social political equality and justice as enshrined in the Preamble. **(iii)** It gives equal opportunity to the most marginalized citizen to have equal say in governance of the Country and **(iv)** It enjoins Legislator to reflect his will amongst others. This is what Justice Krishna Aiyar meant when he talks of 'little man' expressing his 'social political audit' of the government and his representative. What should

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therefore be our aim, is how to make this exercise, free from all pollutions caused due to money-muscle power, otherwise the above right given to the little man would become worthless and the tall claims made in the Preamble would also be defeated.

36. The Supreme Court held that the right to vote is an 'expression' of will and is therefore, a guaranteed right under Article 19(1)(a). The Court, after holding that the 'little mans' right to vote is traceable to Article 19 (1)(a) when he makes his audit, further went on to hold that he has a right to information about the candidates and the law must provide for giving requisite information to enable effective exercise of this right, though, Section 33, was silent in this regard. This was taken to be a breach of Article 19 and requisite affidavits were required to be filed at the time of nomination. The law didn't consciously require, yet giving of information was ensured and enforced, to make the exercise of 'little man's social and political audit more effective. The Apex Court found this exercise necessary. The NOTA with Right to Reject and Re-elect, would subserve the same cause by enabling same audit to be exercised freely-effectively.

37. Framers opted adult suffrage, incorporated Articles 325-326. The principle enshrined in the provisions is called *'One Man One Vote'* principle. It ensures equality of status and non-discrimination. This

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principle has been repeatedly emphasized as one of the 'basic features' of our Constitution. Apart from having a 'basic feature' there is one aspect which has hither to not been noticed is that the right to vote enshrined can be a great egalitarian concept traceable to Article 14. It is the genus and Article 15, 16, 17, 25, 325 and 326 are its species. By subscribing to the principle of 'one man one vote', the framers in one stroke elevated the status of most marginalized to that of the most powerful. They ensured equal right to vote on all, as well as, all votes carry equal weight in the elections to the legislatures that, will express the 'Will' of the people. It is for this reason the principle of 'one man one vote' has been regarded as central feature or the heart of the democratic system imbedded in our Constitution. Articles 14-15 are not only philosophical concepts but also overarching principles called 'genus' and the 'species' would be the Articles that partake the equity equality equal opportunity.

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

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regarded as it partakers of the same nature and character as Articles 14-15.

39. Breach of Articles 325-326 would immediately attract Articles 14-15. In order to understand how Articles 14, 19, 325, 326 are breached presently, it is necessary to understand the nature and character of the principle of 'one man one vote'. Apart from being a basic feature of our Constitution and important human rights, it operates in two ways to ensure equality. Everyone has equal right to vote irrespective of caste creed sex religion etc and all votes carry equal weight. Breach of either of these would result in breach of Articles 14-15. Anything that tinkers with this has potential to upset whole edifice of universal suffrage. The Apex Court had held that the heart of parliamentary system is free and fair election. The term 'free and fair election' may not only be seen in the context of 'Right to Vote' but also from the angle of 'freedom of voting'. The Court held that 'free' elections ensure democracy while 'fair' denotes equal opportunity to all. Thus, the principle *'One Man One Vote'* demands equal opportunity, to vote with guaranteed freedom, to vote without fear or favour. Several reports demonstrate that 'criminalization of politics' has great potential to breach the 'freedom to vote' without fear or favour and the root cause of the 'criminalization of politics' is the use of political party symbol on Ballot Paper and EVM.

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40. Legislators, who make Laws, should have a minimum qualification so that they develop our nation at large scale speed with best skill. In the rapidly developing world, every person is equipped with knowledge. For this, information and communication technology is helpful and one can improve his education, the prime source for development of human being. To understand ongoing changes, Legislators may improve their educational qualifications. Moreover, elector has right to know the age and qualification of candidate.

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

42. An educated mind is a healthy mind and a healthy mind can govern in healthy way. An educated person is able to think logically and can

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differentiate between right-wrong which is necessary in democracy. We cannot give our country in the hands of a person who doesn't know how to handle himself. It is not that the person should be highly qualified but there must be minimum qualification. Education is essential for a legislator because he is the one who is responsible to take decisions. Legislators should have minimum qualification and good knowledge because it helps them to make the right decisions for development of society. Ill-literate Legislator has a lesser thinking, realizing and implementing ability, which he needs to uphold. Political system hampers and its supremacy is been devastated. Not only this, the youths make a mindset that study has no value as illiterate legislators are more prosperous than the educated ones. Uneducated Legislators may misuse their power and in order to prevent from all these shortcomings, minimum education should be compulsory for contesting. In today's world, even electrician, fitter, driver, helper, constable peon, clerk requires a minimum qualification, so why not, for those who carry enormous responsibility of developing a vast and versatile nation?

43. Legislators receive salary pension etc. from public funds and same having been sanctified by the Constitution and law. Article 106 provides that *"the members of either House of Parliament shall be entitled to receive salaries and allowances as may from time to time*

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be determined by Parliament by law." The law in pursuance thereof is Salary Allowances Pension of Members of Parliament Act, 1954 along with Rules **(i)** Travelling and Daily Allowances Rules, 1957 **(ii)** Housing and Telephone Facilities Rules, 1956 **(iii)** Medical Facilities Rules, 1959 **(iv)** Allowances for Journeys Abroad Rules, 1960 **(v)** Constituency Allowance Rules, 1986 **(vi)** Advance for Purchase of Conveyance Rules 1986 **(vii)** Office Expense Allowance, 1988. On a regular basis, each of the above stated perks are revised upwards, at the behest of Legislators themselves, drawing on consolidated fund of India. There are similar provisions in each of the States for the MLAs as well. There can be no quarrel with this however, as they are considered reasonable expenditures for the upkeep and maintenance of an individual duly elected/nominated to serve nation in high house of Parliament. Legislators are not only a public servants but also lawmaker, who take Constitutional Oath to serve the people and towards this end, they should be at least Graduate.

44. When a Bill is introduced in Parliament or State Assembly, the Legislators are supposed to debate on various provisions of the Bill, and propose amendments if they so wish. An illiterate legislator cannot faithfully perform this duty without help of others. Besides the above facts, the Oath of Affirmation, which a Legislator makes

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under Third Schedule, obliges him to faithfully discharge the duty upon which he is entering. Needless to say that illiterate MP cannot faithfully discharge his duty as a legislator. Rules of procedure in each House of Parliament have provisions for 'Question Hour' and 'Zero Hour' during which written and oral questions can be asked. These include questions specific to State or Constituency, which the Legislator represents, or of national interest. Therefore, Legislators must be at least Graduate, if not highly literate. The Parliament has many committees, whose members are nominated by the Chairperson. The Committees scrutinize policies, programmes and bills and propose amendments to the same. There are other Committees such as Public Accounts Committee and Committee on Public Undertakings, which scrutinize reports submitted by CAG. These Committees are regulated by the Rules of Procedure in each House. An illiterate Legislator cannot perform this duty also.

45. The Constitution has provisions to make MP's accountable. Article 102 states that a MP can be disqualified if he holds an "Office of Profit". He can also be disqualified if he quits his party or defects to another party after being elected as MP under the 10th Schedule. Under Article 101, if an MP is absent from meetings for more than 60 days without permission, his seat may be declared vacant. Under

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Article 104, if an MP sits or votes in Parliament without taking oath, he shall be liable to pay a fine of up to Rs 500 per day.

46. The Legislator plays an important role in development of his State. He can fulfill his developmental role under Member of Parliament Local Area Development Scheme (MPLADS). Under the scheme, every MP is allocated Rs 5 crore/year for initiating developmental works in his constituency. The scheme is administered by the Ministry of Statistics and Programme Implementation (MoSPI), which lays down guidelines on the works and activities permitted under MPLADS. The funds under MPLADS are channeled through the respective implementing agencies in district. Local bodies such as Panchayats and municipalities also have an important role in bringing development at the grassroots. Part IXA of the Constitution has a provision under which Legislator of State may provide for representation of MP at intermediate and District level Panchayats (PanchayatSamiti and ZilaParishad). Similarly, under Part IXA of the Constitution, State legislator may provide for representation of MPs in municipal bodies within the constituency. MPs may be nominated to District Planning Committees (DPCs) which are responsible for preparing development plans for district. MPs have to monitor centrally sponsored schemesin their constituencies. The National Rural Drinking Water Programme (NRDWP) mandates

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setting up of District Water Sanitation Mission (DWSM) of which MPs & MLAs from the area would be members. DWSM is among the other things, responsible for formulation, management monitoring of projects on drinking water security, scrutiny and approval of schemes submitted by Block Panchayat / Gram Panchayat and coordination of matters relating to water and sanitation between different departments. Similarly, under National Rural Health Mission (NRHM), MPs are expected to be member of District Level Vigilance and Monitoring Committees (DVMC) to review the progress in implementation of scheme. The MPs could also work towards catalyzing schemes of State and Centre in their constituencies. This is possible by proactive engagement with public officials at the Central and State levels, greater interaction with constituents to understand their needs and concerns, and greater information both qualitative & quantitative about constituencies. As elected representatives, they have legitimate political authority to engage directly with the private/corporate sector for industrial development of their constituencies. MPLAD Scheme provides funds for implementing development works in their constituencies. Permissible items under scheme are: (i) Purchase of tricycles, motorized/battery operated wheelchair, artificial limbs, etc. for physically challenged individuals. The items purchased will be

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given to the beneficiaries at a public function. Applications for such assistance shall be examined and approved by Committee under District Chief Medical Officer to ensure proper eligibility(ii) Health Purchase of ambulances/hearse vans. District Magistrate/Chief Medical Officer is responsible for ownership/management of ambulances. Purchase of ambulances to transport sick or injured animals in Wildlife sanctuaries and National Parks. Wildlife Sanctuary /National Park concerned would be responsible for ownership and management of the ambulances. (iii) Purchase of computers, computer software along with training for government and government aided institutions. Mobile Library for educational institutions of Centre, State, U.T/Local bodies and furniture up to Rs 50 lakh for primary/secondary school. Purchase of book for schools/colleges/public library and vehicles including school buses/vans with a limit of Rs 22 lakh/year. Thus, Legislators have multidimensional role in our democratic system therefore it is need of the hour to set minimum qualification and maximum age limit. Right to Reject will promote quality of the Legislators.

47. Primary function of an MLA is law-making. The Constitution states that the MLA can exercise his legislative powers on the State and Concurrent List. The State List contains subjects of importance to individual State alone, such as trade, commerce, development,

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irrigation and agriculture, while Concurrent List contains items of importance to both the Union and the State such as succession, marriage, education, adoption, forests and so on. Although ideally only the MLA can legislate on State List, the Parliament can legislate on subjects in the State List while Emergency has been imposed on the State. In addition to that, on the matters that are included in the Concurrent List, the laws made by Parliament are prioritized over the laws made by the Legislative Assembly if President does not give his assent to the laws made by Legislative Assembly. The Legislative Assembly holds absolute financial powers. A Money Bill can only originate in Legislative Assembly if MLAs give consent. In the States that have a bicameral legislator, both the Legislative Council and VidhanParishad can pass the Bill or suggest changes to the Bill within 14 days of its receipt although the members are not bound to abide by the changes suggested. The Question is: Can an illiterate legislator perform his constitutional duty faithfully in 21st century?

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

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of no-confidence can be passed only by the MLAs. If passed by a majority, it can force the ruling government to resign. Question Hour, Cut Motions, Adjournment Motions can be exercised by MLAs in order to restrict the executive organ of the Government. MLAs have certain electoral powers also. They comprise the Electoral College that elects the President of India. MLAs elect Members of the Rajya Sabha, who represent a particular state and Speaker of the Legislative Assembly. In States with a bicameral legislator, one-third of the members of the Legislative Council are elected by the MLAs.Although MLAs are the highest law-making organs of the State and the profession is honorable and noble but there is no provision of minimum qualification, maximum age limit for them like Members of Executive and judiciary. NOTA with Right to reject and elect new candidates will ensure that only educated and experienced candidates win election.

49. The powers of the Election Commission operates in the areas left unoccupied by the legislation and is plenary in character. *[Kanhiya Lal Omar v. R.K. Trivedi, (1985) 4 SCC 628, Para 16]* The power of *"superintendence, direction and control"* of the conduct of elections, vested in the Election Commission of India is executive in character. *[A.C. Jose v. Sivan Pillai, (1984) 2 SCC 656, p. 22]* The Symbols Order is traceable to the power of the Election Commission

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of India under Article 324. *[Kanhiya Lal Omar, para 16]* The power to amend, vary or rescind an order, which is administrative in character under Section 21 of General Clauses Act, specifically referred to in paragraph 2(2) of the Symbols Order, would permit the Election Commission of India to withdraw recognition of a political party. *[Janata Dal v. ECI, (1996) 1 SCC 235, para 6]*

50. ECI's powers under Article 324 have been repeatedly held to be wide ranging. From the judgment of *Ponnuswamy*, [1952 SCR 218] where the phrase *"conduct of elections"* was interpreted widely, and held that the ECI is charged with all steps necessary to ensure a smooth conduct of election. This position has been bolstered by Constitution Bench decisions declaring that where there is a void or vacuum, the powers of the ECI could be exercised. *[M.S.Gill, (1978) 1 SCC 405, Special Reference No.1/2002, (2002) 8 SCC 237]*. It was precisely the above that was invoked in ADR Case [(2002)5 SCC 294] to conclude that right of voter under Article 19 must be fulfilled by compulsorily having antecedents of the candidate declared to them. As a result, directions were given to the ECI to solicit the same from contesting candidates. The Apex Court has repeatedly stated that contestants to legislative office must have high levels of integrity and good person ought to be chosen. [PUCL (2013) 10 SCC 1, Ashok Chavan (2014) 7 SCC 99] From the time of *Indira Gandhi*

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[1975 Supp. SCC 1], it is an established precept that free-fair election is inalienable part of the Constitutional but it is impossible without enhancing transparency [PUCL(2013)10SCC1,Manoj Narula, (2014) 9 SCC 1]. Thus, it is clear that ECI nullify the election if NOTA gets maximum votes.

51. The functions performed by legislators are vital to democracy and there is no reason why they should be at lower standard than IAS, IPS and Judges. Candidates for judgeship certainly would not be considered at all if they are looters or criminals. If the Legislator, who has to make good Laws & amend the Constitution, is involved in corruption crime casteism communalism linguism regionalism and nepotism, then he would be disastrous for country and society.

52. Right to reject is essential because democracy depends upon the competence and integrity of the legislators. People like Dr. Rajendra Prasad, Sardar Patel, Dr. Ambedkar, SP Mukherjee, Lohia born in India but political parties don't give them ticket. The Court in MS Gill v. CEC [(1978) 1 SCC 405] held: *"It needs little argument to hold that the heart of the parliamentary system is free and fair elections periodically held, based on adult franchise, although social and economic democracy may demand much more".* This speak to same message of importance of democracy, purity in election process.

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53. On aspect of interpretation of the Constitution, observations of Justice Dickson (Supreme Court of Canada) in Hunter v. Southam Inc [(1984) 2 SCR 145] are quite apposite: *"The task of expounding a Constitution is crucially different from that of construing a statute. A statute defines present rights and obligations. It is easily enacted and as easily repealed. A Constitution, by contrast, is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of governmental power and when joined by a Bill or Charter of Rights, for the unremitting protection of individual rights and liberties. Once enacted, its provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers. The judiciary is the guardian of the constitution and must, in interpreting its provisions, bear these considerations in mind."*

54. In M. Nagaraj v. Union of India [(2006) 8 SCC 212], The Apex Court observed: *"The Constitution is not an ephemeral legal document embodying a set of legal rules for the passing hour. It sets out principles for an expending future and is intended to endure for ages to come and consequently to be adapted to the various crises of human affairs. Therefore, purposive rather than strict literal approach to the interpretation should be adopted. A constitutional*

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provision must be construed not in a narrow and constricted sense but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that a constitutional provisions does not get fossilized but remains flexible enough to meet newly emerging problems and challenges."

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

56. For purpose of vindicating these precious fundamental rights, in so far as the Supreme Court is concerned, apart from Articles 32 and 142, which empower the Court to issue such directions as may be necessary for doing complete justice in any matter, Article 144 also mandates all authorities civil or judicial in the territory of India, to act in aid of the order passed by the Supreme Court. Being the

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protector of civil liberties of citizens, the Supreme Court has not only the power and jurisdiction, but also an obligation to protect the fundamental rights, guaranteed by part-III in general and under Article 21 in particular zealously and vigilantly. The Supreme Court and High Courts are the sentinels of justice and have been vested with extra ordinary powers of judicial review to ensure that rights of citizens are duly protected. [ML Sharma (2014) 2 SCC 532]

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

58. The power of Supreme Court is not confined to issuing prerogative writs only. By using expression "in the nature of", the jurisdiction has been enlarged. The expression "in the nature of" is not the same thing as the other phrase "of the nature of". The former emphasis the essential nature and latter is content with mere similarity. [M. Nagraj v UOI, (2006) 8 SCC 2012] Therefore Supreme Court cannot refuse an application under Article 32 of the Constitution, merely on the grounds: **(i)** that such application have been made to Supreme Court

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

59. Article 32 of the Constitution of India provides important safeguard for the protection of the fundamental rights. It provides guaranteed quick and summary remedy for enforcing the fundamental right because a person complaining of breach of any of his fundamental rights by an administrative action can go straight to the Court for vindication of his right without having to undergo directory process of proceeding from lower to the higher court as he has to do in other ordinary litigation. The Supreme Court has thus been constituted as protector defender and guarantor of the fundamental rights of the

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people. It was very categorically held that: *"the fundamental rights are intended not only to protect individual rights but they are based on high public. Liberty of the individual and protection of fundamental rights are very essence of democratic way of life adopted by the Constitution and it is the privilege and duty of this Court to uphold those rights. This Court would naturally refuse to circumscribe them or to curtail them except as provided by Constitution itself."* [AIR 1961 SC 1457]. In another case, the Supreme Court has held that: *"the fundamental right to move this Court can therefore be described as the corner stone of the democratic edifice raised by Constitution. That is why it is natural that the Court should regard itself as the protector and guarantor of fundamental rights and should declare that it cannot consistently with the responsibility led upon it, refuse to entertain application seeking protection against infringement of such right. In discharging the duties assigned to it, the Court has to play the role of a "sentinel on the qui vive" and it must always regard it as its solemn duty to protect the said fundamental right zealously and vigilantly."* [Prem Chand Garg, AIR 1963 SC 996].

60. Language used in Articles 32 and Article 226 is very wide and the powers of the Supreme Court as well as of the High Courts extends to issuing orders, writs or directions including writs in the nature of

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habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provision of the Constitution, there is no need to look back to procedural technicalities of the writs in English Law. The Court can make and order in the nature of these prerogative writs in appropriate cases in appropriate manner so long as the fundamental principles that regulate the exercise of jurisdiction in matter of granting such writ in law are observed. [AIR 1954 SC 440]

61. An application under Article 32 cannot be thrown out simply because the proper direction or writ has not been prayed for. Thus, where an order in the nature of mandamus is sought in a particular form, nothing debars the Court from granting it in a different form. Article 32 gives a very wide discretion in the matter of framing the writ to suit the exigencies of particular cases. [AIR 1951 SC 41] Even if petitioner has asked for wider relief which cannot be granted by Court, it can grant such relief to which the petitioner is entitled to [Rambhadriah, AIR 1981 SC 1653]. The Court has power to grant consequential relief or grant any relief to do full - complete justice even in favour of those persons who may not be before Court or have not moved the Court. [Probodh Verma, AIR 1985 SC 167] For the protection of fundamental right and rule of law, the Supreme Court

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

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

63. The Supreme Court is entitled to evolve new principle of liability to make guaranteed remedy to enforce fundamental rights real and effective, to do complete justice to aggrieved person. It was held that

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the court was not helpless and the wide powers given to the Supreme Court by Article 32, which itself is a fundamental right imposes a obligation on the Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enables reward of monetary compensation in appropriate cases, where that is the only redress available. The remedy in public law has to be more readily available when invoked by have-nots who are not possessed of the where withal for enforcement of their right in private law, even though its exercise is to be tempted by judicial restraint to avoid circumvention of private law remedies, which more appropriate. Under Article 32, the Court can pass orders or facts to do complete justice between parties even if it is found that writ petition filed is not maintainable in law. [(2003) 7 SCC 250] It is necessary to state that Articles 141-142 empowers the Court to pass necessary orders for doing complete justice in any cause and order so made shall be enforceable throughout the territory of India.

PRAYERS

Keeping in view the above facts; it is respectfully prayed that the Court may be pleased to issue appropriate writ order or direction to:

a) direct the ECI to use its plenary power conferred under Article 324 to nullify the election result and hold fresh election, if maximum votes have been polled in favour of NOTA in particular

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constituency**;** and, restrict the contesting candidates from taking part in the fresh election, who have participated in the invalidated election;

b) alternatively, direct the Centre to take apposite steps to invalidate the election result and hold fresh election, if maximum votes have been polled in favour of NOTA in a particular constituency**;** and, restrict the contesting candidates from taking part in the fresh election, who have participated in the invalidated election;

c) alternatively, being custodian of the Constitution and protector of the fundamental rights of citizens, direct and declare that *"if NOTA gets maximum votes, then election to that constituency shall be invalidated and a fresh election shall be held within six months; and the contesting candidates rejected in the nullified elections, shall not be allowed to participate in the fresh election"*;

d) pass such other order(s) or direction(s) as the Court deems fit.