IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. OF 2022

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

SHRI MATHEWS J. NEDUMPARA & ORS. PETITIONERS

VERSUS

THE HON'BLE CHIEF JUSTICE OF INDIA AND ORS. RESPONDENTS

WITH

I.A. NO. OF 2022

APPLICATION FOR PERMISSION TO APPEAR AND ARGUE IN THE ABOVE MENTIONED WRIT PETITION FILED BEFORE THIS HON'BLE COURT AS PARTY IN PERSON

PAPER BOOK

(KINDLY SEE INDEX INSIDE)

SHRI MATHEWS J. NEDUMPARA & 7 ORS.:

PETITIONERS IN PERSON

RECORD OF PROCEEDINGS

S.NO.	RECORD OF PROCEEDINGS	PAGE NO.
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		

INDEX

S. No.	Particulars of Documents	Page No. of part to which it belongs		Remarks
		Part I [Contents of Paper Book]	Part-II [Contents of file alone.	
[i]	[ii]	[iii]	[iv]	[v]
	E-Court Fee			
1	Listing Performa.	**'A1-A3'**	**`A-A1'**	
2	Cover page of Paper Book		**A-2**	
3	Index of Record of Proceedings		**A-3**	
4	Defect List		**A-4**	
5	Note Sheet		**NS 1 to**	
6	Synopsis & List of Dates	**B-C**		
7	Writ Petition with Affidavit.	**1-49**		
8	**ANNEXURE P-1** A true copy of the objectives of the National Lawyers' Campaign for Judicial Transparency & Reforms, Mumbai, Maharashtra dated 31.03.2014.	**50-52**		
9	**ANNEXURE P-2** A true copy of the Telegraphic Letter for the Attention of PM issued by the National Lawyers Campaign for Judicial Transparency and Reforms dated 29.04.2018.	**53-56**		
10	**ANNEXURE P-3** A true copy of the Letter dated 31.08.2018 submitted by the National Lawyer' Campaign, Mumbai, Maharashtra.	**57-58**		
11	**ANNEXURE P-4** A true copy of the Letter dated 05.09.2020 issued by the National Lawyers	**59-64**		

	Campaign for Judicial Transparency and Reforms.			
12	**ANNEXURE P-5** A true copy of the Progeny Chart – Judges of the Hon'ble Supreme Court of India, issued by the National Lawyers' Campaign for Judicial Transparency and Reforms, Mumbai, Maharashtra dated 06.06.2022.	**65-70**		
13	**I.A. NO. OF 2022** Application for permission to appear and argue the above mentioned Writ Petition filed before this Hon'ble Court as Party in Person.	**71-74**		
14	**ANNEXURE A-1** A true copy of the Aadhar Card bearing No. 2979 5739 1137 of the Petitioner in Person No. 1.	**75**		
15	**ANNEXURE A-2** A true copy of the Aadhar Card bearing No. 9377 1660 6859 of the Petitioner in Person No. 2.	**76**		
16	**ANNEXURE A-3** A true copy of the Aadhar Card bearing No. 4607 2081 1026 of the Petitioner in Person No. 3.	**77**		
17	**ANNEXURE A-4** A true copy of the Aadhar Card bearing	**78**		

	No. 8120 9032 1274 of the Petitioner in Person No. 4.			
18	**ANNEXURE A-5** A true copy of the Aadhar Card bearing No. 8634 9836 9864 of the Petitioner in Person No. 5.	**79**		
19	**ANNEXURE A-6** A true copy of the Aadhar Card bearing No. 9325 2738 7697 of the Petitioner in Person No. 6.	**80**		
20	**ANNEXURE A-7** A true copy of the Aadhar Card bearing No. 8951 0047 9062 of the Petitioner in Person No. 7.	**81**		
21	**ANNEXURE A-8** A true copy of the Aadhar Card bearing No. 5281 1054 7535 of the Petitioner in Person No. 8.	**82**		
22	**ANNEXURE A-9** A true copy of the Special Power of Attorney dated 09.11.2022 executed between all the Petitioners herein.	**83-86**		
22A	Letter	**86A-86D**		
23	Memo of Appearances		**87-94**	
24	F/M		**95**	

A-1

PROFORMA FOR FIRST LISTING

SECTION

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

☐	Central Act: (Title)	Constitution of India
☐	Section:	Article 32 of Constitution of India.
☐	Central Rule: (Title):	NA
☐	Rule No(s):	NA
☐	State Act: (Title)	NA
☐	Section:	NA
☐	State Rule: (Title)	NA
☐	Rule No(s):	NA
☐	Impugned Interim Order: (Date)	NA
☐	Impugned Final Order/Decree: (Date)	NA
☐	High Court: (Name)	NA
☐	Names of Judges:	NA
☐	Tribunal / Authority: (Name)	NA

1. Name of Matter: Civil ☑ Criminal ☐

2. (a) Petitioner/Appellant No. 1: SHRI MATHEWS J.

NEDUMPARA & ORS.

S (b) E-mail ID: mathewsjnedumpara@gmail.com

(c) Mobile Phone Number: 9820535428, 9447165650

3. (a) Respondent No. 1: THE HON'BLE CHIEF JUSTICE OF INDIA AND ORS.

(b) E-mail ID: NA

(c) Mobile Phone Number:

4. (a) Main category classification: 18 Ordinary Civil Matter

1807 Others

(b) Sub classification: 18 Ordinary Civil Matter

1807 Others

5. Not to be listed before: NA

6. Similar / Pending matter:

(a) No similar matter is disposed of before this Hon'ble Court.

(b) No similar matter is pending before this Hon'ble Court.

7. **Criminal Matters:**

(a) Whether accused / convict has surrendered ☐ Yes ☐ No

(b) FIR No. NA Date: NA

(c) Police Station: NA

(d) Sentence Awarded: NA

(e) Sentence Undergone: NA

8. **Land Acquisition Matters:** NA

(a) Date of Section 4 notification: NA

(b) Date of Section 6 notification: NA

(c) Date of Section 17 notification: NA

A-3

9. Tax Matters: State the tax effect: NA

10. Special Category: NA
(First petitioner/appellant only)

☐ Senior citizen > 65 Years ☐ SC/ST ☐ Woman/child ☐ Disabled ☐ Legal Aid Case ☐ In custody

11. Vehicle number (in case of Motor Accident Claim matters): NA

Place: New Delhi

Date: 07.11.2022

MATHEWS J. NEDUMPARA
Petitioner in Person No. 1
E-Mail: mathewsjnedumpara@gmail.com

B

SYNOPSIS

The instant Petition is filed for a declaration that the collegium system of appointment of judges has resulted in the denial of equal opportunity for the Petitioners and thousands of lawyers who are eligible, meritorious and who deserve to be considered. A mechanism in substitution of the Collegium is the need of the hour. The Petitioners have made repeated representations to the Government to bring about the requisite mechanism. However, nothing concrete has taken shape. Moreover, rather than the Government, it is for the Hon'ble Supreme Court itself to correct the error caused in creating the Collegium and in quashing the National Judicial Appointments Commission Act. Hence the instant writ petition under Article 32 of the constitution.

LIST OF DATES AND EVENTS

1993	Collegium came into existence by virtue of a judgment of 9 Judge Constitution Bench of the Hon'ble Supreme Court of India, New Delhi.
2014	The Parliament by amending the Constitution and simultaneously enacting NJAC Act of 2014 sought to substitute Collegium by NJAC.
16.10.2015	A Five Judge Constitution Bench of the Supreme Court of India declared the 99th Constitutional Amendment Act and the NJAC Act as unconstitutional and thereafter revived the Collegium. Since then, the appointment and transfer of the judges of the Supreme

C

Court and the High Courts is at the hands of the Collegium which has resulted in denial of equal opportunities for the Petitioners and thousands of Lawyers who are eligible, meritorious and who deserved to be considered.

07.11.2022 As a corrective action a Petition under Article 32 of the Constitution of India is probably the only remedy.

Hence the instant Petition.

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (CIVIL) NO. OF 2022
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

1. SHRI MATHEWS J. NEDUMPARA
ADVOCATE,
101, 1ST FLOOR, GUNDECHA
CHAMBER, NAGINDAS ROAD,
FORT MUMBAI-400001,
MAHARASHTRA. PETITIONER NO. 1

2. ROHINI MOHIT AMIN
ADVOCATE, HIGH COURT OF BOMBAY
B-705, NIRMAN APARTMENTS, R.J
MARG, PUMP HOUSE, ANDHERI
EAST, MUMBAI,
MAHARASHTRA-40009. PETITIONER NO. 2

3. MARIA NEDUMPARA
ADVOCATE
12-F, HARBOUR HEIGHTS,
COLABA CAUSEWAY, MUMBAI,
MAHARASHTRA-400005. PETITIONER NO. 3

4. RAJESH VISHNU ADREKAR
ADVOCATE
401, D-14, YOGI VARDHAN CHS,
YOGI NAGAR ROAD, YOGI NAGAR,
BORIVILI WEST, MUMBAI-400092,
MAHARASHTRA. PETITIONER NO. 4

5. HEMALI SURESH KURNE,
ADVOCATE
28-A WING, SHUBH SHAGUN BUILDING,
RISHIKESH CHS LTD., SECTOR-34,
MANSAROVAR, NAVI MUMBAI-410209,
MAHARASHTRA. PETITIONER NO. 5

6. SHARAD VASUDEO KOLI,
ADVOCATE
68-1/1, GOLPHADEVI COLONY,
WORLI VILLAGE, MUMBAI-400030,
MAHARASHTRA. PETITIONER NO. 6

7. KARAN KAUSHIK
3, NUGGET, 18TH ROAD,
KHAR WEST, MUMBAI-400052,
MAHARASHTRA. PETITIONER NO. 7

8. MANISHA NIMESH MEHTA
CHARTERED ACCOUNTANT
1905, ROSELLA, PANT NAGAR,
GHATKOPAR, MUMBAI-400075,
MAHARASHTRA. PETITIONER NO. 8

VERSUS

1. THE HON'BLE THE CHIEF JUSTICE OF INDIA,
SUPREME COURT OF INDIA,
TILAK MARG, NEW DELHI-110001. RESPONDENT NO. 1

2. THE COLLEGIUM OF THE HON'BLE JUDGES
OF THE SUPREME COURT OF INDIA
REPRESENTED BY THE HON'BLE
THE CHIEF JUSTICE OF INDIA,
SUPREME COURT OF INDIA.
NEW DELHI-110001. RESPONDENT NO. 2

3. SECRETARY GENERAL,
SUPREME COURT OF INDIA
TILAK MARG, NEW DELHI-110001. RESPONDENT NO. 3

4. UNION OF INDIA
THROUGH ITS SECRETARY,
DEPARTMENT OF LEGAL OF AFFAIRS
MINISTRY OF LAW AND JUSTICE
4TH FLOOR, A-WING, SHASTRI BHAWAN,
NEW DELHI-110001. RESPONDENT NO. 4

5. PRINCIPAL SECRETARY
TO THE PRIME MINISTER
PRIMER MINSTER'S OFFICE,
7 LOK KALYAN MARG,
NEW DELHI. RESPONDENT NO. 5

6. INDIAN NATIONAL CONGRESS
THROUGH ITS NATIONAL PRESIDENT
24, AKBAR ROAD,
NEW DELHI. RESPONDENT NO. 6

7. BHARTIYA JANATA PARTY
THROUGH ITS NATIONAL PRESIDENT,
B.J.P. HEAD QUARTERS
DEEN DAYAL UPADHYAY MARG,
NEW DELHI. RESPONDENT NO. 7

8. COMMUNIST PARTY OF INDIA
THROUGH ITS GENERAL SECRETARY,
AJOY BHAVAN, 15,
INDRAJIT GUPTA MARG,
NEW DELHI-110002. RESPONDENT NO. 8

9. STATE OF MAHARASHTRA
THROUGH ITS CHIEF SECRETARY,
MANTRALAYA, MUMBAI-400032,
MAHARASHTRA. RESPONDENT NO. 9

10. STATE OF KERALA
THROUGH ITS CHIEF SECRETARY,
THIRUVANANTHAPURAM, KERALA. RESPONDENT NO. 10

11. STATE OF TAMIL NADU
THROUGH ITS CHIEF SECRETARY,
FORT ST. GEORGE, CHENNAI,
TAMIL NADU. RESPONDENT NO. 11

12. STATE OF UTTAR PRADESH,
THROUGH ITS CHIEF SECRETARY,
SECRETARIAT LUCKNOW,
UTTAR PRADESH. RESPONDENT NO. 12

13. AAM AADMI PARTY
THROUGH ITS PRESIDENT
206, ROUSE AVENUE,
DEEN DAYAL UPADHYAY MARG,
ITO, NEW DELHI-110002. RESPONDENT NO. 13

14. TRINMOOL CONGRESS
THROUGH ITS CHAIRPERSON
30B HARISH CHATTERJEE STREET,
KOLKATA, WEST BENGAL-700026. RESPONDENT NO. 14

WRIT PETITION FILED UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

TO
THE HONOURABLE THE CHIEF JUSTICE
OF INDIA AND HIS COMPANION
JUSTICES OF THE SUPREME COURT
OF INDIA

HUMBLE PETITION OF THE PETITIONERS
IN PERSONS ABOVE NAMED

MOST RESPECTFULLY SHEWETH:

1. The instant petition is instituted by the Petitioners for the enforcement of their fundamental and legal rights. The Petitioner Nos. 1 to 6 are practicing advocates, the first Petitioner being in the bar for almost 40 years, and the Petitioner No. 2 for over two decades. Petitioner No. 7 is an entrepreneur. The Petitioner No.8 is a Chartered Accountant and a woman entrepreneur who has attained great accolades and recognition even at international levels. Petitioner nos. 7 & 8 having had to knock the

doors of the courts for justice and having personal knowledge and experience of the deficiencies of the system, have a genuine and real stake in the instant petition seeking radical reforms in judiciary.

2. The instant petition is primarily a challenge to the collegium system of appointment and transfer of judges. The Chief Justice of India is the head of the Collegium and in so far as the appointment and transfer of judges are concerned, he/she is the most important person. The Petitioners would have liked to avoid arraying the Chief Justice of India as a Respondent out of sheer respect to the high constitutional office of the Chief Justice of India. However, if the Petitioners had refrained from doing so, that would render the petition defective, given that a necessary party, the Chief Justice of India, not being on the party array. The fact that in SP Gupta's case, the then Chief Justice, Justice Y. V. Chandrachud entered appearance through an advocate and even filed an affidavit, is itself a momentous statement that all authorities, howsoever high, are not above law. The Collegium headed by the Chief Justice of India ordinarily consists of five judges including the CJI and 4 senior-most puisne judges. However, the Petitioners are made to understand that in terms of the judgment of the Supreme Court in the presidential reference of 1998, popularly known as the Judges-3 case, that if none of the four senior-most judges of the collegium are likely to succeed the incumbent CJI on his

retirement, then the senior most judge who is likely to be appointed as the next CJI would also be part of the extended collegium. Since none of the judges who are part of the 5-member collegium to be headed by the in-coming Chief Justice, D.Y. Chandrachud would succeed him as the Chief Justice of India, Justice Khanna who is expected to succeed justice D.Y. Chandrachud would be part of the collegium to be headed by D.Y. Chandrachud as its sixth member!

3. Going by the fundamental principle of jurisprudence that all persons against whom relief is sought and whose presence is necessary for a just and proper adjudication of the lis be made party to the proceedings, all the judges who form part of the collegium to be headed by Justice D.Y. Chandrachud are required to be made parties to the instant petition. However, the Petitioners feel that it would suffice to crave for the leave of this Hon'ble Court to bring on the party array the judges who are part of the collegium, if so deemed necessary.

4. The Secretary General being the senior most ministerial office in the hierarchy of officers in the Supreme Court, he is a proper, if not necessary party to the proceedings. The Principal Secretary to the Prime Minister is a necessary party. The Petitioners have arrayed some of the important political parties and a few of the State Governments, the

remaining State Governments can be arrayed after the Petition is admitted, with the leave of this Hon'ble Court.

5. Ever since the judgment of this Hon'ble Court in Supreme Court Advocates on Record Association (SCAORA) v. Union of India, (2016) 5 SCC 1, came to be pronounced, the Petitioners, particularly, Petitioner No. 1, have been consistently making representation after representation to the Hon'ble Prime Minister, Law Minister, as well as the leaders of the various political parties, namely, BJP, Congress, Nationalistic Congress, YSR Congress, Biju Janta Dal etc., pleading that the National Judicial Appointments Commission (NJAC) is the will of the people, the Constitution (Ninety-ninth Amendment) Act, 2014, and the National Judicial Appointments Commission (NJAC) Act, 2014, having received the unanimous assent of both houses of the parliament (except for the lone dissenting vote of Shri Ram Jethmalani) and the assent of the 21 state assemblies, that the appointment and transfer of judges which falls in the exclusive province of the legislative and executive policy, was not justiciable at all, and that therefore, it is incumbent upon the Government and the opposition to restore the NJAC and to take all such steps that are required. It may not be in the fitness of things to personally array the Prime Minister, though the same offers no legal bar.

6. Respondent Nos. 6 to 14 are arrayed on the party array because appointment and transfer of judges is of equal concern to the State Governments as much as the Central Government and of the Opposition and Regional parties as much as the ruling party at the Centre.

LOCUS STANDI OF THE PETITIONERS

7. The first Petitioner enrolled in the year 1984, is aged 64 years and is still eligible for consideration of appointment to the office of the judge of the Supreme Court of India or even the Chief Justice of India along with hundreds if not thousands who are equally eligible but are denied the opportunity because there does not exist any open and transparent system of selection and appointment of judges. This is because the first Petitioner qualifies all the minimum qualifications prescribed under Article 124 (3) of the Constitution, namely, being a citizen of India, being a lawyer of the High Court for more than 10 years. The Petitioner No. 1 in the same breath wishes to add that he does not in his wildest of dreams consider himself to be entitled to the office of a judge of the Supreme Court. The Petitioner No.1 would readily concede that without the assertion of violation of fundamental rights, the instant Petition under Article 32 would not lie at his hands.

8. All that the Petitioners intend to convey is that Article 14 being the very foundation on which our Constitution and democracy is built, the

Petitioner No. 1 and for that matter every lawyer, who falls under the minimum eligibility criteria, has a right to be considered for the office of the judge of the High Court or Supreme Court.

9. Unfortunately, the collegium system of selection and appointment of judges has meant the concept of equality and equal opportunities in the matter of appointments to higher judiciary being denied to thousands who are equally if not far more eligible, qualified and deserving, but are less privileged. The Petitioners want to make it abundantly clear, for removal of any misconception, that he is referring to the constitutional provisions only in support of his locus standi as a person aggrieved, a person though eligible, but did not fall in the zone of consideration, for there never existed a just and fair system in search of merit, nay, evaluation thereof.

10. Petitioner No. 2 enrolled in the year 1999 and has been practicing in the High Court of Bombay and other Courts and tribunals for the last over two decades. While the first Petitioner is the President of the National Lawyers' Campaign for Judicial Transparency and Reforms (NLC) registered under the Maharashtra Public Trusts Act, for greater accountability and transparency in judiciary, Petitioner No. 2 is its General Secretary. Like the first Petitioner, she believes that higher judiciary being a public office appointment ought to be open to all who

are eligible and desirous and selection should be based on merit and not on kinship. The selection process should be open and transparent.

11. Petitioner No. 3 to 6 are lawyers practicing in the High Court of Bombay and other tribunals. Like Petitioner Nos. 1 and 2, they too believe that the current system of appointment and transfer of judges is a flawed one which has resulted in the denial opportunity to many who are far more meritorious and deserving but never considered for lack of familial and other connections. Petitioner Nos. 7 & 8 having had to knock the doors of the courts for justice and having personal knowledge and experience of the deficiencies of the system, have a genuine and real stake in the instant petition seeking radical reforms in judiciary.

12. The First Petitioner is the President of the National Lawyers Campaign for Judicial Transparency and Reforms (NLC) and the second Petitioner is the General Secretary. The remaining Petitioners are members of the NLC or sympathizers of its objectives. A true copy of the objectives of the National Lawyers' Campaign for Judicial Transparency & Reforms, Mumbai, Maharashtra dated 31.03.2014 is annexed herewith and marked as **ANNEXURE P-1 (PAGES 50 TO 52).**

HOW THE COLLEGIUM, WHICH THE CONSTITUTION DID NOT PROVIDE FOR, CAME INTO EXISTENCE

13. How the Collegium, which the Constitution did not provide for, at all, came into existence is a 'riddle wrapped in a mystery, inside an enigma' to borrow an expression from Winston Churchill. The simple answer is that the collegium is a product of PIL. The jurisprudence of PIL which does not exist anywhere else in the world is probably the most important province of our jurisprudence today. Millions of pages are written eulogizing the utility and the sanctity of the so-called jurisprudence of PIL. It would not take much time to demonstrate how hallow and contrary to the first principles of jurisprudence this so-called province of jurisprudence is.

14. It is fundamental principle of jurisprudence, which no one would dare question that when the Parliament enacts a law, it is deemed to be enacted with the consent of every citizen, for every citizen from the poorest of the poor to the rich, from a man of no consequence to the most powerful, are symbolically present in the Parliament and the law so enacted by the Parliament, binds everyone. To put it pithily, a record of a Parliament binds everyone, everyone being a party to it. On the contrary, it is equally undeniable, that the record of a court, namely, a judgment, decree, order or minutes will only bind the parties thereto and if a suit or proceedings is of a representative nature it will bind all those on whose behalf the suit or proceedings is instituted or defended, no matter right or wrong. This

principle is known as the doctrine of res judicata or constructive res judicata. Nobody is bound by a judgment or decree or order of which he is not party, not even constructively, otherwise known as the doctrine of res inter alias.

15. The so-called new jurisprudence of PIL which the Supreme Court evolved in the early 1980s and which has assumed elephantine proportions, is against the first principles of jurisprudence. PIL sanctifies a horrifying jurisprudence that a citizen can be bound by a judgment, order or decree of a court of which he/she was not a party, not even constructively. The judgments which this Court renders in PILs and suo motu PILs which are asserted to be the "law of the land" under Article 141, so too, under Article 142, is against the first principles of jurisprudence, audi alteram partem. It is against the first principles of natural justice.

16. Of late, the various High Courts, so too the Supreme Court, have been initiating contempt of Court proceedings for violation of the judgments of the Supreme Court, the so-called law of the land under Articles 141 and 142 against government officers and others who are not even parties to the judgment or orders of which violation is alleged. The Petitioners are confident that even the greatest proponent of PIL jurisprudence would agree that the doctrine of audi alteram partem, i.e., the principles of

natural justice cannot be violated, and a situation where it is allowed to be violated would not be conducive to the rule of law.

IF THE JURISPRUDENCE OF PIL IS VIOLATIVE OF THE PRINCIPLES OF NATURAL JUSTICE/AUDI ALTERAM PARTEM, HOW DID IT COME INTO EXISTENCE IN THE FIRST PLACE AND HOW DID IT COME TO OBTAIN A CERTAIN AMOUNT OF ACCEPTANCE

17. PIL originated in the form of pro bono litigation at the hands of humanist judges like the legendary Bhagwati, YV Chandrachud, Krishna Iyer, et al. Pro bono litigation was not a new concept in jurisprudence at all. It did not create any new right which did not exist before or a new remedy or new forum. All that the Court did in entertaining even a post card as a writ petition, reaching out to the under-trials, bounded labourers and others who out of poverty, illiteracy are unable to approach the Court, is allow a person acting pro bona to act on their behalf. When ‘A’ a public interest litigant is allowed to take up the cause of ‘B’ an under-trial, the real petitioner is ‘B’ the under-trial and it is for the enforcement of the private rights and liberties of the under-trial. In other words, where a public authority has failed to discharge its duty to compel the authority to discharge its duty by means of a writ of mandamus, a public law remedy. The pro bono litigant is not the real litigant, he / she is only representing the under trial. Pro bono litigation is constitutional, legal, and ethical. There can be no two opinions about it.

18. It is no new jurisprudence, but a time-tested remedy of qui tam action. Unfortunately, and without gaining much attention, the jurisprudence of pro bono litigation, was hijacked by certain vested interests for fame, name and money. The so-called activists, particularly, activist lawyers used the door of pro bono litigation which the legendary judges paved way for, to use the Supreme Court as a tool for political power and to subjugate the Parliament and the political executive. They brought every issue under the sun, matters in the exclusive province of the legislature and executive to the Court invoking Article 32/PIL, bringing a situation where the decisions of the executive and the Parliament and matters of policy being substituted with that of the Supreme Court. The NJAC was all about the appointment and transfer of judges of the Supreme Court and High Courts.

19. Appointment of judges is purely an executive function to be exercised by the executive in consultation with the Chief Justice. The Constitution (Ninety-ninth Amendment) Act, 2014, and the NJAC Act provided for a mechanism for the appointment of the judges of the High Courts and Supreme Court, including the Chief Justice of India. The Constitution (Ninety-ninth Amendment) Act, 2014, bringing the NJAC into existence had received the assent of both houses of the parliament and was ratified by 21 state legislatures. It was the will of “we the people” on a matter

which is in the exclusive province of executive policy, namely, the appointment and transfer of judges. The Constitution (Ninety-ninth Amendment) Act, 2014, and the NJAC Act did not violate the fundamental rights, or for that matter any right of anyone. Nobody had made a grievance at all. Not even a whisper thereof. Yet, a 5-judge bench of this Court in Supreme Court Advocates on Record Association (SCAORA) v. Union of India, (2016) 5 SCC 1, held the Constitution (Ninety-ninth Amendment) Act, 2014, and the NJAC Act as unconstitutional, holding it violative of the 'basic structure' of the constitution.

20. The NJAC was the culmination of discussions and considerations spanning over three decades for a flawless system of appointment and transfer of judges. Late Shri Dinesh Goswami, Law Minister in the V.P. Singh Government was the one who pioneered the movement for a system of appointment and transfer of judges by an independent judicial appointments commission. In 2014, we the people of this country, asserted through our representatives that the judges of this country shall be appointed by a national judicial appointments commission consisting of judges, members of the civil society and the law minister. The judges still had a predominant role in as much as the Chairman of the commission was the Chief Justice of India and two senior-most judges

were among its members. The Law Minster was the ex-officio member of the Commission and the remaining two members were to be eminent persons to be elected by a committee consisting of the Prime Minister, Chief Justice of India and the leader of the Opposition. Nowhere in the world does there exist a judicial appointments commission where the judiciary has such a predominant say/role. The judges had a veto power in as much as that any of the two judges together could veto any proposal. The NJAC was a perfectly sound system of transfer and appointment of judges, where the Government did not enjoy any absolute say, the Law Minister being the sole representative of the Government.

21. Be that as it may, in a democracy, the people speaking through the legislature decides what is right and wrong in matters of policy. The principle which was laid down in Heydon's case, namely, that Judges are supposed to construe the statutes by seeking the true intent of the makers of the Act, and that the legislature is the best judge of the needs of its own people and the laws made by it are in recognition thereof, and the legislative wisdom is not amenable to challenge, has been quoted with approval by the Supreme Court in umpteen judgments. Like how a judicial decision of a Court within its jurisdiction, howsoever erroneous, is binding between the parties, the ordain of the Parliament in matters falling in its province of legislative policy, whether right or wrong, is

right. It is for the Parliament alone to correct it. It is for those who oppose a legislation to take recourse to democratic means to even change the Government and to enact laws in the lines they want. That is what democracy is. Unfortunately, the will of the people, the NJAC was thwarted, "quashed and set aside" by Supreme Court in the NJAC case on the premise that it is violative of the 'basic structure' of the constitution.

22. The reason for quashing the NJAC, namely, that it is violative of the basic structure of the constitution and that the Parliament has no power to abrogate the basic structure, that the independence of judiciary is a basic structure and that is protected only when the ultimate power of appointment is vested in the judges, is an affront to reason and common sense. Apart from offering the incredulous proposition that the power of appointment of the judges by the collegium of the Supreme Court is a basic structure, the Court went on to write paragraphs after paragraphs on how undesirable the decision of the Parliament is to vest the power of selection and appointment of judges in a judicial commission where the judges do not have the absolute say, meaning where a candidate nominated by the judges could be vetoed by the non-judge members. The Court made a cardinal mistake, namely, it forgot that it does not have the jurisdiction to sit in judgment of the wisdom of the legislature in matters of policy. Even if independence of judiciary is a basic structure and the

expression is a justiciable one, then too, the core of independence of judiciary is not in the process of appointments but in the post appointment discharge of duties which the founding fathers took great care of. No judge can be removed from office except by a motion of impeachment which has received the assent of both houses of the Parliament and two-thirds of members present and voting. The Judges Protection Act, 1985, affords absolute immunity to the judges and even where they act maliciously and willfully denies justice, no criminal or civil action will lie. The emerging public opinion is against the blind and absolute immunity and is in favor of absolute immunity so far as the judge acts bona fide as is the case of other public servants.

23. The real villains, here, therefore are two concepts, the independence of judiciary and the basic structure theory. These two concepts are the fallout of the misconception of the doctrine of judicial review.

RATIO OF THE NJAC CASE

24. The Constitution (Ninety-ninth Amendment) Act, 2014, and the NJAC Act were struck down holding it to be violative of the basic structure of the constitution. The reasoning of the Supreme Court was that in Kesavananda Bharati's case it was held (7:6) that the Parliament has no legislative competence to bring a Constitutional amendment which would abridge or violate the basic structure of the constitution. In the Judges-2

case, it was held that the independence of judiciary is one of the basic features of the constitution which the Parliament has no competence to abrogate. The further reasoning was that the core of the independence of judiciary is not in the discharge of judicial function post appointment, but in the very appointment itself and that the core is protected when the judiciary has a primacy in the matter of appointments. The further reasoning was that the primacy of judiciary in the matter of appointment of judges in itself is part of the basic structure. In other words, the collegium itself is a part of the basic structure. That the Constitution (Ninety-ninth Amendment) Act, 2014, and the NJAC Act seeks to replace the collegium and therefore, it is violative of the basic structure of the constitution and, therefore, is unconstitutional. It is difficult to imagine of a greater irrationality.

JUDICIAL REVIEW

25. Lex injusticia non est lex, an unjust law is no law, said St. Augustine. Following the footsteps of St. Augustine, St. Thomas Aquinas in his book "Summa Theologica" asserted that if the Parliament were to make a law which was against the law of nature and of God, there is a duty to disobey. Henry de Bracton who is considered to be the Justinian of common law, in his book 'De legibus et consuetudinibus angliae – Treatise on the Laws and Customs of the Kingdom of England', asserted

that the king must not be under man but under God and under the law. Later, in the 17th century, Chief Justice Edward Coke, in Dr. Bonham's case said Iniquum est aliquem rei sui esse judicem, namely, that if the Parliament were to make a law where one of the parties to a dispute is made a judge thereof, such a law is null and void.

26. In England, the Parliament is supreme. No Court has the power to declare an Act of Parliament as unconstitutional. Coke's assertion was repudiated, but it found great acceptance in the United States. Our founding fathers incorporated the doctrine of judicial review in unmistakable terms in Article 13 by asserting that the State shall not make any law which takes away the rights conferred under Part III and that any law which violates the fundamental rights shall be null and void to that extent. The Petitioners in all humility assert that the concept of judicial review is the core of our constitution. Right to life, liberties and equality are fundamental, non-negotiable features of the constitution. Part III is the very basic structure of the constitution which cannot be abrogated. The Petitioners do not dispute this, and on the contrary stand for it and vouch for it.

27. The Petitioner's, however, are deeply disturbed by the misconception and abuse of the concept of the basic structure which has resulted in any number of enactments which are sound and constitutional being declared

to be unconstitutional. The most solid examples are the NJAC Act and the National Tax Tribunal Act.

28. The reason for all these misfortunes and misunderstanding is the judgment of the Supreme Court in the Kesavananda Bharati case. Before Kesavandanda Bharati, the validity of many a constitutional amendment was challenged on the ground of it being violative of the fundamental rights and this Court in Golaknath's case held that the Parliament has no power to abrogate fundamental rights even by a constitutional amendment. The judgment in Golaknath's case led to the Constitution 24th Amendment Act and incorporation of clause (4) under Article 13, namely, that nothing under this Article shall be applied to any amendment made under Article 368. In other words, a constitutional amendment is not amenable to challenge for violation of fundamental rights. The Constitutional 24th Amendment Act was challenged in the Kesavananda Bharati case. The full court of the Supreme Court by a 7:6 majority was pleased to hold that the Parliament is competent to amend every Article of the Constitution including that concerning the fundamental rights, but not the "basic structure". The "basic structure theory" thus came into existence.

BASIC STRUCTURE THEORY

29. The basic structure theory, the Petitioners are afraid to say, is against the elementary principles of jurisprudence, nay, in ignorance thereof. The reason is simple. Before Kesavandana Bharati, petitions under Article 32 used to be filed complaining violation of the fundamental rights by the state or its instrumentalities and seeking enforcement of the rights by granting remedies in the nature of the five writs stated in the Article. In other words, there is a right, remedy, forum. After Kesavandana Bharati, petitions under Article 32 and now PILs, came to be filed complaining violation of no fundamental right or any right for that matter, but complaining violation of the "basic structure".

30. The judges 2 case and the NJAC are classical examples. The said cases were filed by the Supreme Court Advocates on Record Association. The SCAORA did not complain of the violation of any of the fundamental rights of the organization or its members. It did not seek any writ or remedies for the enforcement of its rights. Its plea was ridiculous. That the NJAC was violative of the basic structure, that the Parliament has no competence to violate the basic structure and that the Act therefore, be struck down. The Supreme Court accepted the plea and quashed the NJAC. The Kesavananda Bharati case runs into 2264 paragraphs and 700 pages. The NJAC case runs into 764 pages. The Petitioners dare say that very few would have read these judgments. For to read it fully one has to

spend days if not weeks. Anyone who reads the judgment is all certain to miss the wood for the tree.

WHILE VIOLATION OF FUNDAMENTAL RIGHTS IS JUSTICIABLE, THE VIOLATION OF THE BASIC STRUCTURE IS NOT JUSTICIABLE AT ALL

31. Though the manner in which the basic structure theory has been canvassed and the Supreme Court was made to accept it is most unfortunate, even laughable, it does not mean that the basic structure theory has no meaning at all. The Petitioners do not at all question the validity of the basic structure theory, the Petitioners assert so, lest they should be misunderstood and misquoted. The basic structure theory is akin to the doctrine of St. Augustine, St. Thomas Aquinas, Bracton, Magna Carta and Part III of the constitution. If one were to go to a court complaining of violation of the fundamental rights, which would certainly mean violation of the basic structure of the constitution, the Petitioners do not have any quarrel at all. Article 13 is crystal clear. Any law which is enacted by the Parliament in violation of the fundamental rights, namely, Part III, is unconstitutional. The fundamental rights are paramount. If the Petitioners in the NJAC case and the Judges- 2 were to allege the violation of any of their fundamental rights, they certainly were free to invoke Article 32. The Petitioners have no quarrel with that proposition.

But the fact remains that they could not have alleged the violation of any fundamental right and they did not. The SCAORA, in approaching the Supreme Court when none of their rights were violated and they were not persons aggrieved at all and hence could not have sought any remedy at all, and in clamoring the violation of the basic structure, was misleading the Court.

32. The judgment in Kesavananda Bharati, the Petitioners submit in all humility, was wholly erroneous. To the Petitioners, it appears that the Supreme Court has since noticed the irrationality of the basic structure theory in many a decision, particularly in M Nagaraj Vs. Union of India (2006) 8 SCC 212 and I R Coelho v. State of Tamil Nadu 2007, in as much as that in the said judgments the Court has held that the fundamental rights are the basic structure. If this Court and the legal fraternity, nay, the nation were to accept fundamental rights as the basic structure of the constitution, then the confusion created by a judgment which runs into several pages, would stand resolved.

33. One of the problems with Kesavananda Bharati, the NJAC and the judges 2 case is its volume. If the said judgments were brief and thus comprehensible to the ordinary people, the irrationality would have been evident to the people. Our legal system would have been spared of the great injury it has suffered as a result of these judgments.

MISCONCEPTION OF THE DOCTRINE OF JUDICIAL REVIEW

34. People are taught that the validity of a judgment is dependent on the strength of the bench and even the majority of the opinion. The common understanding is that a judgment of a 3-judge bench can be overruled by a 5-judge bench and the 5-judge bench by a 7-judge bench, and that an erroneous decision by a 9-judge bench remains to be the "law of the land" till it is set aside by a still larger bench. The Supreme Court has in the recent past said that a judgment, for instance that of a 7-judge bench divided in the ratio of 6:1 can be overruled by a larger bench of 9 judges by a ratio of 5:4.

THE FAILURE TO NOTICE AND APPRECIATE THE DIFFERENCE BETWEEN RES JUDICATA AND PRECEDENT

35. Article 141 of the Constitution does not say that the judgments of the Supreme Court is the law of the land. Judgment of the Supreme Court in a case between A and B, whether right or wrong, will only bind A and B. It will not bind C and D who were not parties to the proceedings. Article 141 only means that if the Supreme Court has evolved a principle where none existed for the resolution of an issue before it, that principle, nay, the reason for the decision, will be binding in a future case between C and D who were not parties to the previous case, as a precedent. Even where no new principle is evolved but an existing principle is reaffirmed or followed, that will be binding as a precedent. It is for the court before

which a judgment of a superior court is relied as a precedent to decide whether there is any precedential value or not, and if yes, to apply it. Suppose, in a case before a Munsiff, different judgments of the Supreme Court of a bench of 3, 5 and 7 judges are placed, it is for the Munsiff to decide if the said judgments are applicable and he is free to apply the principle adopted by the 3-judge bench if the said principle is sound. The strength of the bench is absolutely relevant, but that is in the province of res judicata. If the majority of judges in a case between A and B hold that a cat is a dog, then that judgment, though erroneous, is final, binding and authoritative as res judicata between A and B. Nobody could be heard to dispute it except by way of an appeal if the statute provides for one.

LAW HAS NO ESTOPPEL

36. The basic difference between res judicata and precedent is that while res judicata has finality, law has no finality or estoppel. It does not serve any purpose in jurisprudence to constitute larger benches to decide questions of law, in as much as that even after a full court of the Supreme Court decides a question of law, if it is wrong, it is open to challenge the very next day. The Petitioners beg to submit that in questioning the precedential value of the judgment based on the strength which is the practice today, and in asserting that what matters is the reasoning and in further asserting that the current practice of constituting larger benches to

lay down the law of the land when there is no estoppel against law, the Petitioner does not at all mean to assail the respectability to be given to larger benches of this Court. The Petitioners readily concede that it is of immense sense and utility to give weightage to judgments of larger benches, but that should not be absolute or blind, as is the case today.

37. Every judgment of the Supreme Court rendered by the larger benches of this Court is certainly entitled to the respect to be given to precedent in terms of Article 141. That is the practice world over. But the difference between India and the rest of the world is that nowhere else in the world are Constitutional Amendments, Acts of Parliament, matters of legislative and executive policies are questioned in the highest court of the land as the first court of original jurisdiction, that too by way of PILs. The concept of judicial review has been misunderstood and misapplied. The Petitioners vouch for the concept of judicial review and that is the very life of the Indian Constitution.

38. However, a judgment of a court striking down an Act of Parliament or statutory instrument is stricto sensu binding only between the parties as res judicata. The principle evolved in such a case can be relied as a precedent in a subsequent case between C and D. The provision struck down by a Court as unconstitutional would still remain in the statute book. It is not repealed. But in all civilized democracies, a judgment of a

court holding a statutory provision or instrument as unconstitutional is respected. The core of democracy is the mutual respect between the institution of Judiciary, the Executive and the Parliament.

DEMONISATION OF THE PARLIAMENT AND THE EXECUTIVE

39. It would be totally inappropriate and in-conducive for a vibrant democracy like ours to presume that the legislature is anti-people, that its policies are directed against the people and that the common people are ignorant. This proposition of the elite was completely bared open during the emergency. The Kesavananda Bharati case was hailed as the fundamental rights case but for which the country would have fallen into the dark ages. Two years later, in 1975, Indira Gandhi declared emergency and aborted all fundamental rights. Even the Supreme Court did not come to the rescue of the people. To quote justice Krishna Iyer, it was the 'Daridra Narayanas' (the common people – voters of this Country), who voted the Indira Gandhi government out of power and restored democracy. And it was the Parliament by 42nd Constitutional Amendment Act that undid the mistake committed by the Indira Gandhi's totalitarian regime. If Parliament commits a mistake, the same or the next Parliament can undo it. Whereas, on the contrary, when the Supreme Court trenches into the domain of the Parliament and the executive, it is too difficult to get the mistake undone. The judgements in the NJAC case

and the Judges-2 case are nothing but total lack of faith in Parliamentary democracy, which despite all its deficiencies and limitations is better than any other form of government.

NEPOTISM

40. The Judges-2 case was instituted crying that the independence of judiciary is at stake and calling for judicial activism. The truth of the matter is that when the executive was powerful nobody would have thought to trample the constitution and if an attempt was made the legislative and the executive certainly would not have tolerated it. In 1993, misled by the plea of the elite class who wanted to consolidate their influence and who had no confidence in the democracy, crying wolf, persuaded the Supreme Court to re-write the constitution and bring into existence the collegium, an undemocratic body, without the slightest thought of its far-reaching consequences. When the Judges-2 case was heard and decided, the political executive led by Narasimha Rao, a minority government was extremely weak and ridden with allegations of corruption. The Attorney General/ Shri Parasaran, who represented the Union of India, did not even raise the issue of maintainability of the so-called PIL filed by SCAORA. In 1998, the attempt made by the Vajpayee Government by way of a presidential reference was far from what was required to undo the monumental error which the Judges-2 case indeed

was. The Manmohan Singh government also did not make any meaningful attempt. The Modi Government, when it came into power acted decisively and enacted the Constitution (Ninety-ninth Amendment) Act, 2014, and the NJAC Act. However, even before it was notified, the validity of the Amendment was questioned, though in vain. Finally, the Act came into force and the elite class of lawyers, using SCAORA as a pawn, by way of a so-called PIL challenged the validity of the constitutional amendment and the Act, primarily on the premise that the collegium was declared to be an integral part of the basic structure (independence of judiciary) and that the constitutional amendment seeking to dismantle/substitute the collegium with the NJAC is violative of the basic structure of the constitution.

THE FAILURE OF THE AG TO DEFEND THE NJAC

41. Right from day one of the hearing of the NJAC, Petitioner No. 1 had raised the very non-maintainability of the PIL instituted by SCAORA and pleaded that it be decided as a preliminary issue. However, it was a cry in the wilderness. The Petitioners pleaded with the AG to take up the issue of non-maintainability, however, the AG did not pay any heed to it. In fact, had the AG questioned the maintainability of SCAORA's PIL, the Supreme Court would not have quashed the NJAC Act. This is equally true of the Judges-2 case where the Senior Counsel representing the

Union of India did not at all question the very maintainability of SCAORA's so-called PIL. Even in the presidential reference case, popularly known as the Judges-3 case too, the then AG did not question the validity of the Collegium and seek review of the Judges-2 case, which the Petitioners believe was his bounden duty which he failed to do.

42. The Petitioners fought for the NJAC. Petitioner No. 1, who is a lawyer primarily practicing in Bombay, knew that the elite lobby would marshal all resources against the NJAC, and the NJAC which was the hope for lawyers who have no god fathers for equal opportunities in judicial appointments, would be sabotaged. Petitioner No. 1 raised to two fundamental, preliminary issues, namely, whether the PIL in challenge of the NJAC was maintainable since no one has alleged the violation of their fundamental or even legal right, (b) assuming that the petition is maintainable, who all have a right to be heard, if it was concerning lawyers, would it be proper to conduct the hearing without notice to the lawyers in the different parts of the country? Even if that is done, are lawyers the only stakeholders? Is the public at large not stakeholders, was not the court duty bound to issue notice to the public at large. Unfortunately, the Court did not meaningfully hear the Petitioner no.1 on these two fundamental issues though these were the main issues raised in

the written argument notes and all throughout at different stages by the Petitioner no. 1, before the bench of Justice Dave and Justice Khehar.

PIL, IF MAINTAINABLE, PROCEDURE AKIN TO REPRESENTATIVE PROCEEDINGS ARE LIABLE TO BE FOLLOWED

43. The SCAORA's PIL against the NJAC was not maintainable for no petition will lie in the Supreme Court in the first instance except for violation of fundamental rights. No petition which is in public interest can be allowed to be conducted like a private litigation. PILs, if at all are maintainable, are liable to be conducted like a class action/representative proceedings as in Order 1 Rule 8 (2) of the CPC or Section 245 of the Companies Act. The Petitioner also raised the plea that the NJAC was the will of the people and that it is not justiciable at all and that the Judges-2 case is one rendered null and void, one without jurisdiction, nothing but re-writing of the constitution in the name of interpretation. The Petitioner No. 1 had also pleaded that if at all the PIL of SCAORA was maintainable, it should be heard by a bench of which none of the judges are or would be a part of the collegium. However, none of the pleas were recorded. However, in the judgment only the plea for the recusal of Justice Dave and Justice Khehar, alone were recorded.

44. The Hon'ble Court, the Court sought for the opinion of the public at large on the ways and means to improve the existing collegium, but after

quashing the NJAC! That was an entirely futile exercise in as much as that more than 10,000 suggestions were received in response to the Supreme Court's public notice. The irony is that the enactment of the NJAC Act by their elected representatives, itself, is the response of the people as to the ways and means in which the existing system of appointment of judges could be improved. The NJAC was the loud cry of the people of this country to do away with the opaque and undemocratic collegium system. The Petitioners feel that instead of seeking the opinion of the public at large after the quashing NJAC, if at all such opinion was earnestly sought, it should have been done before quashing the NJAC and for improvements on the NJAC and not the collegium. The Court should not have aborted the NJAC even before it took form.

To allow busy bodies to institute PILs claiming to represent the public at large and obtain orders behind the public at large in matters of policy concerning the people of this country is a gross abuse of the process of law.

45. Today, busy bodies, often motivated by name, fame, money and other vested interests, claiming themselves to represent the public at large, i.e., acting as the de facto Attorney General, obtain orders from the Supreme Court and High Courts entirely behind the back of the public at large without notice to them. Assuming for mere argument's sake that PILs

serve some public purpose and ought to be allowed, then it is absolutely imperative that the Public Interest Litigations are prosecuted in a manner akin to that of representative suits as under Section 91 of and Order 1 Rule 8(2) of the CPC or Section 245 of the Companies Act which provides for class action litigation.

THE PETITIONERS' EFFORTS FOR THE RESTORATION AND REVIVAL OF THE NJAC

46. The Petitioners believe in the old adage 'nihil desperandum', never despair. Petitioner No. 1 in his practice spanning over almost 40 years has come across inconceivable injustice and victimization, nay, even persecution. The personal trauma which the Petitioner was needlessly made to undergo perhaps has no parallels. However, the Petitioner is a strong believer in the ultimate goodness of humans and the power of the truth. He believes that the mistakes of the past will be corrected and that it may have been the will of the providence to make him an instrument for change, through the personal sacrifices he was made to undergo. The Petitioner accordingly filed a petition for review of the judgment which however was dismissed in chambers declining even the plea for open court hearing.

47. Petitioner No. 2, the General Secretary of the National Lawyer's Campaign for Judicial Transparency and Reforms (NLC), filed a petition under Article 32 for a declaration that the NJAC judgment is one rendered void ab initio, without jurisdiction and rendered behind the back of the stakeholders, the public at large and the legal fraternity in different parts of the country. The Petitioner No. 2 pleaded that the judgment takes away her right for a fair opportunity to be considered for appointment along with all others who are meritorious and desirous. The said petition was dismissed with an observation that the appropriate procedure would be to file a review. Accordingly, in furtherance of the observations of the Court, the Petitioners filed a review. However, the said review petition was dismissed in chambers by a non-speaking order, that too declining the plea for an open court hearing.

48. The Petitioners /the National Lawyers Campaign filed a Petition for the Review of the Judgments of the Judges 2 Case, by which alone the Collegium, which is unknown to the constitution was given birth. However, the said Petition was dismissed in Chambers by a non-speaking Order, even declining the Plea of the Petitioners for an Open Court hearing.

THE PETITIONERS' REPRESENTATION TO THE GOVERNMENT

49. The Petitioners, without giving up hope, approached the leaders of the various political parties, Cabinet Ministers, Chairman of the Parliamentary Committee for Law and Justice, requesting them/the government to file a review of the NJAC case. The Petitioners were promptly assured but the promises remain unfulfilled.

50. Petitioner No. 1 addressed a letter to the Prime Minister as well the Members of Parliament and the leaders of the various political parties, requesting the Government to file a review. Since the Petitioner did not receive any response from the Prime Minister's Office, the Petitioner addressed a letter dated 29.04.2018 to the Prime Minister in a telegraphic language. A true copy of the Telegraphic Letter for the Attention of PM issued by the National Lawyers Campaign for Judicial Transparency and Reforms dated 29.04.2018 is annexed herewith and marked as **ANNEXURE P-2 (PAGES 53 TO 56).** A true copy of the Letter dated 31.08.2018 submitted by the National Lawyer' Campaign, Mumbai, Maharashtra is annexed herewith and marked as **ANNEXURE P-3 (PAGES 57 TO 58).** The Petitioner did not receive any response to the said letter. He addressed yet another letter dated 05.09.2020. A true copy of the Letter dated 05.09.2020 issued by the National Lawyers Campaign for Judicial Transparency and Reforms is annexed herewith and marked as **ANNEXURE P-4 (PAGES 59 TO 64).** Though the Petitioner did not

receive any response from the Prime Minister's Office, he received innumerable responses from Members of Parliament cutting across political parties, all appreciating the Petitioner's efforts and extending their support.

51. The Petitioner believes that it is high time that the Collegium system is dismantled and the NJAC is restored, because the collegium today is widely seen as a synonym for nepotism and favoritism.

COLLEGIUM, A SYNONYM FOR NEPOTISM

52. For considerations of reticence the Petitioners refrain from elaborating. There is hardly any official data easily available to the public as to the familial ties of the members of the higher judiciary. The data which the Petitioners could collect from large number of members of the bar would indicate that 3/4th, if not more of the judges of the Supreme Court are either the kith and kin of the judges, their juniors, senior lawyers, political leaders and who are otherwise well connected, so too is the case with the Chief Justices of the High Courts. A true copy of the Progeny Chart – Judges of the Hon'ble Supreme Court of India, issued by the National Lawyers' Campaign for Judicial Transparency and Reforms, Mumbai, Maharashtra dated 06.06.2022 is annexed herewith and marked as **ANNEXURE P-5 (PAGES 65 TO 70).**

THE NJAC IS THE WILL AND THE NEED OF THE PEOPLE

53. The higher judiciary in India is certainly respected for the impartiality and independence of its judges. However, had there been a transparent system of appointment of judges in existence, the seat of justice of the higher judiciary would certainly have been occupied by a far greater number of men and women from all sections of society, academically brilliant and more diverse, being from different walks of society, and more litigant friendly. The justification offered for the current opaque system of appointment is that the best talent from the bar is not willing to join the bench. Nothing could be further away from the truth. If vacancies are notified and applications are invited, many talented lawyers from among the less privileged and less connected will adorn the seat of justice of the higher judiciary. When that happens, the legal profession will be able to attract the best talents and the best among the junior bar will not leave the profession in search of a job of an in-house lawyer, being unable to sustain themselves.

54. It is a common grievance of the members of the bar and the public that many judges of the superior courts behave like emperors, ill-treat litigants and lawyers. Hon'ble Justice Sanjay Kishan Kaul had openly lamented of this unfortunate reality. Justice Krishna Iyer had on many an occasion lamented of the ill-treatment of lawyers at the hands of judges by borrowing the words of Lord Hailsham who termed the condition as

"judgeitus or judges' disease", describing its symptoms to include "pomposity, irritability, talkativeness, proneness to obiter dicta (statements not necessary for the decision in the case), a tendency to take short cuts". What Lord Hailsham said in 1978 is as relevant, or more, today.

COURSE CORRECTION: OPEN SELECTION

55. The Collegium once again proved that blood is thicker than water and it is high time that the judiciary, the bar and the government take note of the red signal and take corrective action without allowing a moment's time to be wasted, for history would not forgive it.

56. The current scenario where judges appoint themselves and appoint advocates as senior advocates, the bar and bench has become the exclusive province of a few dynasties. The talent elsewhere is not at all recognized. The generation of the Petitioners are denied equal treatment and fair opportunity and wherever they have raised their voice against discrimination, they are targeted. There can be no change unless the culture of entitlement and privilege is done away with.

57. The collegium which the incoming Chief Justice will preside over will have three judges who are sons/nephews of formers judges of the Supreme Court. Who appoints the judges is important, but what is more

important is who is appointed. The Supreme Court and High Courts will not be recognized as a democratic institution unless the talented members of the bar are appointed and that will happen only when there is an open, transparent selection process by inviting applications from all eligible. The NJAC had it been allowed to take birth, would have certainly done that. The people of this country would have demanded it. It is the duty of all concerned to bring back the NJAC and the easiest way is to review the Judges-2 case and the NJAC case. The representations which the Petitioner No. 1 has made are precisely to that effect.

INDIAN HIGHER JUDICIAL SERVICE

58. The concept of invitation to the bench has undergone radical change all over the world, so too, with concept of entitlement. The office of the judges of the High Courts and Supreme Court is a public office of the greatest of importance, including political importance. The core of our constitution is that all are created by the maker equally and that all citizens shall receive equal treatment, so too, equal opportunity in every walk of public life, this is from the point of view of an individual desirous of occupying the office of a judge.

59. So far as the public at large and the litigants are concerned, the seat of justice should be occupied by the most deserving, the best of talent, the most erudite, and that is possible when the zone of consideration,

particularly that of higher judiciary is made as wide as possible, in contrast to the current pool of consideration which is confined to the elite. Advertisement of vacancies of the judges of the Supreme Court and High Court, invitation of applications from all individuals and an open and transparent process of selection and appointment is certain to ensure that the seats of justice are occupied by the very best, the most eligible and is not a matter of inheritance. The concept of an Indian Judicial Service for the selection and appointment to the subordinate judiciary has received fair amount of consideration at various levels. Differences subsist and therefore it is yet to become a reality. What has never been discussed, anywhere at any level is an Indian Higher Judicial Service, IHJS, along the lines of IAS, IPS, IFS, IRS etc., solely on merit, based on competitive evaluation.

60. The Petitioners and other members of the NLC met a large number of leaders of the various political parties, retired judges, and in particular, the Chairman of the Parliamentary Committee on Law and Justice, and submitted a memorandum containing proposals concerning the much-needed judicial reforms.

The Petitioners crave the leave of this Hon'ble Court to produce the rest of the documents in due course.

61. The Petitioners are therefore, well within their rights, nay, their duty, to approach this Court for a reconsideration of the NJAC case or at least to undo the injustice arising out of it by whatever means possible. The Petitioners foresee no hurdle, all that is required is the will to rectify the errors of the past. Hence the instant petition on the following among other grounds:

A) The collegium system of selection and appointment of judges denies equal opportunities for appointment to the office of the judges of the Supreme Court and High Courts to the Petitioner nos. 1 to 6 and thousands of lawyers throughout the width and breadth of the country who are equally, if not far more deserving, eligible and meritorious, but less privileged because the pool of selection is confined to an elite class of lawyers consisting only of the dynasties of lawyers and judges, their juniors, so too, those politically well-connected. Article 14 is violated because the office of the judge of the Supreme Court and the High Courts is a high public/constitutional office to which all deserving, eligible and desirous, shall have equal opportunity and that is denied when there is no open and transparent system of appointment of judges. The Petitioners are afraid to say that the collegium is widely considered to be a synonym

for nepotism and favouritism. The Collegium was the creation of this Court by judicial law making and it is the duty of this Hon'ble Court to undo its mistake.

B) The stakeholders of the institution of judiciary are not the judges and lawyers alone. The public at large are the real stakeholders. Petitioner nos. 6 and 8 who are litigants feel equally concerned in as much as they deserve adjudication at the hands of the most competent, eligible and deserving judges. The Petitioners, as citizens of this great democracy, are entitled to dispensation of justice at the hands of the most competent judges. It is a fundamental principle that justice should not only be done but seemingly and manifestly be done. The opaque collegium system rejected and replaced by the electorate through their representatives, does not evince the confidence of "we the people".

C) The grounds in support of the instant petition have been sufficiently elaborated in the statement of facts and to repeat the same would mean rendering this petition needlessly voluminous. Suffice to say that the current system of appointment of judges is violative of the fundamental rights of Petitioner nos. 1 to 6 who are advocates, so too, violative of the right of access to justice of Petitioner nos. 7 and 8.

62. That the Petitioners have not filed any other petition seeking similar reliefs in this Hon'ble Court or any other courts in India.

PRAYER

In the above premises, it is prayed that this Hon'ble Court may be pleased to:

a) To declare that the collegium system of appointment of judges has become a synonym for nepotism and favoritism, nay, has resulted in the denial of fair opportunity in the selection and appointment of judges of the Supreme Court and High Courts to the Petitioner Nos. 1 to 6, who are practicing lawyers and thousands of others who are equally, if not, more deserving, but less privileged, lest their fundamental right for equal opportunity for being considered for such appointments is not deprived;

b) To issue a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the Respondent No. 4, nay, the Union Government to consider the representations of the Petitioner No.1 seeking such legislative and executive action so as to ensure an open and transparent system of appointment of judges, nay, by notifying vacancies, inviting applications from all eligible and desirous;

c) To direct the collegium of the Supreme Court of India and the Collegiums of the High Courts to notify the vacancies in the office of the judges of the Supreme Court and High Courts and invite applications from all

eligible and desirous and select the most deserving, ideally allowing the public at large to offer objections, if any;

d) To declare that the Constitution (Ninety-ninth Amendment) Act, 2014, and the NJAC Act are the will of the people on a matter which falls in the exclusive province of legislative and executive policy, namely, the appointment and transfer of the Supreme Court and High Courts, that the same is not justiciable and that the judgment of the Supreme Court in the SCAORA v. Union of India, (2016) 5 SCC 1, popularly known as the NJAC case, is one rendered void ab initio, non-est, still born, one which never ever existed in the eyes of law;

e) To declare that even assuming, without conceding in the least, that the Constitution (Ninety-ninth Amendment) Act, 2014, and the NJAC Act are amenable to judicial review, nay, is justiciable, then also the judgment of the Supreme Court in the NJAC case will not amount to repeal of the said Acts and the same continue to be in the statute book and the judgment declaring the said Acts to be unconstitutional will be binding only between the parties to the said case as res judicata and none else;

f) To declare that to prevent the mischief as in the NJAC case, where an association under the guise of representing the public at large secures even a legislation of such immense public utility, nay, the will of the people like the Constitution (Ninety-ninth Amendment) Act, 2014, and the NJAC Act, being declared as unconstitutional without there being any

opportunity for the public at large to partake in the case, it is imperative to mandate every PIL litigant to give notice to the public at large, nay to follow a procedure akin to representative suits under Order 1 Rule 8 (2) of the CPC or of a class action as contemplated under Section 245 of the Companies Act;

g) To declare that the review petitions of the Petitioners No. 1 & 2 in challenge of the judgment in the NJAC case is liable to be restored to file and heard in the open court as the contentions raised by the Petitioners as to the very maintainability of the PIL filed by SCAORA, and to observe the requirements to followed in a representative suit or class action proceedings, was not recorded or discussed at all and there was no decision on the Petitioners' case on its merits at all;

h) To declare that the Rules of the Supreme Court mandating that a curative petition can be instituted only upon procuring a certificate of a senior advocate that there exist sufficient grounds for its institution is violative of the fundamental rights of the Petitioners and has led to denial of their very right of access to justice;

i) To declare that the Petitioners 1 & 2 are entitled to a judgment on merits on the question as to the very maintainability of the PIL instituted by SCAORA which the Petitioners 1 & 2 have raised in the first instance or at least in the review, and that the failure of the Supreme Court to record the Petitioners contentions at all, renders the judgment in the NJAC case

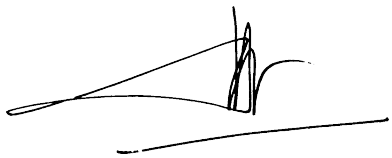
as void ab initio, it being non speaking as far as the Petitioners 1 & 2 are concerned;

j) To issue a writ in the nature of mandamus or any other writ, direction or order directing the Government of India and other stakeholders to consider the feasibility of bringing into existence an Indian Higher Judicial Service along the lines of IAS, IPS, IFS, IRS etc. which would bring the best talent, selection being solely on competitive basis, least influenced by considerations of kinship and connections;

k) To grant such other and further writs, orders or directions which this Hon'ble court may be pleased to grant in the interest of justice and the circumstances of the case;

AND FOR THIS ACT OF KINIDNESS THE PETITIONER IN PERSONS SHALL AS IN DUTY BOUND EVER PRAY.

Drawn & Filed by:



MATHEWS J. NEDUMPARA
PETITIONER IN PERSON NO. 1
9820535428

Drawn on: 04.11.2022
Place: New Delhi
Dated: 07.11.2022

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (CIVIL) NO. OF 2022

IN THE MATTER OF:

SHRI MATHEWS J. NEDUMPARA & ORS. PETITIONERS

VERSUS

THE HON'BLE CHIEF JUSTICE OF INDIA AND ORS. RESPONDENTS

AFFIDAVIT

I, Mathews J. Nedumpara. Petitioner No.1, Having Office at 101, 1st Floor, Gundecha Chmabers, Nagindas Master road, Fort, Mumbai-400001, Maharashtra, Presently at New Delhi, do hereby solemnly affirm and state as follows:-

1. I am the Petitioner No.1 in the above Writ Petition and am conversant with the facts of the case and I am competent to swear this affidavit. I do so on my own behalf and on behalf of the co-Petitioners.

2. I state that I have read and understood the contents of the Synopsis and List of Dates at Pages B to C and contents of Para 1 to 62 at pages 1 to 47 of the Writ Petition and state that the facts mentioned therein are true to the best of my knowledge, information and belief as also as derived from the records of the case. I say that the facts and circumstances stated in the Writ Petition are true and correct.

3. That the Annexures produced along with the Writ Petition are true copies of their respective originals.

NOTARY K. BANDANA Delhi Regd. No.: 19718 Date of Expiry 26.02.2025 GOVT. OF INDIA

4. That the averments in para 1 to 3 of this affidavit are true and correct to best of my knowledge and belief.

DEPONENT

VERIFICATION

I the above named deponent affirms that the contents of Para 1 to 4 of this Affidavit are true and correct to best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on this the 04th day of November, 2022.

DEPONENT
PARTY IN PERSON

IDENTIFIED

04 NOV 2022

ATTESTED
NOTARY PUBLIC DELHI
GOVT. OF INDIA
Mob.: 9654768498

NOTARY
K. BANDANA
Delhi
Regd. No.: 19718
Date of Expiry
26.02.2025
GOVT. OF INDIA

National Lawyers' Campaign

FOR JUDICIAL TRANSPARENCY & REFORMS

Registration No: MH/MUM/1701/2015/GBBSD

304, Hari Chambers, 3rd Floor, 54/68 SBS Marg, Near Old Custom House, Fort, Mumbai- 400 023
Tel: 022 22626634 / Mobile: +91 98205 35428 / +91 9920477447

E. Mail: nationallawyerscampaign@gmail.com

31.3.2014

Objectives

1) Abolition of Collegium system of appointment and transfer of judges and the substitution of the same by an independent judicial appointments commission where neither the executive nor the judiciary will have a primacy. The NJAC shall advertise the vacancies and invite applications from all eligible candidates.

2) Creation of a Judicial Ombudsman to deal with the complaints of corruption and malpractices against judges.

3) Audio/video-recording of proceedings of all Courts and Tribunals and access to such records to the litigants, lawyers and public;

4) Reintroduction of the policy of transfer of 1/3rd of judges out of their parent High Court as a panacea for the pernicious practices of the kith and kin of judges practicing in the very same court, nay, the "Uncle Judges Syndrome";

5) Abolition of the practice of designation of Advocates as Senior Advocates by the judges, so too abolition of AOR;

6) Abolition of the concept of Contempt of Courts by scandalization

7). Enactment of laws to ensure that Public Prosecutors/ Govt. Pleaders/ Standing Counsel for Central Government and statutory Authorities are appointed in a Transparent manner.

8) Restoration of the pristine glory of the civil courts as the court of record of

plenary jurisdiction empowered, competent and duty bound to embark upon any dispute of a civil nature including the constitutionality of a statute as it was the case prior to independence.

9) Simplification of procedures of all courts and tribunals and, in particular, implementation of the E-courts project on a war footing;

10) Abolition of Tribunals except involving highly technical subjects which require non lawyer Members on the Bench and equal opportunity of selection to lawyers qua those from judicial services.

11) Repeal the Articles 226, 32 of the constitution because the said jurisdiction is pronouncedly absolutely discretionary or make it function as a court of plenary jurisdiction which will act on law and least on its discretion, will allow the litigants to adduce evidence on disputed facts, frame issues and hear the parties on all issues and pass a speaking order.

12) Make it mandatory that no judge of the SC shall be eligible for appointment of any office until the expiry of at least two years since retirement.

13) Make Sec.92 and Order 1 Rule 8 of the CPC applicable to PILs so that PIL is no longer an instrument of tyranny and injustice where the public at large is bound by a judgement of a case where they were not party and PIL is not abused as a political weapon against the political Executive. At the same time Promote "pro bono" litigation for the benefit of the poor.

14) To bring an appropriate legislation providing for at least one Forum of Appeal on facts and law against all judicial pronouncements and in particular of the SC under Articles 32, 129, 141,142 of the Constitution or under the Contempt of Court Act.

15) Do away with the immunity judges today enjoy even from penal offence because of the orders of the SC that no FIR shall be registered against the judges of the SC and HC without the permission of the CJI.The role of the brokers who meddle with the affairs of the judiciary be investigated by CBI and ED.

16) Abolition of the concept of absolute judicial immunity and instead immunity be limited where the judge acts bonafide as is the case with any other public servant.

17) Bring an end to the ill treatment and harassment of the 'Party in Person' and to provide them at least bare minimum facilities.

18) So far as the affairs of the judiciary is concerned, RTI is a dead letter, judges are no longer declaring assets. Both to be made mandatory.

19) All cases including Review Petition be heard in the open court, except cases which are required to be heard 'in-camera' and no case shall be disposed of without a speaking order.

20) Increase the strength of judiciary at all levels including the SC and, in particular, the subordinate judiciary; improve the infrastructure of subordinate courts which is in an abysmal position today.

21. Financial assistance to all lawyers irrespective of standing, particularly, from Banks and Financial Institutions obligated by law.

22. Creation of an Indian Judicial Service for subordinate courts and an Indian Higher Judicial Service for High Courts and Supreme Court on the lines of IAS, IPS, IFS, IRS etc.

Mathews J Nedumpara
President

//True Copy//

ANNEXURE P-2

NATIONAL LAWYERS CAMPAIGN FOR JUDICIAL

TRANSPARENCY AND REFORMS

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No. 11, DD Tudor Villa, Padam Road, Vaduthala- 682 023

Mob: +91 9820535428 email: mathewsjnedumpara@gmail.com

TELEGRAPHIC LETTER

FOR THE ATTENTION OF PM

29 April 2018

To,

Hon'ble Sri Narendra Modi,

The Prime Minister of India

Room No. 246, South Block,

Raisina Hills, New Delhi

Hon'ble Sri Modi Ji

Subject: 1. Review of the NJAC case
2. Dismantling of the collegium
3. Audience with your kind self.

Ref: Umpteen letters addressed to your Hon'ble self, some of which have not even been acknowledged.

I address you sir, in a telegraphic language as the President of NLC in the hope that atleast this will receive your personal attention in view of the great national importance of the subject.

1. I was the only person who instituted a Substantive Petition in the light of the challenge of the NJAC by Fali Nariman & Co. that the Act is Constitutional and the Legislation being in the realm of policy is not justiciable. I also sought a declaration that the Judges 2 & 3 cases are

null and void; per incuriam as well. I also sought a declaration that if the NJAC is justiciable, then every citizen has a right to be heard and not merely the Nariman & Co. and am afraid to say, the large brigade of sycophants of the Supreme Court Bar who consider it profitable to be seen defending the cause of the Judges, because the greatest law today is the "Face Law". I asserted that the judges are the real petitioners in the NJAC case and the courts decision striking down the NJAC will be seen as the Judges delivering a judgement in their favour when they are the real actors/plaintiff.

2. I sought the recusal of Justice Dave on the ground of conflict of interest. Justice Dave was a noble soul. His Lordship recused. Then a new bench headed by Justice J S Khehar was constituted. I sought not only the recusal of Justice J S Khehar, but also of Justices Madan Lokur & Justice Kurian Joseph. The reason is: if the NJAC was to be struck down, the collegium will be restored and Justice J Chalemeshwar, Justice Madan Lokur and Justice Kurian Joseph will be part of the Collegium. In other words, if Justice Kurian Joseph & Justice Madan Lokur were to strike down the NJAC their Lordship, may be unwittingly, be giving a berth for themselves in the cabal collegium which amount to acting in violation of the first principle of Natural Justice that nobody shall be a judge of his own cause. But my plea was rejected, sad though. Sir we lost the NJAC case only because of Rohatgi, He did not challenge the maintainability of Narimans Case. He did not plead that Judges 2 case is per incuriam.

3. Today's Times of India carries a caption: "From railway platform to IAS: A tale of grit and perseverance". Statics show, not even 1% of IAS officers are the kith and kin of the serving or retired officers. On the contrary the Supreme Court of India today is really a 'Sons Court of India'. If Justice K. M. Joseph, is elevated to the Supreme Court, then we will have two eminent judges who are the sons of the former judges of the Supreme Court. In Justice Gogoi, we have the son of former Chief Minister. CJI is the nephew of the former CJI. Even Fali Nariman has his son anointed as the Judge of the Supreme Court. We have in Chief Justice Bhosale the son of former Chief Minister of Maharashtra, Justice A A Sayed the nephew of Antulay, former Chief Minister of Maharashtra and in Justice Gavai a former Governor's son. 90% of the Lawyers directly elevated to the Supreme Court and High Court are the sons of Judges or Senior Lawyers or big politicians.

4. When it came to the violation of the equality clause of the Constitution, the Supreme Court of India is in the dock, not really the Governments or the Legislatures because the latter could be criticised. I could be hauled up in contempt for the uncomfortable truths which I have stated above; so too what I have been saying in the public domain. In many ways, I have been persecuted.

5. The Supreme Court hears lawyers according to their stature. Fali Nariman, Jethmalani, et al; the Class A Seniors are heard to an unlimited extent: Then comes Class B, Class C and Class D seniors. The ordinary lawyers representing the poor man's cause is hardly heard. The system of designation of Lawyers as 'Seniors and others' is the reason behind it. The judges themselves only give the "senior" tag. The sons, nay, kith and kin of judges and big lawyers get it as if a matter of right at a young age; blood is thicker than water.

6. The judges are the real stumbling blocks in bringing about reforms which could make the institution accountable and transparent. The most emergent reform that need to be brought in are:

A. Restoration of NJAC by seeking a review of the judgement or by a fresh legislation- which narrows the role of the judges; so too, the Government and Civil Society should shoulder a definite role.

B. Dismantling the Collegium seeking review of the 2nd & 3rd Judges case. The Attorney General should seek a review.

C. Video recording of the proceedings of all the courts and tribunals including the Supreme Court of India.

D. Judicial Accountability Bill.

E. Repeal of Section 16 and 23(5) of the Advocates Act.

7. There are many other reforms which are long overdue. However, to keep this letter in a telegraphic language, I am not venturing to mention.

8. NLC is an organisation of the underdogs, who constitute to be 90% of the Legal Fraternity. We are small people. Underdogs. On any subject on Judicial reform, only the 'Elite' like Nariman & Salve are heard. Therefore, the concern of the common man and the ordinary lawyers are never heard. Sri Ravi Shankar Prasad and Arjun Jaitely, they all belong to the elite lawyers. Congress is worst in this regard. That party is a synonym for dynasty, and sycophancy. The elite lawyers like Sibal, Chidambaram, Singhvi, Tulsi and Khursheed dominate it.

9. Today all concern is about whether the Collegium or the government or the NJAC should select the judges. This is a false premise, what is important is who are selected. The ordinary lawyers will find their place in the higher Judiciary as they have today in the subordinate Judiciary and as in civil services, when vacancies are notified and applications are invited.

10. Sir you have come from a humble background, you will be able to sense and identify with the feeling, pains and sorrows of the underdog and the poor. Therefore, we once again seek an audience with your kindself which we hope will be granted this time.

In the unstinted faith that our request for an audience will not be a cry in the wilderness, I remain.

Yours Sincerely

Mathews J Nedumpara
President
NLC

P.S.: The delegation of NLC will consist of 5-10 of its office bearers, depending on the decision of the PMO.

//True Copy//

ANNEXURE P-3

National Lawyers' Campaign

FOR JUDICIAL TRANSPARENCY AND REFORMS

MH/MUM/1701/2015/GBBSD

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To

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE

THROUGH

Shri A.K. Sahoo,
Addl. Director,
Rajya Sabha Secretariat,
Room No. 012,
A-Block, Ground Floor,
Parliament House Annexe Ext. Building,
New Delhi-110001,
Tel: 011-23035365,
E-mail: rs-memocpers@sansad.nic.in

Sub: "STRENGTHENING THE JUSTICE DELIVERY PROCESS"

Ref: Press Release dated 18th August, 2018.

Rt. Honourable Members,

1. It is our special privilege & honours to address this Hon'ble Committee on the subject mentioned supra.
2. We, the National Lawyers' Campaign for Judicial Transparency and Reforms (NLC, for short) felt it absolutely imperative to address a common letter as the instant one to your Honourable selves since, the justice delivery system is the very foundation and existence of the constitutional democracy; so too the separation of powers with respect to the judiciary, the Parliament and the executive which falls within their exclusive domain requires the Government/the Parliamentary Committee to act with a sense of urgency which the current scenario calls for.
3. The NLC has as its members lawyers with varying political ideologies, sometimes even poles apart. But the members of the NLC, who come from different streams, from different parts of the country, have joined together to campaign for eleven objectives on which everyone agrees, which is enclosed with this representation.

4. The NLC has left no stone unturned to achieve these objectives. Some of the petitions and representations made by the NLC during the course of its struggle are enclosed with this letter for your kind consideration. Those documents are self-explanatory and seek no further elaborations. The said documents may kindly be treated as a representation to this committee also, to initiate suitable legislative processes.
5. The NLC is further seeking an audience with the committee, for which the selected representatives will be attending the meeting on any date as may be informed in advance.
6. Kindly allow the audience by appearance for oral evidence before the committee.

With respectful regards,

Yours sincerely,

31st August, 2018

(A.C.Philip)
Secretary (Litigation)
FOR NATIONAL LAWYERS' CAMPAIGN FOR JUDICIAL TRANSPARENCY AND REFORMS

Enclosures:

i. The objectives of the National Lawyers' Campaign For Judicial Transparency And Reforms
ii. Petition by NLC/ members seeking video recording of the court proceedings, pending before the Supreme Court of India.
iii. The additional written submission in the above petition for video recording of the court proceedings.
iv. The Review Petition by the NLC/ members for the review of the NJAC judgment.
v. The Review Petition by the NLC/members for the review of Juges-2 judgment.
vi. The petition by the NLC/Members for the abolition of senior designation of Advocates.
vii. The review Petition by the NLC/ members in the above judgment(vi).
viii. Representation by the NLC/Members for the amendment to The Contempt Of Courts Act,1971.

//True Copy//

ANNEXURE P-4

NATIONAL LAWYERS CAMPAIGN FOR JUDICIAL

TRANSPARENCY AND REFORMS

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Mob: +91 9820535428 email: mathewsjnedumpara@gmail.com

5.9.2020

To,

Hon'ble Shri. Narendra Modi,
The Prime Minister of India.

Hon'ble Smt. Sonia Gandhi,
President of INC.

Leaders of the various political parties,
Members of Parliament, Members of the legal fraternity,
press, the public at large.

Hon'ble Sirs and Mesdames,

Sub: Emergent judicial reforms lest supremacy of the Constitution and the Parliament, nay, democracy should be put to great jeopardy, and "judgeocracy" is further perpetuated through PILs.

1. The conviction of Mr. Prashant Bhushan for contempt of court and his being sentenced for a fine of Re.1 which he readily agreed to pay, is a great victory of the very right to dissent, freedom of speech and expression, the very core of democracy. I was jubilant, but in a fraction of a second the horrifying unseen effect of the victory of Mr. Prashant Bhushan came to my mind. On the face of it, it is the victory of democracy, but, in reality, the said victory will undermine the very foundations of the concept of constitutional democracy. Why I say so, I will deal with briefly as infra.

2. Even before the constitution came, the concept of judicial review was very much in existence. The Government of India Act, 1935 was the Constitutional Act. Any law which is contrary to the same was ultra vires, and the civil courts had the jurisdiction to grant such declaration. The sad part is that many lawyers and judges think mistakenly otherwise. Articles 32 and 226 were incorporated in the constitution for expeditious remedies for the protection of fundamental rights. The said Articles were not intended to take away the jurisdiction of the ordinary civil courts as constitutional courts. Suits were the only means by which the constitutionality of an Act of Parliament could be questioned, and it is evident from Order 27A of the CPC and Article 228 of the Constitution.

However, the elite class of lawyers in Delhi, by challenging the constitutionality of an Act by recourse to Article 32 substituted the civil courts, and as time passed, the unfortunate situation where judges, lawyers, the press and even Parliamentarians being misled to think that only the High Courts and the Supreme Court under Articles 226 and 32 alone can entertain a challenge on the constitutionality of an Act came to be the doctrine. This, I call the coup d'etat no. 1 by which the Civil courts came to be ousted of its legitimate jurisdiction as constitutional courts and the ordinary lawyers came to be deprived of their brief as constitutional lawyers.

3. The 2nd coup d'etat is the misinterpretation of the doctrine of precedent to suit the vested interests of the elite class of lawyers in the Supreme Court. Article 141 incorporates the concept of precendent. It only means if the Supreme court has evolved a principle, where none existed, for the resolution of an issue before it, that legal principle will be a binding precedent for future cases. The concept is known as 'stare decisis' or 'rationale decisis' or reason for the decision. Since independence, to my knowledge, the Supreme Court has not evolved a single principle which never ever existed for the resolution of an issue before it, which could be truly called a precedent. The only exception is the 'basic structure' theory, which I will deal with a little later. (The application of precedent in actual practice has nothing to do with stare decisis but is the erroneous application of the decision in a previous case to future cases). In other words, misconception of res judicata as stare decisis.

4. This misconception has caused unthinkable damage to India's constitutional law, therefore, it requires a little explanation. What a precedent is in the legal principle evolved by a court to be applied to future cases, and to do so makes immense sense. I stand by the doctrine of precedent in its true sense. The grievance I make is of the abuse, if not misconception, of the concept. 'Res judicata' means that the judgment in a case between A and B will be final and binding, subject to appeal, between them, howsoever erroneous it could be. To constitute res judicata, the cause of action and parties ought to be the same, and the matter ought to have been contested. A court can make "black the white and white the black," provided it acted within its jurisdiction and observed the principles of natural justice. If the court in a case between A and B says that 1+1=0, though it is manifestly erroneous, it is res judicata, valid though erroneous, final and binding. No court has the jurisdiction to rely on the reasoning on facts of a previous decision between A and B to decide the case before it between C and D. To do so would be unjust. But, since independence, that is what is being done in the name of precedent. This mischief is the result of the misconception of Article 141. Article 141 which states that the law declared by the Supreme court shall be binding on all courts within the territory of India, only means that if the Supreme court has evolved a legal principle in a case between A and B, distinct from the decision, will be applicable in a future case between C and D. Article 141 in other words means the application of a legal principle evolved by the Supreme Court as a precedent binding on subordinate courts, as well as itself.

5. I have stated above that I am not aware of any legal principle which the Supreme Court has evolved for the first time where none existed, other than the 'basic structure doctrine' and 'public interest litigation', both which have no legs to stand, which I beg to deal with as infra.

6. Nobody has been able to tell me a principle which the Supreme Court has evolved for the first time as the law declared by it. What we follow is not the doctrine of 'stare decisis'. What we follow as stare decisis or precedent is to treat the reason for the decision on facts, often erroneous, of a previous case to future cases. Stare decisis is a legal principle. Its strength is not based on any numbers. On the contrary, the doctrine of 'res judicata' has its foundation in numbers. For easy elucidation let me think of the judgment of a 5-judge constitution bench in a case between A and B where the majority 3:2 holds that a goat is a dog. Because both have two ears, two eyes, four legs and a tail. However, the minority holds that a goat is not a dog as one is a herbivore while the other is a carnivore. Manifestly the majority is wrong, but so far as A and B is concerned, the majority decision is final, binding, authoritative, nay, res judicata. Because res judicata means a judge is free to err within his jurisdiction, namely, on facts. No judge has the jurisdiction to err on law. He is bound by law. As I had stated before, if my contention that the Supreme Court has not evolved a single principle since independence, which nobody has so far been able to contradict, what we follow in the name of 'stare decisis' or Article 141 is to make even erroneous decisions on facts of past cases applicable to future cases, upon persons who were not parties to the earlier judgements, which is unjust.

7. The consequence of the misconception of treating 'res judicata' as precedent has had calamitous ramifications. The judgement of the Supreme Court in Kesavananda Bharati is a great absurdity. Prior to Kesavananda Bharati, a litigant could only invoke Article 32 complaining that his fundamental right is infringed. Post Kesavananda Bharati petitions after petitions are filed claiming the litigant has not suffered any personal injury, much less violation of his fundamental rights, but the "basic structure" has been abrogated. I am afraid to say that most of Mr. Prashant Bhushan's petitions are of that category. Kesavananda Bharati is hailed as a landmark judgement because 7 Ld. judges in contrast to 6 held that the Parliament can amend every Article of the Constitution, including that of the fundamental rights, but not the basic structure. The Basic Structure Theory is against the fundamental principle of jurisprudence, ubi jus ibi remedium, where there is a right there is a remedy. In other words, 'right, remedy, forum'. So far as the parties to Kesavananda Bharati's case is concerned, that judgment is final, binding, nay, res judicata. So far as the future cases are concerned, what is binding is the principle, if any, which the court has evolved for the first time or even reiterated. What a precedent is, is the principle, not the number or the strength of the bench. If that judgement is cited before a High Court or even a Munsiff, it is for that judge to decide whether to follow it or not. He/she will, if it is a valid precedent, and he/she will not if it is per in curiam, in other words, rendered in ignorance of law. If I am a Munsiff and the judgement in Kesavananda Bharati is cited before me,

I will refuse to follow it because I believe it is against the fundamental principle of jurisprudence.

8. To elucidate coupe no.2 in a brief letter like this is a difficult task. The misinterpretation of Article 141, I am afraid to say is not an entirely innocent act. It is difficult to believe that the celebrated lawyers are oblivious to these fundamentals. On the contrary, to cement this misconception into an unquestionable theory is highly profitable to them. Every day we hear of the clamour for the constitution of larger benches and even conversation of the Supreme Court into the exclusive "constitutional court", and to establish a court of appeals to hear the appeals from High Courts. Every court in this country, right from the Munsiff, to the criminal courts to the Supreme Court, since the coming into force of the constitution, is empowered and duty bound to construe the constitution. But these elite lawyers, have over the years created a false notion that constitutional law is something not digestible to other lawyers and is their exclusive fortè.

9. Kesavananda Bharati has been very cleverly used to rewrite the constitution. The classic example is the creation of the Collegium system of appointment of judges through the Judges-2 case. Kesavananda Bharati's case is a half-a-million-word judgement which is nothing but a facade. Let me further explain how Kesavananda Bharati case has been used to whittle down the powers of the Parliament. I believe that in a constitutional democracy, the Parliament is supreme. It is free to make any law, subject to the limitation of Article 13(2).

10. The judges-2 case runs into hundreds of paragraphs. Very few would have read it. It is impossible to imagine a judgement which is a greater affront to reason than the same.

11 . The 'ratio' of that judgment is thus: (a) independence of judiciary is a basic structure (b) the core of the independence is in the appointments and not in post appointment decision making (c) the core of independence is maintained if the opinion of the Chief Justice of India has primacy over other consultees (d) the word "consultation with the Chief Justice of India" does not mean the CJI alone and his opinion does not mean of his alone but the plurality of the judges which is reflected through the collegium of the senior judges (e) the collegium system is a part of the basic structure of the constitution.

12. Blood is thicker than water. Collegium became a synonym for nepotism and favoritism, with vast majority of the Chief Justice and judges of the Supreme Court and high courts being the progenies of sitting and retired judges. The constitution was amended and NJAC was brought in. However, the elite class of lawyers, using SCOARA as a pawn, got the NJAC Act declared as unconstitutional. The reason offered is that the Collegium system of appointment is part of the 'basic structure' and the Parliament has no right to abrogate it.

13. I would call the basic structure theory as the coup d'etat no.3. The Parliament's venture to establish even the National Tax Tribunal was

thwarted because the Supreme Court held that such a tribunal would amount to violation of the basic structure. I will conclude by referring in brief to coup d'etat no.4 which is certain to destroy the institution of judiciary, that is nothing but the PIL industry, of which Mr. Prashant Bhushan is the patron Saint.

14. Many consider me as pro BJP. That is primarily because many of those closely associated with me are pro BJP and I have appeared as a lawyer for the cause of the BJP. But speaking for myself, I have no political affiliation. The political executive ought to be criticized, but the battle to be fought is a political one. To use the Supreme court as a tool to gain political mileage against whoever is in power, which Mr. Prashant Bhushan has been doing for long, in the past when the Congress was in power, and now against the BJP, will lead to the destruction of the institution of judiciary. The reason is simple. What is brought before the court by way of PIL are matters which fall in the province of the legislature and executive, purely issues of governance and policy where the public opinion is sharply divided. What Mr. Prashant Bhushan and his ilk are doing is to act as if they represent the public at large and compel the court to decide the issues along the lines he wishes, keeping the public at large entirely in the dark, which is unethical. By forcing the court to tread into the forbidden province of governance he is exposing the court and the judges to public criticism. The public cannot be blamed or controlled in criticizing the court when it decides matters which fall in the province of policy. PIL made the Supreme Court the most powerful court on the planet, so too, undermined its very foundations. The court can preserve its authority and majesty only if it confines to its legitimate domain, namely, confine itself to what is called adjudication of lis. It should realize that it is wrong for it to substitute the Parliament and the Executive, and act as all at once.

15. The court should reform, it should abandon its role as knight acting at its will, undoing all wrongs. It should eschew the temptation to be the government, the legislature, all at once. It should realize that its constitutional role is that of a court of appeal. The true constitutional courts of original jurisdiction are the civil courts. Interpretation of the constitution is not its exclusive province, the Supreme court should realise that even a Magistrate is vested of the power and duty to do so. It should not perpetuate injustice by treating 'res judicata' as 'stare decisis' and should refrain from the resultant practice of needlessly quoting judgements after judgements, leading to judgements running into hundreds of pages, which are against common sense and reason.

16. The Modi government and the Opposition parties too, did a commendable job in enacting the Constitution 99th (Amendment) Act and the NJAC Act, thereby abolishing the Collegium system. By a judicial coup d'etat the said Acts were struck down. I would have expected the Government to take a stand founded on fundamental principles that the Parliament is supreme, its views being the will of the people. No judgement can be in perpetuity, the Parliament should assert its authority, and in doing so, it is acting in full conformity with the fundamental principles of constitutional law as explained above.

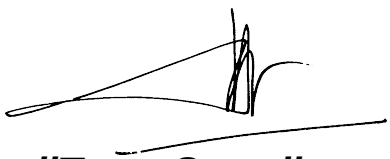
17. Elsewhere in the world if a judgment is contrary to the constitution it is regarded as nullity and incapable of being enforced. However, we consider the judgment to be gospel and amend the constitution and if the constitution so amended is again declared by the court to be unconstitutional which is what happened with NJAC, we throw up our arms in despair. It is a matter of great shame for us as a nation.

18. I am sure this letter will reach the eyes of the Hon'ble Prime Minister, leaders of the Opposition parties, Members of Parliament and pave way for much needed judicial reforms, to bring an end to the opaque collegium system of appointments and in its place bring in open selection, substitution of the Parliament and Executive by the Court through PILs which are no representative litigation but conducted as if private litigation in furtherance of vested interests, video recording of court proceedings and access to such records by the litigant public, abolition of the draconian contempt law, abolition of the absolute immunity that judges enjoy (which is today even extended to offences under the Penal laws by a judicial legislation that no FIR can be registered against a judge except with the consent of the CJI), judicial accountability, abolition of the discriminatory practice of judges designating lawyers as senior advocates, implementation of the transfer policy as a solution to the 'uncle judges syndrome', and above all, bringing an end to the menace of justice being buried in the camouflage of judgments running into hundreds of pages which discuss all about past cases and little about the case at hand, nay, the abuse of precedent, a means by which a judge could, by citing hundreds of cases, safely conclude that black is white, and day is night.

I await to hearing from you.

With most respectful regards,

Mathews J Nedumpara
Advocate
98205 35428



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Date 06.06.2022

National Lawyers' Campaign For Judicial Transparency And Reforms

Progeny Chart- Judges of the Supreme Court of India.

SR. NO.	NAME OF THE JUDGE	KINSHIP	DATE OF APPOINMENT
1.	Hon'ble Mr. Justice N.V. Ramana	First Generation Lawyer	17-02-2014
2.	Hon'ble Mr. Justice Uday Umesh Lalit	Son of Justice U.R Lalit Former Judge of the Bombay High Court	13-08-2014
3.	Hon'ble Mr. Justice A.M. Khanwilkar	Son-in-law of Balasaheb Pawar, Member of Parliament.	13-05-2016
4.	Hon'ble Dr. Justice D.Y. Chandrachud	Son of Justice Y.V Chandrachud Former Chief Justice of India	13-05-2016
5.	Hon'ble Mr. Justice L. Nageswara Rao	Junior of Senior Advocate Y. Suryanarayana,	13-05-2016
6.	Hon'ble Mr. Justice Sanjay Kishan Kaul	Great-great-grandfather, Raja Suraj Kishan Kaul, Revenue minister in the Regency council of the princely state of Jammu and Kashmir. His great-grandfather, Sir Daya Kishan Kaul, was a statesman and diplomat who served as the finance minister of Jammu & Kashmir state. His grandfather, Raja Upinder Kishen Kaul, had a	17-02-2017

		distinguished career in public service. Justice Kaul's brother, Justice Neeraj Kishan Kaul, was also a judge of the Delhi High court. Was a batch mate of Justice D.Y.Chandrachud at Delhi University.	
7.	Hon'ble Mr. Justice S. Abdul Nazeer	First Generation Lawyer	17-02-2017
8.	Hon'ble Ms. Justice Indira Banerjee	Junior of Somnath Chatterjee, Former Speaker of Lok Sabha	07-08-2018
9.	Hon'ble Mr. Justice K.M. Joseph	Son of Justice K.K Mathew, Former Judge of the Supreme Court	07-08-2018
10.	Hon'ble Mr. Justice Hemant Gupta	Son of Justice J.D Gupta, former Acting Chief Justice of Punjab and Haryana High Court.	02-11-2018
11.	Hon'ble Mr. Justice Mukeshkumar Rasikbhai Shah	First Generation Lawyer	02-11-2018
12.	Hon'ble Mr. Justice Ajay Rastogi	Son of a prominent Advocate	02-11-2018
13.	Hon'ble Mr. Justice Dinesh Maheshwari	Son of Senior Advocate Ramesh Chandra Maheshwari.	18-01-2019
14.	Hon'ble Mr. Justice Sanjiv Khanna	Son of Justice Dev Raj Khanna Former Judge of Delhi High Court Justice Sanjiv Khanna is also the nephew of Justice H. R Khanna, a former Judge of the Supreme Court of India.	18-01-2019
15.	Hon'ble Mr. Justice Bhushan Ramkrishna Gavai	Son of R.S Gavai Former M.P and Governor of Kerala.	24-05-2019

		Junior of Raja S. Bhosale, Former Advocate General and Judge of a High Court.	
16.	Hon'ble Mr. Justice Surya Kant	First Generation Lawyer	24-05-2019
17.	Hon'ble Mr. Justice Aniruddha Bose	Son of Somnath Bose, a prominent Advocate.	24-05-2019
18.	Hon'ble Mr. Justice Ajjikuttira Somaiah Bopanna	Son of A.N Somaiah, Former Member of Karnataka Legislative Council	24-05-2019
19.	Hon'ble Mr. Justice Krishna Murari	Son of a prominent Advocate and Nephew of Senior Advocate G.N Verma	23-09-2019
20.	Hon'ble Mr. Justice Shripathi Ravindra Bhat	First Generation Lawyer and a batch mate of Justices D.Y Chandrachud, Sanjay Kishan Kaul and Hrishikesh Roy at Delhi University.	23-09-2019
21.	Hon'ble Mr. Justice V. Ramasubramanian	Junior of Senior Advocates K. S Sarvabhauman and T.R. Mani	23-09-2019
22.	Hon'ble Mr. Justice Hrishikesh Roy	Junior of a prominent Senior Advocate Mr. J.P Bhattacharjee and batch mate of Justices D.Y Chandrachud, Sanjay Kishan Kaul and Ravindra Bhat at Delhi University. Incidentally, Justice Hrishikesh Roy, Former Chief of Justice, Justice Gogoi and Former Judge of Supreme Court, Justice, Justice Amitava Roy were Junior of	23-09-2019

		Senior Advocate Late Justice J.P Bhattacharjee	
23.	Hon'ble Mr. Justice Abhay S. Oka	Junior of Justice V.P Tipnis, Former Judge of the Bombay High Court and Former Lokayukta. Justice Oka's Father was also a lawyer in Thane District court.	31.08.2021
24.	Hon'ble Mr. Justice Vikram Nath	Fourth Generation Lawyer.	31.08.2021
25.	Hon'ble Mr. Justice J.K Maheshwari	Son of a Judge.	31.08.2021
26.	Hon'ble Ms. Justice Hima Kohli	Junior of Former Chief Justice of India, Justice Y.K Sabharwal	31.08.2021
27.	Hon'ble Mrs. Justice B.V Nagarathna	Daughter of Former Chief Justice of India, Justice E.S Venkataramiah.	31.08.2021
28.	Hon'ble Mr. Justice C.T Ravikumar	Justice C.T Ravikumar is the brother in law of Former Chief Justice of India, Justice Balakrishnan's younger brother. And also Junior of Former Advocate General of Kerala, M K Damodaran	31.08.2021
29.	Hon'ble Mr. Justice M.M. Sundresh	Son of a Lawyer.	31.08.2021
30.	Hon'ble Ms. Justice Bela M. Trivedi	Daughter of City Civil Court Judge, Justice Trivedi.	31.08.2021
31.	Hon'ble Mr. Justice Pamidighantam Sri Narasimha	Son of Former Judge of Andhra Pradesh High Court, Justice P Kodanda Ramayya	31.08.2021
32.	Hon'ble Mr. Justice Sudhanshu Dhulia	Son of Justice Keshav Chandra Dhulia, Former	09.05.2022

		Judge of Allahabad High Court.	
33.	Hon'ble Mr. Justice J.B Pardiwala	Son of Advocate Burjor Cawasji Pardiwala. His Grandfather and Great Grandfathers were also Lawyers	09.05.2022

SUMMARY

SR. NO.	RELATION OF JUDGES	NUMBER OF JUDGES	PERCENTAGE
1.	Sons, Daughters, Son-in- laws, Nephews, Brother, Brother-in-Laws, Juniors of the Judges of the Supreme Court and High Court.	15	46%
2.	Sons of Senior Advocates	5	15%
3.	Juniors of Advocate General, Lok Sabha Speaker and Senior Advocates	5	15%
4.	First Generation Lawyers	5	15%
5.	Sons and Son-in-Laws of Governor/Member of Parliament.	3	9%
6.	**TOTAL**	**33**	

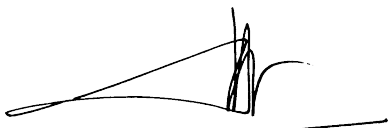
- 15 Judges are Sons, Daughters, Son-in- laws, Nephews, Brother, Brother-in-Laws, Juniors of the Judges of the Supreme Court and High Court.
- 5 Judges are Sons of Senior Advocates.
- 5 Judges are Juniors of Advocate General, Lok Sabha Speaker and
- Senior Advocates
- 5 Judges are First Generation Lawyers.
- 3 Judges are Sons and Son-in-Laws of Governor/Member of
- Parliament.

- Incidentally 4 Judges are batch mates of Justice D.Y Chandrachud. (Campus Law Centre, Delhi University, 1982 batch)

Mathews J Nedumpara
President NLC
9820535428

P.S

Since no official datas are available, the chart has been prepared based on informal sources. Mistakes if any may kindly be pointed out.



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IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

I.A. NO. OF 2022

IN

WRIT PETITION (CIVIL) NO. OF 2022

IN THE MATTER OF:

SHRI MATHEWS J. NEDUMPARA & ORS. PETITIONERS

VERSUS

THE HON'BLE CHIEF JUSTICE OF INDIA AND ORS. RESPONDENTS

APPLICATION FOR PERMISSION TO APPEAR AND ARGUE IN THE ABOVE MENTIONED WRIT PETITION FILED BEFORE THIS HON'BLE COURT AS PARTY IN PERSONS

TO
THE HONOURABLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUSTICES OF THE HONOURABLE SUPREME COURT OF INDIA

HUMBLE PETITION OF THE PETITIONERS IN PERSONS ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the instant Petition is instituted by the Petitioners in Persons for the enforcement of their fundamental and legal rights. The Petitioner Nos. 1 to 6 are practicing advocates, the first Petitioner being in the bar for almost 40 years, and the Petitioner No. 2 for over two decades. Petitioner

No. 7 is an entrepreneur. The Petitioner No.8 is a Chartered Accountant and a woman entrepreneur who has attained great accolades and recognition even at international levels. Petitioner Nos. 7 & 8 having had to knock the doors of the courts for justice and having personal knowledge and experience of the deficiencies of the system, have a genuine and real stake in the instant petition seeking radical reforms in judiciary.

2. That the Petitioners in Person herein have not engaged the services of the an Advocate on Record as the Petitioner is well conversant and can diligently assist the court and the Petitioner in Person herein wishes to pursue the matter as in Person. A true copy of the Aadhar Card bearing No. 2979 5739 1137 of the Petitioner in Person No. 1 is annexed herewith and marked as **ANNEXURE A-1 (PAGES 75).**

A true copy of the Aadhar Card bearing No. 9377 1660 6859 of the Petitioner in Person No. 2 is annexed herewith and marked as **ANNEXURE A-2 (PAGES 76).**

A true copy of the Aadhar Card bearing No. 4607 2081 1026 of the Petitioner in Person No. 3 is annexed herewith and marked as **ANNEXURE A-3 (PAGES 77).**

A true copy of the Aadhar Card bearing No. 8120 9032 1274 of the Petitioner in Person No. 4 is annexed herewith and marked as **ANNEXURE A-4 (PAGES 78).**

A true copy of the Aadhar Card bearing No. 8634 9836 9864 of the Petitioner in Person No. 5 is annexed herewith and marked as **ANNEXURE A-5 (PAGES 79).**

A true copy of the Aadhar Card bearing No. 9325 2738 7697 of the Petitioner in Person No. 6 is annexed herewith and marked as **ANNEXURE A-6 (PAGES 80).**

A true copy of the Aadhar Card bearing No. 8951 0047 9062 of the Petitioner in Person No. 7 is annexed herewith and marked as **ANNEXURE A-7 (PAGES 81).**

A true copy of the Aadhar Card bearing No. 5281 1054 7535 of the Petitioner in Person No. 8 is annexed herewith and marked as **ANNEXURE A-8 (PAGES 82).**

A true copy of the Special Power of Attorney dated 09.11.2022 executed between all the Petitioners herein is annexed herewith and marked as **ANNEXURE A-9 (PAGES 83 TO 86).**

3. That the Petitioners in Person herein are not willing to accept an advocate if appointed by this Hon'ble Court because he himself wants to explain his point of view regarding the above mentioned Writ Petition.

4. That the Petitioners in Person are trying to put forth all the facts, circumstances and observations in the form of this Writ Petition before this Hon'ble Court.

5. That the present application is being made in the interest of justice and no prejudice shall be caused to any party if the present application is allowed.

6. That in light of the above, the balance of convenience lies in favour of the Applicant.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

a) Allow the present Application and permit the Petitioner No. 1 Mathews J. Nedumpara (Party in Person) to appear and argue the above mentioned Writ Petition as Party in Person before this Hon'ble Court for self and on behalf of the all the Petitioners being the Special Power of Attorney Holder; and

b) Pass such other order or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR WHICH ACT OF KINDNESS THE PETITIONERS IN PERSON SHALL AS IN DUTY BOUND EVER PRAY.

Filed by:

MATHEWS J. NEDUMPARA
PETITIONER IN PERSON NO. 1
9820535428

Place: New Delhi
Dated: 07.11.2022

ANNEXURE A-1

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ANNEXURE A-2


भारत सरकार
Government of India
रोहिणी मोहित अमीन
Rohini Mohit Amin
जन्म तारीख / DOB : 16/02/1974
स्त्री / Female
9377 1660 6859
आधार - सामान्य माणसाचा अधिकार


आधार
भारतीय विशिष्ट ओळख प्राधिकरण
Unique Identification Authority of India
पत्ता W/O: मोहित अमीन, बी / 705, निर्माण अपार्टमेंट्स, आर.जे. मार्ग, पुंजब राष्ट्रीय बँक, अंधेरी (ईस्ट), मुंबई, चाकाला एमआयडीसी, महाराष्ट्र, 400093
Address: W/O: Mohit Amin, B / 705, Nirman Apartments, R.J. Marg, Punjab National Bank, Andheri (East), Mumbai, Chakala Midc, Maharashtra, 400093
9377 1660 6859
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1800 300 1947
help@uidai.gov.in
www
www.uidai.gov.in

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ANNEXURE A-3

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ANNEXURE A-4


भारत सरकार

आधार

भारतीय विशिष्ट ओळख प्राधिकरण

भारत सरकार

Unique Identification Authority of India

Government of India

नोंदणी क्रमांक : Enrolment No.: 1218/17748/89469

To,

Rajesh Vishnu Adrekar

राजेश विष्णू आड्रेकर

06/11/2011

B/ 23, EKSAR NEELKAMAL CHS LTD, EKSAR ROAD D.D
BORGE MARG, NEXT TO MEGHDOOT SOCIETY
BORIVALI WEST Borivali West Mumbai
Maharashtra 400092
Mobile:8082006475

UC 08009781 9 IN

Ref No.:4I2B3E9X-8009781

आपला आधार क्रमांक / Your Aadhaar No. :

8120 9032 1274

आधार — सामान्य माणसाचा अधिकार

भारत सरकार

GOVERNMENT OF INDIA

राजेश विष्णू आड्रेकर

Rajesh Vishnu Adrekar

जन्म वर्ष / Year of Birth : 1970

पुरुष / Male

8120 9032 1274

आधार — सामान्य माणसाचा अधिकार

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ANNEXURE A-5

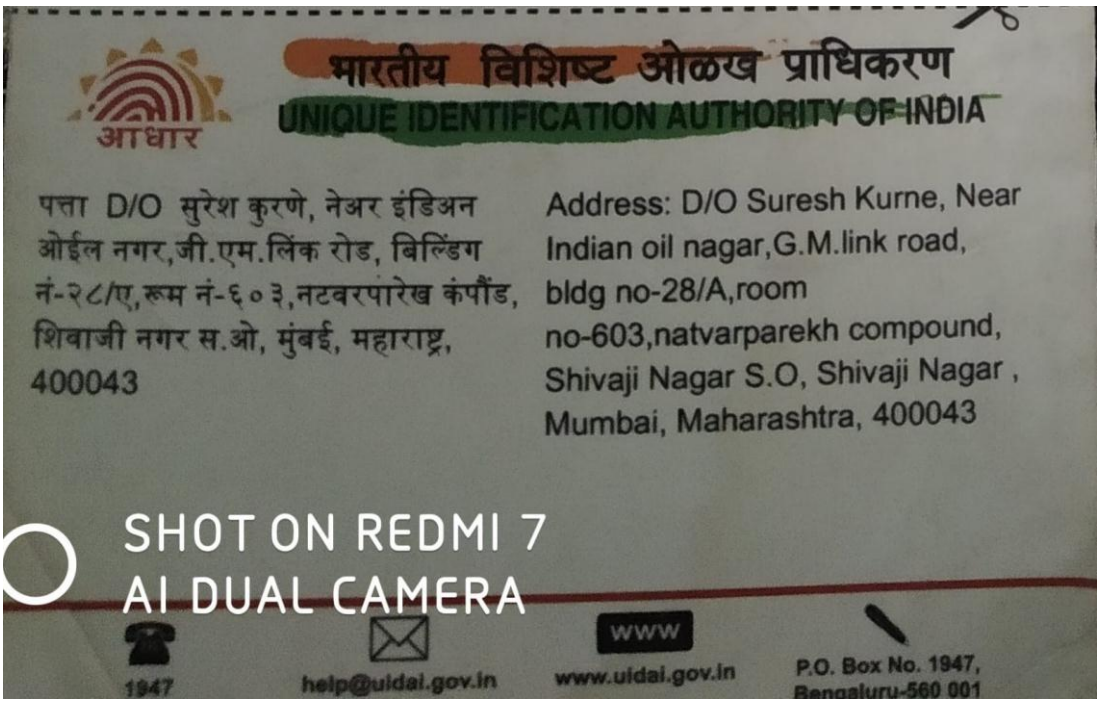

भारत सरकार
GOVERNMENT OF INDIA

हेमाली सुरेश कुरणे
Hemali Suresh Kurne

जन्म वर्ष / Year of Birth : 1985
स्त्री / Female

8634 9836 9864

आधार


आधार
भारतीय विशिष्ट ओळख प्राधिकरण
UNIQUE IDENTIFICATION AUTHORITY OF INDIA

पत्ता D/O सुरेश कुरणे, नेअर इंडिअन ओईल नगर,जी.एम.लिंक रोड, बिल्डिंग नं-२८/ए,रूम नं-६०३,नटवरपारेख कंपौंड, शिवाजी नगर स.ओ, मुंबई, महाराष्ट्र, 400043

Address: D/O Suresh Kurne, Near Indian oil nagar,G.M.link road, bldg no-28/A,room no-603,natvarparekh compound, Shivaji Nagar S.O, Shivaji Nagar , Mumbai, Maharashtra, 400043

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ANNEXURE A-6

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ANNEXURE A-7

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ANNEXURE P-8

सत्यमेव जयते
भारत सरकार

आधार

भारत सरकार
Government of India

भारतीय विशिष्ट ओळख प्राधिकरण
Unique Identification Authority of India

नोंदणी क्रमांकः/ Enrolment No.: 0013/37005/11981

Download Date: 26/10/2021

Issue Date: 04/10/2021

To
मनीषा निमेश मेहता
Manisha Nimesh Mehta
C/O: Nimesh Mehta
Flat No 1905, 19th Floor , Rosella, Bldg No 148
.
Pant Nagar Ghatkopar East
.
Mumbai
Pant Nagar
Mumbai Suburban Maharashtra - 400075
9821931014

आपला आधार क्रमांक / Your Aadhaar No. :

5281 0154 7535

VID : 9107 3549 2423 4652

माझे आधार, माझी ओळख

सत्यमेव जयते
Government of India

AADHAAR

माहिती

- आधार ओळखीचा पुरावा आहे नागरिकत्वाचा नाही
- सुरक्षित QR कोड / ऑफलाइन XML / ऑनलाइन प्रमाणीकरण वापरून ओळख सत्यापित करा.
- हे इलेक्ट्रॉनिक प्रक्रिये द्वारा तयार झालेले एक पत्र आहे.

INFORMATION

- **Aadhaar** is a proof of identity, not of citizenship.
- Verify identity using Secure QR Code/ Offline XML/ Online Authentication.
- This is electronically generated letter.

- आधार देशभरात वैध आहे
- आधार आपल्याला विविध सरकारी आणि खाजगी सेवा सुलभतेने घेण्यास मदत करते
- आपला मोबाइल नंबर आणि ईमेल आयडी आधारमध्ये अदयावत ठेवा
- आपल्या स्मार्ट फोनमध्ये आधार घ्या - **mAadhaar App** वापरा

- **Aadhaar** is valid throughout the country.
- **Aadhaar** helps you avail various Government and non-Government services easily.
- Keep your mobile number & email ID updated in **Aadhaar**.
- Carry Aadhaar in your smart phone – use **mAadhaar** App.

भारत सरकार
Government of India

आधार

Download Date: 26/10/2021

मनीषा निमेश मेहता
Manisha Nimesh Mehta
जन्म तारीख/DOB: 22/12/1968
महिला/ FEMALE

Issue Date: 04/10/2021

5281 0154 7535

VID : 9107 3549 2423 4652

माझे आधार, माझी ओळख

भारतीय विशिष्ट ओळख प्राधिकरण
Unique Identification Authority of India

AADHAAR

पत्ता:
मार्फत: निमेश मेहता, फ्लॅट नं 1905, 19 फ्लोर , रोज़ेला बीएलडीजी नं 148, ., ., पंत नगर घाटकोपर ईस्ट, मुंबई, मुंबई उपनगर, महाराष्ट्र - 400075

Address:
C/O: Nimesh Mehta, Flat No 1905, 19th Floor , Rosella, Bldg No 148, ., ., Pant Nagar Ghatkopar East, Mumbai, Mumbai Suburban, Maharashtra - 400075

5281 0154 7535

VID : 9107 3549 2423 4652

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ANNEXURE A-9

भारतीय गैर न्यायिक

एक सौ रुपये

Rs. 100

रु. 100

ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

NOTARY M. M. PABALE Mumbai Maharashtra Reg. No. 15220 Expiry Dt. 30-10-2024 GOVT. OF INDIA

महाराष्ट्र MAHARASHTRA ◑ 2022 ◑ 29AA 557806

प्रधान मुद्रांक कार्यालय, मुंबई
प.न.वि.क. ८०००९०
1 NOV 2022
सक्षम अधिकारी

श्री. पंकज सिंघारे

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (Diary) NO. 35794 OF 2022
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)
IN THE MATTER OF:

SHRI MATHEWS J. NEDUMPARA & ORS. ...PETITIONERS

VERSUS

THE HON"BLE CHIEF JUSTICE OF INDIA AND ORS. ...RESPONDENTS

AUTHORISATION / POWER OF ATTORNEY

We,

1. Mathews J. Nedumpara, Advocate, 101, 1st Floor, Gundecha Chamber, Nagindas Road, Fort Mumbai-400001
2. Rohini M. Amin, Advocate, B-705, Nirman Apartments, R.J, Marg, Pump House, Andheri East, Mumbai- 400009

जोडपत्र - २ Annexure - II

दस्ताचा प्रकार	POWER OF ATTORNEY
दस्त नोंदणी करण्यास असेल का ?	YES/NO
मिळकतीचे वर्णन -	
मुद्रांक विकत घेणाऱ्याचे नाव	Mathews Nedumpara M
दुसऱ्या पक्षकाराचे नाव	Hemali Rane
इतर असल्यास त्याचे नाव व पत्ता	Saiman.
मुद्रांक शुल्क रक्कम	
मुद्रांक विक्री बॉंड याचा अनुक्रमांक/दिनांक	8891
मुद्रांक विकत घेणाऱ्याची सही	
मुद्रांक विक्रेत्याची सही	

परवाना क्रमांक : ८०००९०
मुद्रांक विक्रिचे नाव/पत्ता : श्री. कल्पेश प्रेमजी गाला
शॉप नं.४, भाग्योदय बिल्डींग, ७१ नरसिकलाल मास्टर रोड,फोर्ट, मुंबई-४०० ००१
ज्या कारणासाठी ज्यांनी मुद्रांक खरेदी केला [illegible]
मुद्रांक खरेदी केल्यापासून ६ महिन्यात वापरणे बंधनकारक आहे

- 9 NOV 2022

- 9 NOV 2022

NOTARY GOVT. OF INDIA

3. **Maria Nedumpara,** Advocate, 12-F, Harbour Heights, Narayan A Sawant Rd, Azad Nagar, Colaba, Mumbai -400005
4. **Rajesh Adrekar,** Advocate, 401, D-14, Yogi Vardhan CHS, Yogi Nagar Road, Yogi Nagar, Borivili West, Mumbai-400092,
5. **Sharad Koli,** Advocate, 68-1/1, Golphadevi Colony, Worli Village, Mumbai-400030,
6. **Karan Kaushik,** 3, Nugget, 18th Road, Khar West, Mumbai-400052,
7. **Manisha Mehta**, Chartered Accountant, 1905, Rosella, Pant Nagar, Ghatkopar, Mumbai-400075,

the Petitioners in the Writ Petition instituted as party in person, authorise Petitioner no. 5 among us, Adv. Hemali Kurne , residing at 28 A Wing, Shubhshagun Building, Rishikesh Co-op HSG , Sector 34, Mansarovar , Navi Mumbai - 410 209, to file the petition via e-filing.

We, the Petitioners, understand that an express authorisation/Power of Attorney in writing is mandatory where a petition is instituted online by more than one person as co-petitioners. The instant Power of Attorney/Authorisation is only for that specific purpose.

We also authorise Shri. Mathews J Nedumpara, the 1st Petitioner to appear and argue on behalf of all the Petitioners.

NOTARY MUMBAI Maharashtra GOVT. OF INDIA

EXECUTANTS

1. SHRI MATHEWS J. NEDUMPARA — PETITIONER NO. 1
2. ROHINI AMIN — PETITIONER NO. 2
3. MARIA NEDUMPARA — PTITIONER NO. 3
4. RAJESH ADREKAR — PETITIONER NO. 4

5. SHARAD V. KOLI — PETITIONER NO. 6

7. KARAN KAUSHIK — PETITIONER NO. 7

8. MANISHA MEHTA — PETITIONER NO. 8

ATTORNEY FOR THE EXECUTANTS

I am grateful to my co-petitoners in their authorising me to appear on their behalf as well and accept to do so

WITNESS

1. Shameem Fayiz
2. Neha Mishra.

Place :Mumbai

Date :09thday of November 2022.

NOTED & REGISTERED
Page No. 59145 Sr. No. 628
Date 12 NOV 2022

Mahendra J. Nadumpara
98205 35428

BEFORE ME

MANISH M. PABALE
B.Sc. LL.M.
ADVOCATE & NOTARY (GOVT. OF INDIA)
04, Natwar Chambers,
94 Nagindas Master Road,
Fort, Mumbai - 400 001.

//True Copy//

MATHEWS J. NEDUMPARA **86-A**
Advocate
101, Gundecha Chambers, Nagindas Master Rd, Kala Ghoda, Fort, Mumbai, Maharashtra 400001
E-mail: mathewsjnedumpara@gmail.com Mob:9820535428

MOST URGENT

11.11.2022

To,
The Registrar,
Supreme Court of India,
New Delhi.

Sir,

Sub: Mathews J. Nedumpara v. The Hon'ble the Chief Justice of IndiaW.P (diary) no. 35794 of 2022- Explanation for the defects notified by the Registry at Serial nos. 4 and 5 – reg.

1. The Registry of the Supreme Court has notified 6 defects of which, except for Nos. 4 and 5, have been cured/rectified.

2. **Defect no. 4**

Defect no. 4 is *"In Person to clarify the maintainability of prayer G, H and I in view of the subject of the instant petition".*

4.1. **Explanation with regard to Prayer "G"-**In jurisprudence, a judicial enquiry falls into two categories: (a) concerning the jurisdiction of the Court and (b) the merits of the actual controversy. So far as jurisprudence is concerned, there are two kinds of issues, "issues going to the jurisdiction" to borrow an expression of Lord Reid in Anisminic v. Foreign Compensation Commission, (1969) 2 AC 147, and "issues within the jurisdiction"."Jurisdiction is a verbal coat of many colours" said Justice K.K. Mathew. A suit or proceedings may be barred by cause of action estoppel, nay, res judicata. A suit or proceedings may be barred by limitation/delay, or may be barred by monetary or territorial limits. These questions of jurisdiction are called substantive and adjectival, respectively. So far as the Petitioner/litigants are concerned, the right to institute a petition under Article 32 in itself is considered to be a fundamental right. A court considering a petition under Article 32, as is

the case of a Civil Court, is duty bound to adjudicate all questions concerning jurisdiction, whether substantive or adjectival.

4.2. Since the Registry has not given any indication as to what is on its mind as to the nature of the objection, to repeat, I am forced to make a wild guess. The only thing that comes to my mind is whether the Registry assumes "prayers G, H and I" to be barred by the doctrine of res judicata/estoppel. Assuming that is the case, the Petitioners assert prayers are not barred by res judicata.

4.3. The core of the doctrine of res judicata is the adjudication of a lis on its merits, affording the parties concerned a full opportunity to be heard adhering to the natural justice, to adduce evidence and argue their case. If there is no decision on the merits, the doctrine of res judicata has no application at all. The petitions preferred by Petitioner nos. 1 and 2 seeking a declaration that the NJAC judgment is void/review of the same was dismissed, in chambers, without hearing the Petitioners, by way of cyclostyle, brief, cryptic order. There is absolutely no bar of the instant petition by virtue of the doctrine of res judicata. To repeat, in the earlier proceedings nothing was decided on its merits, nor were the Petitioners even heard.

4.4. **Explanation with regard to Prayer "H"-**The objection that prayer "H"is not maintainable is wholly unfounded. Prayer "H" is for a declaration that the rule that a curative petition is maintainable only upon being supported by a certificate of a Senior Advocate is violative of Article 14. The said rule has resulted in denial of the fundamental right of the Petitioners to file a curative petition aggrieved by the dismissal of their review petition.

4.5. **Explanation with regard to Prayer "I"-**The explanation offered above for prayer "G" equally apply for the objections concerning prayer "I". To repeat, had the Supreme. Court heard the petition seeking review of the

NJAC preferred by Petitioner nos. 1 and 2 and rejected the same offering reasons, then, probably, the doctrine of res judicata would have applied. The Court did not hear Petitioner nos. 1 and 2 or record their arguments on the merits of the NJAC issue. The Petitioners, therefore, are not barred by the doctrine of res judicata/estoppel.

4.6. Though I have given a separate explanation for each prayer, it was not necessary at all. Whether a declaration ought to be sought or not is the province of the petitioner/plaintiff, and whether to grant it or not is in the province of the Court. The Registry has no role whatsoever with regard to pure questions of law.

4.7. As aforesaid, at any rate, these issues are substantial questions of pure jurisprudence, which the all respect to the officers of the Registry, the humble Petitioners submit to be beyond the scope of scrutiny of the Registry.

3. **<u>Defect no. 5</u>**

Defect no. 5 is *"in Person to further clarify regarding Respondent no. 5 to 14 as to whether they are necessary parties as clarification at Para 6 Page 8 of the petition is incomplete".*

5.1. The NJAC case was about the constitutionality of the Constitution 99th (Amendment) Act and the NJAC Act. he said Acts were passed by the Parliament unanimously. It was the will of the people. No Court or authority has power to undo it. But the SCAORA got it quashed behind the backs of the people of this country. They did not bring on the party array any of the political parties, not to speak of even the ruling BJP and the Congress, the principal opposition party. Not a single Member of Parliament was on the party array, the SCAORA played a fraud on the people by obtaining a judgment behind the back of the people of this country. If SCAORA's petition was assumed to be maintainable, then the principles applicable to a representative suit/class action ought to have been followed. A few lawyers were able to get the NJAC Act quashed

because they were powerful. The petitioner/plaintiff is the dominus litus. He/she is the master of the proceedings. It is for him/her to decide who is to be on the party array. If he/she fails to bring the necessary parties on the party array, his/her petition/proceedings is rendered void ab initio. The Registry has no objection that the Petitioners have failed to bring on the party array all the necessary parties. On the contrary, it has objected to the Petitioners bringing the State Governments and the major political parties on the party array. If at all the Petitioner can be faulted, it could only be for not bringing in all the State Governments on the party array. The Petitioner has craved the leave of the Hon'ble Court to do so in due course. The objection of the Registry on this count is, therefore, misconceived.

4. This explanation, the Petitioners, in all humility, hope would satisfy the Registry and that the petition will be numbered in no delay.

With kind regards,

Yours Sincerely,

MATHEWS J. NEDUMPARA
9820535428
mathewsjnedumpara@gmail.com

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (CIVIL) NO. OF 2022
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IN THE MATTER OF:

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VERSUS

THE HON'BLE CHIEF JUSTICE OF INDIA AND ORS. RESPONDENTS

MEMO OF APPEARANCE

To,

The Registrar,
Supreme Court of India,
New Delhi.

Sir,

Please enter my appearance for the above named Petitioners in Persons in the above mentioned Writ Petition.

Yours faithfully

Mathews J. Nedumpara
Advocate
Petitioner in Person No. 1
101, 1st Floor, Gundecha, Chamber,
Nagindas Road,
Fort, Mumbai-400001,
Maharashtra
E-Mail: mathewsjnedumpara@gmail.com
Mob. No. 9820535428

Dated: 07.11.2022
Place: New Delhi

IN THE SUPREME COURT OF INDIA

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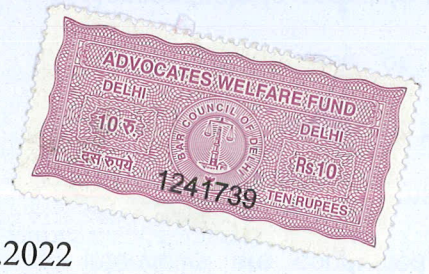

Yours faithfully

RM Amin

Rohini Mohit Amin
Advocate
Petitioner in Person No. 2
B-705, Nirman Apartment,
R.J. Marg, Pump House,
Andheri East, Mumbai,
Maharashtra-400009
E-Mail: advrohiniamin@gmail.com
Mob. No. 9920477447

Dated: 07.11.2022
Place: New Delhi

IN THE SUPREME COURT OF INDIA

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MEMO OF APPEARANCE

To,

The Registrar,
Supreme Court of India,
New Delhi.

Sir,

Please enter my appearance for the above named Petitioners in Persons in the above mentioned Writ Petition.

Yours faithfully

Maria Nedumpara
Advocate
Petitioner in Person No. 3
12-F, Harbour Heights,
Colaba Causeway,
Mumbai, Maharashtra-440005.
E-Mail: marianedumpara@gmail.com
Mob. No. 9447165650

Dated: 07.11.2022
Place: New Delhi

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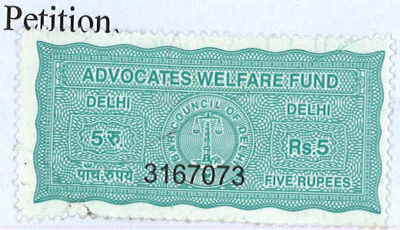

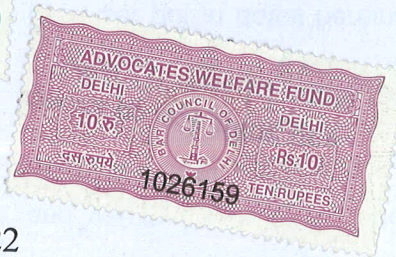

Yours faithfully

Rajesh Vishnu Adrekar
Advocate
Petitioner in Person No. 4
401, D-14, Yogi Vardhan CHS,
Yogi Nagar Road, Borivili West,
Mumbai, Maharashtra-400092.
E-Mail: rajeshadrekar@gmail.com
Mob. No. 8082006475

Dated: 07.11.2022
Place: New Delhi

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MEMO OF APPEARANCE

To,

The Registrar,
Supreme Court of India,
New Delhi.

Sir,

Please enter my appearance for the above named Petitioners in Persons in the above mentioned Writ Petition.

Yours faithfully

Hemali Suresh Kurne
Advocate
Petitioner in Person No. 5
28-A Wing, Shubh Shagun Building,
Rishhikesh CHS Ltd., Sector-34,
Mansarovar, Navi Mumbai-410209,
Maharashtra
E-Mail: kurnehemali@gmail.com
Mob. No. 9967969256

Dated: 07.11.2022
Place: New Delhi

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MEMO OF APPEARANCE

To,

The Registrar,
Supreme Court of India,
New Delhi.

Sir,

Please enter my appearance for the above named Petitioners in Persons in the above mentioned Writ Petition.

Yours faithfully

Sharad Vasudeo Koli
Advocate
Petitioner in Person No. 6
68-1/1, Golphadevi Colony,
Worli Village, Mumbai,
Maharashtra-400030
E-Mail: sharad.koli@gmail.com
Mob. No. 9870464547

Dated: 07.11.2022
Place: New Delhi

IN THE SUPREME COURT OF INDIA

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MEMO OF APPEARANCE

To,

The Registrar,
Supreme Court of India,
New Delhi.

Sir,

Please enter my appearance for the above named Petitioners in Persons in the above mentioned Writ Petition.

Yours faithfully

Karan Kaushik
Petitioner in Person No. 7
3, Nugget, 18th
68-1/1, Golphadevi Colony,
Worli Village, Mumbai,
Maharashtra-400052
E-Mail: karankaushik999@gmail.com
Mob. No. 9967026663

Dated: 07.11.2022
Place: New Delhi

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The Registrar,
Supreme Court of India,
New Delhi.

Sir,

Please enter my appearance for the above named Petitioners in Persons in the above mentioned Writ Petition.

Yours faithfully

Manisha Nimesh Mehta
Petitioner in Person No. 8
1905, Rosella, Pant Nagar,
Ghatkopar, Mumbai-700075,
Maharashtra
E-Mail: mm@perfectinfra.com
Mob. No. 9821931014

Dated: 07.11.2022
Place: New Delhi

SECTION

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

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INDEX

Sl. No.	Description	Copies	C. Fee
1	Listing Proforma	1+3	
2	Synopsis & List of Dates	1+3	
3	Writ Petition with affidavit	1+3	
4	Annexures P-1 to P-5	1+3	
5	**I.A. NO. OF 2022** Application for permission to appear and argue the above mentioned Writ Petition filed before this Hon'ble Court as party in Person.	1+3	
6	Annexure A-1 to A-8	1+3	
7	Memo of Appearances		
	Total Rs.		

Filed by:

Mathews J. Nedumpara
Petitioner In Person No.1,
101, 1st Floor, Gundecha Chambers, Nagindas Master Road, Fort, Mumbai-400001, Maharashtra
Mob. No. 9820535428
E-Mail: mathewsjnedumpara@gmail.com

Dated: 07.11.2022
Place: New Delhi