

## **SYNOPSIS**

Petitioner is filing the instant petition under the Article 32, seeking a writ in the nature of declaration, that the sentence under the Special Laws relating to corruption, separatism and terrorism; viz. the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988, the Prohibition of Benami Property Transactions Act, 1988, the Prevention of Money Laundering Act, 2002, the Foreign Contribution (Regulation) Act, 2010, the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, the Fugitive Economic Offenders Act, 2018, etc.; shall be Consecutive.

On 30.04.2016, Justice Arijit Pasayat (Vice-Chairman, SIT-Black Money) called for a more stringent Prevention of Money Laundering Act (PMLA) with increased jail term. He was of the opinion that the 3-7 years sentence prescribed under the PMLA is too less. Justice Pasayat cited the example of United States where such offenders are sentenced for up to 150 years. Justice Pasayat said: "*How I wish we had such sentencing here. Those stealing one rupee and those laundering Rs 300 crores are given the same sentence here,*" Justice Pasayat said: "*While murder and attempt to murder are predicate offences, tax offences are still not included in the category. If you are evading massive amount of tax, that is murder of the economy which will eventually impact people,*"

Cash transactions are the root cause of many evils like corruption, black marketing, smuggling, drug trafficking, tax evasion and many more. Money Laundering is being employed by launderers worldwide to conceal criminal activity associated with it such as drug/arms trafficking, terrorism and extortion. Money Laundering is not an independent crime

and depends upon a predicate offence, the proceeds of which are the subject matter of the crime in money laundering. Corruption is an insidious plague that has wide range of corrosive effects on our country. It undermines democracy and rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows terrorism, naxalism, smuggling, money laundering and extortion and other threats to human security, to flourish.

Corruption hurts the poor disproportionately by diverting funds intended for development, undermining government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign aid and investment. It is a key element in economic underperformance and major obstacle to poverty alleviation and development. The most important fundamental right- Right to Life-guaranteed under Article 21 cannot be secured to all citizens and the great golden goals as set out in the Preamble cannot be achieved without curbing the corruption and black money generation. Hence, it is duty of the State to take steps to curb the corruption and black money generation and give a strong message that Government is determined to fight against corruption and black money generation. Executive action should be taken to warn the corrupt that betrayal of the public trust will no longer be tolerated.

Cash transaction is used in terrorism, naxalism, separatism, smuggling, money laundering, kidnapping, extortion, bribing and dowry. It inflates price of crucial commodities as well as major assets like real estate, gold etc. Corruption can be curbed up to great extent by recalling currency above Rs. 100, restricting cash transaction above Rs. 10,000/- and linking fixed and movable properties documents with AADHAAR.

India cannot move forward without clean and transparent governance, for which corruption-free society is a basic requirement. There is no country in top 50 of the Human Development Index, which has a significant amount of corruption and money laundering. There is correlation between Welfare State with apposite attention to education and public health, and absence of corruption and money laundering so it is obligation of the State to take steps to curb black money generation

Berlin-based corruption watchdog Transparency International has placed India at rank 79 in Corruption Perception Index 2018. We are ranked 66<sup>th</sup> in 1998, 72<sup>nd</sup> in 1999, 69<sup>th</sup> in 2000, 71<sup>st</sup> in 2001 and 2002, 83<sup>rd</sup> in 2003, 90<sup>th</sup> in 2004, 88<sup>th</sup> in 2005, 70<sup>th</sup> in 2006, 72<sup>nd</sup> in 2007, 85<sup>th</sup> in 2008, 84<sup>th</sup> in 2009, 87<sup>th</sup> in 2010, 95<sup>th</sup> in 2011, 94<sup>th</sup> in 2012, 87<sup>th</sup> in 2013, 85<sup>th</sup> in 2014, 76<sup>th</sup> in 2015, 79<sup>th</sup> in 2016 and 81<sup>st</sup> in 2017. Hence, it is proved that ground level corruption is as it is. Corruption is the root cause of pitiable condition of our International Ranking. We are ranked 103 in the Global Hunger Index, 43 in Suicide Rate, 168 in Literacy Rate, 133 in World Happiness Index, 125 in Gender Discrimination, 124 in Minimum Pay, 42 in Employment Rate, 66 in Rule of Law Index, 43 in Quality of Life Index, 51 in Financial Development Index, 177 in Environment Performance Index, 13 in GDP Per Capita.

Corruption disrupts public distribution system. It is inimical to the fostering of excellence and has adverse impact on EWS and BPL families. 50% population is in distress, leading a hand-to-mouth existence, large segments not knowing where next meal is coming, with abominable health standards and primary education levels. Much of this malaise is traceable to widespread corruption and existence of black money.

The bomb blasts and terrorist attack in many cities like Jaipur, Ahmedabad, Bangalore, Mumbai, Pune and the recent attack in Pulwama on 14.2.2019 confirms that Terrorism has grown to a great extent in last two decades. The terrorist attack have outraged every patriotic Indian. No civilized nation can allow this kind of barbaric inhumanity to be even partly supported or sponsored by any neighbor/domestic insurgents. Prevention is crucial; and laws like POTA can prevent such occurrences. This is the only way we can minimize it, if not eliminate.

India is facing multifarious challenges in the management of its internal security. There is an upsurge of terrorist activities, intensification of cross border terrorist activities and insurgent groups in different parts of the country. Terrorism has now acquired global dimensions and has become a challenge for the whole world. The reach and methods adopted by terrorist groups and organizations take advantage of modern means of communication and technology using high tech facilities available in the form of communication system, transport, sophisticated arms and various other means. This has enabled them to strike and create terror among people at will. The criminal justice system of India like Indian Penal Code and Criminal Procedure Code was not designed to deal with such type of crimes. In view of this situation it was felt necessary to make special anti-terror laws for giving rigorous punishment for these enmity of the humanity. India needs a stringent law to end terrorist activities. Earlier Kashmir Punjab and North East States were affected but currently scope has been increase. Around 250 districts are afflicted from terrorism and there are around 400 separatist organizations operating in the country.

The Preamble is not a mere flourish of words, but is an ideal setup for practices and observances as a matter of law through Constitutional mechanism. The purpose of Preamble is to clarify who has made the Constitution, what is its source, what is the ultimate sanction behind it; what is the nature of polity, which is sought to be established by the Constitution and what are its goals and objectives. The Preamble acknowledges, recognizes and proclaims that the Constitution emanates from the 'People of India' and not from any external or lesser source and meant for the 'Welfare of the People'.

In catena of decisions, this Hon'ble Court has reiterated that corruption is menace of our social and economic development. [*State of MP v. Ram Singh (2000) 5 SCC 88; State of AP v. V Vasudeva Rao (2004) 9 SCC 319; Subramanian Swamy v. Manmohan Singh (2012) 3 SCC 64; State of Gujarat v. R. A. Mehta (2013) 3 SCC 1*] This Hon'ble Court has observed that there is no sentencing principle in India [*State of Punjab v. Prem Sagar (2008) 7 SCC 550; Soman v. State of Kerala (2013) 11 SCC 382*]

India doesn't have a policy of consecutive and concurrent sentence and this Hon'ble Court has indicated the need of consecutive sentence in three decisions. [*Mohammad Akhtar Hussain v. Assistant Collector of Customs (1988) 4 SCC 183; O. M. Cherian v. State of Kerala (2015) 2 SCC 501; Muthu Ramalingam v. State (2016) 8 SCC 313*]

This Hon'ble Court has observed about sentencing principle of proportionality thrice. [*Om Prakash v. State of Haryana (1999) 3 SCC 19; Jai Kumar v. State of MP (1999) 5 SCC 1; Alister Anthony Pareira v. State of Maharashtra (2012) 2 SCC 648*] However, the successive government failed to take appropriate steps in this regard.

In the Nirbhaya Case [Mukesh v. State of NCT of Delhi, Criminal Appeal 607-608 of 2017], the 3 Judges Bench of this Hon'ble Court has very categorically observed that the society is crying for justice:

*"144. Society's reasonable expectation is that deterrent punishment commensurate with the gravity of the offence be awarded. When the crime is brutal, shocking the collective conscience of the community, sympathy in any form would be misplaced and it would shake the confidence of public in the administration of criminal justice system. As held in Om Prakash v. State of Haryana (1999) 3 SCC 19, the Court must respond to the cry of the society and to settle what would be a deterrent punishment for what was an apparently abominable crime.*

*145. Bearing in mind the above principles governing the sentencing policy, I have considered all aggravating and mitigating circumstances in the present case. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the crime. Justice demands that the courts should impose punishments befitting the crime so that it reflects public abhorrence of the crime. Crimes like the one before us cannot be looked with magnanimity. Factors like young age of the accused and poor background cannot be said to be mitigating circumstances. Likewise, post-crime remorse and post-crime good conduct of the accused, the statement of the accused as to their background and family circumstances, age, absence of criminal antecedents and their good conduct in prison, in my view, cannot be taken as mitigating circumstances to take the case out of the category of "rarest of rare cases". The circumstances stated by the accused in their affidavits are too slender to be treated as mitigating circumstances."*

In Subramanian Swamy v. Manmohan Singh, [(2012) 3 SCC 64], this Hon'ble Court categorically observed about menace of corruption:

*"Corruption not only poses a grave danger to concept of constitutional governance, it also threatens the very foundation of the democracy and the Rule of Law. The magnitude of corruption in public life is incompatible with concept of the Socialist, Secular and Democratic Republic. Where corruption begins all rights end. Corruption devalues human rights, chokes development, and undermines justice, liberty, equality and fraternity, which are the values in Indian Preambular vision..."*

In State of Gujarat v R.A. Mehta, [(2013) 3 SCC 1], the Court held:

*"Corruption threatens constitutional governance and shakes foundation of democracy and rule of law. Corruption is opposed to democracy and social order as being not only anti-people, but also due to the fact, that it affects the economy of a country and destroys its cultural heritage. It threatens security of society, undermines ethical value and justice and jeopardizes sustainable development. It devalues human rights, chokes development and corrodes the moral fabric of society. It causes considerable damage to the national economy, national interest and image of the country. The very object, the noble and grand vision of the Preamble will be defeated if corruption is not curbed immediately".*

The Court in *Kartar Singh v. State of Punjab [1994] 3 SCC 569*, held that country has been in firm grip of spiraling terrorist violence and is caught between deadly pangs of disruptive activities. Lord Denning said: "*freedom of individual must take second place to the security of the State.* International community cannot fault India if it chose to enact tough measures to deal with menace of corruption and terrorism.

**LIST OF DATES**

- 30.04.2016: Hon'ble Justice Arijit Pasayat (Vice-Chairman, SIT Black Money) called for more stringent the PMLA.
- 11.05.2018: Petitioner filed a petition [WP(C) 418/2018] seeking a declaration that sentence under the Special Laws relating to corruption separatism and terrorism; shall be consecutive. But, withdrew it.
- 15.5.2018: Petitioner submitted a detailed representation to the Hon'ble Prime Minister of India and requested him to take appropriate steps to increase the sentence under special laws relating to corruption separatism and terrorism but did not receive any response till date
- 20.02.2018: The Special Laws relating to corruption separatism and terrorism - the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988, the Prohibition of Benami Property Transactions Act, 1988, the Prevention of Money Laundering Act, 2002, the Foreign Contribution (Regulation) Act, 2010, the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015, the Fugitive Economic Offenders Act, 2018 and similar other laws are made with definitive legislative purpose. Therefore, this Hon'ble Court may declare that Section 31, Cr.P.C., which provides concurrent sentence, shall not be applicable to these Special Laws. Hence, petitioner is filing the instant petition in larger public interest.

**IN THE SUPREME COURT OF INDIA**  
**CIVIL ORIGINAL JURISDICTION**  
**WRIT PETITION (CIVIL) NO ..... OF 2019**  
**(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)**

**IN THE MATTER OF:**

Ashwini Kumar Upadhyay  
S/o Sh. Suresh Chandra Upadhyay  
Office: 15, M.C. Setalvad Chambers Block  
Supreme Court of India, New Delhi-110001  
Residence: G-284, Govindpuram, Ghaziabad ...Petitioner

## Verses

1. Union of India  
Through the Secretary,  
Ministry of Law and Justice,  
Shashtri Bhawan, New Delhi-110001
  2. Union of India  
Through the Secretary,  
Ministry of Finance,  
North Block, New Delhi-110001
  3. Law Commission of India  
Through the Chairman,  
4<sup>th</sup> Floor, B-Wing, Loknayak Bhawan,  
Khan Market, New Delhi-110003

**PIL SEEKING DECLARATION THAT SENTENCE UNDER SPECIAL LAW RELATING  
TO CORRUPTION, SEPERATISM AND TERRORISM SHALL BE CONSECUTIVE;  
To,**

THE HON'BLE CHIEF JUSTICE OF INDIA  
AND LORDSHIP'S COMPANION JUSTICES  
OF THE HON'BLE SUPREME COURT OF INDIA  
HUMBLE PETITION OF ABOVE-NAMED PETITIONER  
THE MOST RESPECTFULLY SHOWETH AS THE UNDER:

1. Petitioner is filing the instant petition under the Article 32, seeking a writ in the nature of declaration, that the sentence under the Special Laws relating to Corruption, Separatism and Terrorism viz. the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988, the Prohibition of Benami Property Transactions Act, 1988, the Prevention of Money Laundering Act, 2002, the Foreign Contribution (Regulation) Act, 2010, the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, the Fugitive Economic Offenders Act, 2018, etc.; shall be consecutive not concurrent.

**2.** Petitioner has not filed any other petition either in this Hon'ble Court or in other Court seeking same/similar directions except WP(C) 418/2018.

The Order dated 11.5.2018 is Annexed as Annexure P-1(Page 27)

**3.** Petitioner's full name is Ashwini Kumar Upadhyay. Residential address is: G-284, Govindpuram, Ghaziabad-201013, U.P. Ph: 08800278866, aku.adv@gmail.com, PAN: AAVPU7330G, AADHAAR-659982174779. Annual Income is 4 LPA. Petitioner is an Advocate and social-political activist, contributing his best to development of socially-economically downtrodden people, particularly EWS and BPL category.

**4.** The facts constituting cause of action accrued on 30.04.2016 and every subsequent date, when Hon'ble Justice Arijit Pasayat (Vice-Chairman, SIT-Black Money) called for a more stringent Prevention of Money Laundering Act with increased jail term. But, Executive has not taken appropriate steps in this regard till date.

**5.** The injury caused to public is large because corruption, black money generation and benami transaction badly affects fundamental rights guaranteed under Article 21 viz. right to health, right to shelter, right to water, right to justice, right to development and right to livelihood etc.

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

**7.** There is no civil, criminal or revenue litigation, involving petitioner, which has or could have legal nexus, with issue involved in this petition.

**8.** There is no point moving to authority for relief sought in this petition. Petitioner already submitted Representation to Hon'ble Prime Minister on 15.5.2018 but not received any response. (Annexure P-2, Pg. 28-37)

**9.** Terry Nohols was sentenced 161 life imprisonment without parole for killing 161 Americans. Abdulla Barghouti was sentenced 67 life imprisonment and 5200 years without parole for killing 66 Israelis. Gary Ridgway was sentenced 49 life imprisonment without parole plus 480 years for killing 71 prostitutes. Loi Khac Nguyen was sentenced 49 life imprisonment without parole for kidnapping 35 Americans. Martin Bryant was sentenced 35 life imprisonment and 1035 years without parole for killing 35 Australians. A List of prisoners, sentenced to more than 100 years is annexed as Annexure P-3. (Page 38-45)

**10.** On 30.04.2016, Justice Arijit Pasayat (Vice-Chairman, SIT-Black Money) called for a more stringent Prevention of Money Laundering Act (PMLA) with increased jail term. He was of the opinion that the 3-7 years sentence prescribed under the PMLA is too less. Justice Pasayat cited the example of United States where such offenders are sentenced for up to 150 years. Justice Pasayat said: "*How I wish we had such sentencing here. Those stealing one rupee and those laundering Rs 300 crores are given the same sentence here,*" Justice Pasayat said: "*While murder and attempt to murder are predicate offences, tax offences are still not included in the category. If you are evading massive amount of tax, that is murder of the economy which will eventually impact people,*"

**11.** Cash transactions are the root cause of many evils like corruption, black marketing, smuggling, drug trafficking, tax evasion and many more. Money Laundering is being employed by launderers worldwide to conceal criminal activity associated with it such as drug/arms trafficking, terrorism and extortion. Money Laundering is not an independent crime and depends upon a predicate offence, the proceeds of which are the

subject matter of the crime in money laundering. Corruption is an insidious plague that has wide range of corrosive effects on our country. It undermines democracy and rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows terrorism, naxalism, smuggling, money laundering and extortion and other threats to human security, to flourish.

**12.** Corruption hurts the poor disproportionately by diverting funds intended for development, undermining government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign aid and investment. It is a key element in economic underperformance and major obstacle to poverty alleviation and development. The most important fundamental right- Right to Life-guaranteed under Article 21 cannot be secured to all citizens and the great golden goals as set out in the Preamble cannot be achieved without curbing the corruption and black money generation. Hence, it is duty of the State to take steps to curb the corruption and black money generation and give a strong message that Government is determined to fight against corruption and black money generation. Executive action should be taken to warn the corrupt that betrayal of the public trust will no longer be tolerated, but it has not taken appropriate steps in this regard till date.

**13.** Cash transaction is used in terrorism, naxalism, separatism, smuggling, money laundering, kidnapping, extortion, bribing and dowry. It inflates price of crucial commodities as well as major assets like real estate, gold etc. Corruption can be curbed up to great extent by recalling currency above Rs. 100, restricting cash transaction above Rs. 10,000/- and linking fixed and movable properties documents with AADHAAR.

**14.** India cannot move forward without clean and transparent governance, for which corruption-free society is a basic requirement. There is no country in top 50 of the Human Development Index, which has a significant amount of corruption and money laundering. There is correlation between Welfare State with apposite attention to education and public health, and absence of corruption and money laundering so it is obligation of the State to take steps to curb black money generation

**15.** Berlin-based corruption watchdog Transparency International has placed India at rank 79 in Corruption Perception Index 2018. We are ranked 66<sup>th</sup> in 1998, 72<sup>nd</sup> in 1999, 69<sup>th</sup> in 2000, 71<sup>st</sup> in 2001 and 2002, 83<sup>rd</sup> in 2003, 90<sup>th</sup> in 2004, 88<sup>th</sup> in 2005, 70<sup>th</sup> in 2006, 72<sup>nd</sup> in 2007, 85<sup>th</sup> in 2008, 84<sup>th</sup> in 2009, 87<sup>th</sup> in 2010, 95<sup>th</sup> in 2011, 94<sup>th</sup> in 2012, 87<sup>th</sup> in 2013, 85<sup>th</sup> in 2014, 76<sup>th</sup> in 2015, 79<sup>th</sup> in 2016 and 81<sup>st</sup> in 2017. Hence, it is proved that ground level corruption is as it is. Corruption is the root cause of pitiable condition of our International Ranking. We are ranked 103 in the Global Hunger Index, 43 in Suicide Rate, 168 in Literacy Rate, 133 in World Happiness Index, 125 in Gender Discrimination, 124 in Minimum Pay, 42 in Employment Rate, 66 in Rule of Law Index, 43 in Quality of Life Index, 51 in Financial Development Index, 177 in Environment Performance Index, 13 in GDP Per Capita.

**16.** Corruption disrupts public distribution system. It is inimical to the fostering of excellence and has adverse impact on EWS and BPL families. 50% population is in distress, leading a hand-to-mouth existence, large segments not knowing where next meal is coming, with abominable health standards and primary education levels. Much of this malaise is traceable to widespread corruption and existence of black money.

**17.** The bomb blasts and terrorist attack in many cities like Jaipur, Ahmedabad, Bangalore, Mumbai, Pune and the recent attack in Pulwama on 14.2.2019 confirms that Terrorism has grown to a great extent in last two decades. The terrorist attack have outraged every patriotic Indian. No civilized nation can allow this kind of barbaric inhumanity to be even partly supported or sponsored by any neighbor/domestic insurgents. Prevention is crucial; and laws like POTA can prevent such occurrences. This is the only way we can minimize it, if not eliminate.

**18.** India is facing multifarious challenges in the management of its internal security. There is an upsurge of terrorist activities, intensification of cross border terrorist activities and insurgent groups in different parts of the country. Terrorism has now acquired global dimensions and has become a challenge for the whole world. The reach and methods adopted by terrorist groups and organizations take advantage of modern means of communication and technology using high tech facilities available in the form of communication system, transport, sophisticated arms and various other means. This has enabled them to strike and create terror among people at will. The criminal justice system of India like Indian Penal Code and Criminal Procedure Code was not designed to deal with such type of crimes. In view of this situation it was felt necessary to make special anti-terror laws for giving rigorous punishment for these enmity of the humanity. India needs a stringent law to end terrorist activities. Earlier Kashmir Punjab and North East States were affected but currently scope has been increase. Around 250 districts are afflicted from terrorism and there are around 400 separatist organizations operating in the country.

**19.** The Preamble is not a mere flourish of words, but is an ideal setup for practices and observances as a matter of law through Constitutional mechanism. The purpose of Preamble is to clarify who has made the Constitution, what is its source, what is the ultimate sanction behind it; what is the nature of polity, which is sought to be established by the Constitution and what are its goals and objectives. The Preamble acknowledges, recognizes and proclaims that the Constitution emanates from the 'People of India' and not from any external or lesser source and meant for the 'Welfare of the People'.

**20.** In catena of decisions, this Hon'ble Court has reiterated that corruption is menace of our social and economic development. [*State of MP v. Ram Singh (2000) 5 SCC 88; State of AP v. V Vasudeva Rao (2004) 9 SCC 319; Subramanian Swamy v. Manmohan Singh (2012) 3 SCC 64; State of Gujarat v. R. A. Mehta (2013) 3 SCC 1*] This Hon'ble Court has observed that there is no sentencing principle in India [*State of Punjab v. Prem Sagar (2008) 7 SCC 550; Soman v. State of Kerala (2013) 11 SCC 382*]

**21.** India doesn't have a policy of consecutive and concurrent sentence and this Hon'ble Court has indicated the need of consecutive sentence in three decisions. [*Mohammad Akhtar Hussain v. Assistant Collector of Customs (1988) 4 SCC 183; O. M. Cherian v. State of Kerala (2015) 2 SCC 501; Muthu Ramalingam v. State (2016) 8 SCC 313*]

**22.** This Hon'ble Court has observed about sentencing principle of proportionality thrice. [*Om Prakash v. State of Haryana (1999) 3 SCC 19; Jai Kumar v. State of MP (1999) 5 SCC 1; Alister Anthony Pareira v. State of Maharashtra (2012) 2 SCC 648*] However, the successive government failed to take appropriate steps in this regard.

**23.** In the Nirbhaya Case [Mukesh v. State of NCT of Delhi, Criminal Appeal 607-608 of 2017], the three Judges Bench of this Hon'ble Court has very categorically observed that our society is crying for justice:

*"144. Society's reasonable expectation is that deterrent punishment commensurate with the gravity of the offence be awarded. When the crime is brutal, shocking the collective conscience of the community, sympathy in any form would be misplaced and it would shake the confidence of public in the administration of criminal justice system. As held in Om Prakash v. State of Haryana (1999) 3 SCC 19, the Court must respond to the cry of the society and to settle what would be a deterrent punishment for what was an apparently abominable crime. 145. Bearing in mind the above principles governing the sentencing policy, I have considered all aggravating and mitigating circumstances in the present case. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the crime. Justice demands that the courts should impose punishments befitting the crime so that it reflects public abhorrence of the crime. Crimes like the one before us cannot be looked with magnanimity. Factors like young age of the accused and poor background cannot be said to be mitigating circumstances. Likewise, post-crime remorse and post-crime good conduct of the accused, the statement of the accused as to their background and family circumstances, age, absence of criminal antecedents and their good conduct in prison, in my view, cannot be taken as mitigating circumstances to take the case out of the category of "rarest of rare cases". The circumstances stated by the accused in their affidavits are too slender to be treated as mitigating circumstances."*

**24.** In Subramanian Swamy v. Manmohan Singh, [(2012) 3 SCC 64], this Hon'ble Court categorically observed about menace of corruption: *"Corruption not only poses a grave danger to concept of constitutional governance, it also threatens the very foundation of the democracy and the Rule of Law. The magnitude of corruption in public life is incompatible with concept of the Socialist, Secular and Democratic Republic. Where corruption begins all rights end. Corruption devalues human rights, chokes development, and undermines justice, liberty, equality and fraternity, which are the values in Indian Preambular vision..."*.

**25.** In State of Gujarat v R.A. Mehta, [(2013) 3 SCC 1], the Court held: *"Corruption threatens constitutional governance and shakes foundation of democracy and rule of law. Corruption is opposed to democracy and social order as being not only anti-people, but also due to the fact, that it affects the economy of a country and destroys its cultural heritage. It threatens security of society, undermines ethical value and justice and jeopardizes sustainable development. It devalues human rights, chokes development and corrodes the moral fabric of society. It causes considerable damage to the national economy, national interest and image of the country. The very object, the noble and grand vision of the Preamble will be defeated if corruption is not curbed immediately".*

**26.** The Court in *Kartar Singh v. State of Punjab [1994] 3 SCC 569*, held that country has been in firm grip of spiraling terrorist violence and is caught between deadly pangs of disruptive activities. Lord Denning said: *"freedom of individual must take second place to the security of the State.* International community cannot fault India if it chose to enact tough measures to deal with menace of corruption and terrorism.

**27.** Statement of Object and Reason of the PMLA, 2002 reads thus:

*"It is being realized, world over, that money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. Some of the initiatives taken by the international community to obviate such threat are outlined below:—*

(a) *the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party, calls for prevention of laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from such offence.*

(b) *the Basle Statement of Principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling problem of money laundering.*

(c) *the Financial Action Task Force established at the summit of seven major industrial nations, held in Paris from 14th to 16th July, 1989, to examine the problem of money-laundering has made forty recommendations, which provide the foundation material for comprehensive legislation to combat the problem of money laundering. Recommendations were classified under various heads. Some of the important heads are— (i) declaration of laundering of monies carried through serious crimes a criminal offence; (ii) to work out modalities of disclosure by financial institutions regarding reportable transactions; (iii) confiscation of the proceeds of crime; (iv) declaring money-laundering to be an extraditable offence; and (v) promoting international co-operation in investigation of money laundering.*

*(d) Political Declaration and Global Programme of Action adopted by UN General Assembly by its Resolution No. S-17/2 of 23rd February, 1990,*

*inter alia, calls upon member States to develop mechanism to prevent financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering.* (e)

*the United Nations in the Special Session on countering World Drug Problem Together concluded on the 8th to the 10th June, 1998 has made another declaration regarding the need to combat money laundering. India is a signatory to this declaration.*

*2. In view of an*

*urgent need for the enactment or a comprehensive legislation inter alia for preventing money-laundering and connected activities confiscation of proceeds of crime, setting up of agencies and mechanisms for coordinating measures for combating money-laundering, etc., the Prevention of Money-Laundering Bill, 1998 was introduced in the Lok Sabha on the 4th August, 1998. The Bill was referred to the Standing Committee on Finance, which presented its report on the 4th March, 1999 to the Lok Sabha. The recommendations of the Standing Committee accepted by the Central Government are that (a) the expressions "banking company" and "person" may be defined; (b) in Part I of the Schedule under Indian Penal Code the word offence under section 477A relating to falsification of accounts should be omitted; (c) 'knowingly' be inserted in clause 3(b) relating to the definition of money laundering; (d) the banking companies financial institutions and intermediaries should be required to furnish information of transactions to the Director instead of Commissioner of Income-tax (e) the banking companies should also be brought within the ambit of clause II relating to obligations of financial institutions and intermediaries; (f) a definite time-limit of 24 hours should be provided for producing a person about to be searched or arrested person before the Gazetted Officer or*

*Magistrate; (g) the words “unless otherwise proved to the satisfaction of the authority concerned” may be inserted in clause 22 relating to presumption on inter-connected transactions; (h) vacancy in the office of the Chairperson of an Appellate Tribunal, by reason of his death, resignation or otherwise, the senior-most member shall act as the Chairperson till the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill the vacancy, enters upon his office; (i) the appellant before the Appellate Tribunal may be authorised to engage any authorised representative as defined under section 288 of the Income-tax Act, 1961, (j) the punishment for vexatious search and for false information may be enhanced from three months imprisonment to two years imprisonment, or fine of rupees ten thousand to fine of rupees fifty thousand or both; (k) the word ‘good faith’ may be incorporated in clause relating to Bar of legal proceedings. The Central Government have broadly accepted above recommendations and made provisions of the said recommendations in the Bill.*

**28.** Statement of Objects and Reasons of MPLA 2005 reads as under:

*“The Prevention of Money-laundering Act, 2002 was enacted to prevent money-laundering and to provide for confiscation of property derived from, or involved in money-laundering, and for matters connected therewith or incidental thereto. The Act had become necessary to implement the Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June, 1999 which called upon the Member States to adopt national money-laundering legislation and programme. The said Act had been enacted, broadly incorporating, the recommendations of the Standing Committee on Finance in its report*

*presented to the Lok Sabha on the 4th March, 1999, and laid on the Table of the Rajya Sabha on the 8th March, 1999 and the recommendations of the Select Committee of Rajya Sabha given in its report presented to the Rajya Sabha on the 24th July, 2000.*

**29.** The Statement of Objects and Reasons of PMLA, 2008 as under:

*"The Prevention of Money-laundering Act, 2002 was brought into force in 2005 to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. The Act also addressed the international obligations under the Political Declaration and Global Programme of Action adopted by the General Assembly of the United Nations to prevent money-laundering. The Act was amended in 2005 to remove the difficulties in implementation of the Act.*

*2. The Prevention of Money-laundering (Amendment) Bill, 2008 seeks to bring certain financial institutions like Full Fledged Money Changers, Money Transfer Service Providers such as Western Union and International Payment Gateways including VISA and Master Card within the reporting regime of the Act. The Bill incorporates provisions to combat financing of terrorism and it introduces a new category of offences which have cross-border implications. The Bill seeks to amend the Act, to provide, inter alia, to - (a) include institutions like Full Fledged Money Changers and Money Transfer Service Providers and to bring the business activities such as casinos under the reporting regime of the Act; (b) make provisions for the 'offences with cross border implications' and to add new Part C in the Schedule to the Act for such offences; (c) ensure that the investigating agency can attach any property and search a person only after completing*

*investigation and also to enhance the period of provisional attachment of property from 90 days to 150 days; (d) empower the Enforcement Directorate to search the premises immediately after the offence is committed and the police has filed a report under section 157 of Code of Criminal Procedure, 1973; (e) increase the age of retirement of Chairperson and Members of the Adjudicating Authority from 62 years to 65 years; (f) provide mandatory consultation with the Chief Justice of India before removal of the Chairperson or a Member of the Appellate Tribunal; (g) enable the Central Government to return the confiscated property to the requesting country in order to implement the provisions of the United Nations Convention Against Corruption; and (h) expand the scope of the Act by adding certain offences in Part A and Part B of the Schedule to the Act.*

*3. The Bill seeks to achieve the above objects.*

**30.** The Statement of Objects and Reasons of the PMLA 2011 is thus:

*"The Prevention of Money-laundering Act, 2002 was enacted to prevent money laundering and to provide for confiscation of property derived from, or involved in, money laundering and for matters connected therewith or incidental thereto. The aforesaid Act also addresses the international obligations under the Political Declaration and Global Programme of Action adopted by the General Assembly of the United Nations to prevent money laundering. The Act was amended in the year 2005 and 2009 to remove difficulties arisen in implementation of the Act. 2. The problem of money-laundering is no longer restricted to the geo political boundaries of any country. It is a global menace that cannot be contained by any nation alone. In view of this, India has become a member of the Financial Action Task Force and Asia Pacific Group on money-laundering, which are*

*committed to the effective implementation and enforcement of internationally accepted standards against money-laundering and the financing of terrorism. Consequent to the submission of an action plan to the Financial Action Task Force to bring anti money-laundering legislation of India at par with the international standards and to obviate some of the deficiencies in the Act that have been experienced by the implementing agencies, the need to amend the Prevention of Money-Laundering Act, 2002 has become necessary.*

**3. The Prevention of Money-Laundering (Amendment) Bill, 2011, inter alia, seeks to—**

*(a) introduce the concept of 'corresponding law' to link the provisions of Indian law with the laws of foreign countries and provide for transfer of the proceeds of the foreign predicate offence in any manner in India;*

*(b) introduce the concept of 'reporting entity' to include therein a banking company, financial institution, intermediary or a person carrying on a designated business or profession;*

*(c) enlarge definition of offence of money-laundering to include therein the activities like concealment, acquisition, possession and use of proceeds of crime as criminal activities and remove existing limit of 5 lakh rupees of fine under the Act;*

*(d) make provision for attachment and confiscation of the proceeds of crime even if there is no conviction so long as it is proved that offence of money-laundering has taken place and property in question is involved in money-laundering;*

*(e) confer power upon the Director to call for records of transactions or any additional information that may be required for the purposes of the Prevention of money-laundering and also to make inquiries for non-compliance of reporting obligations cast upon them;*

*(f) make the reporting entity, its designated directors on the Board and employees responsible for omissions*

*or commissions in relation to the reporting obligations under Chapter IV of the Act; (g) provide that in any proceedings relating to proceeds of crime under the aforesaid Act, unless the contrary is proved, it shall be presumed that such proceeds of crime is involved in money-laundering; (h) provide for appeal against the orders of the Appellate Tribunal directly to the Supreme Court; (i) provide for the process of transfer of the cases of Scheduled offence pending in a court which had taken cognizance of the offence to the Special Court for trial of offence of money-laundering and also provide that the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed. (j) putting all the offences listed in Part A and Part B of the Schedule to the aforesaid Act into Part A of that Schedule instead of keeping them in two Parts so that the provision of monetary threshold does not apply to the offences.* 4.

*The Bill seeks to achieve above objects.*

**31.** Maharashtra Control Organised Crime Act, 1999 (MCOCA) was enacted to make special provisions for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang, and for matters connected therewith or incidental thereto. The Statement of Objects and Reasons for enacting the said Act are as under: "Organised crime has been for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fueled by illegal wealth generated by contract, killing, extortion, smuggling in contrabands, illegal trade in narcotics kidnappings for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the organized crime being very huge, it has had serious adverse effect on our economy. It was seen that the organized

criminal syndicates made a common cause with terrorist gangs and foster terrorism which extend beyond the national boundaries. There was reason to believe that organized criminal gangs have been operating in the State and, thus, there was immediate need to curb their activities. It was also noticed that the organized criminals have been making extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission would be an indispensable aid to law enforcement and the administration of justice.

*2. The existing legal framework i.e. the penal and procedural laws and the adjudicatory system were found to be rather inadequate to curb or control the menace of organized crime.* Government, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organized crime. It is the purpose of this act to achieve these objects." Section 2(e) reads thus: (e) "organised crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or other person or promoting insurgency. Section 3(2) provides for punishment for organized crime as following: "(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organized crime or any act preparatory to organized crime, shall be

punishable with imprisonment for a term which *shall be not less than five years but which may extend to imprisonment for life, and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.*" Section 4 provides for punishment for possessing unaccountable wealth on behalf of member of organised crime syndicate. If any person on behalf of a member of an organised crime syndicate is, or, at any time bus been, in possession of movable or immovable property which he cannot satisfactorily account for, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine, subject to a minimum fine of rupees one lac shall liable for attachment and forfeiture, as provided by section 20.

**32.** Extorting money by spreading terrorism in society is the aim of organized criminals. They target elite class of society. Naturally, the money they recover is of unusual proportion. The money is not spent on just causes but to derail state economy. It is therefore, essential to provide for strictest punishment. Punishment envisaged in the Act is 3 to 10 years of imprisonment which can be extended to life imprisonment. Death penalty can also be imposed on the criminals kill any one. So also a fine of 3 to 10 lacs can also be imposed.

**33.** On 29.9.2014, Spaniard Lopez Tardon sent to prison for 150 years in Miami money-laundering case. He was guilty of a single conspiracy charge that carried up to 20 years in prison and guilty of 13 money-laundering charges that carried up to 10 years each. In US, the judge had authority to craft a prison term that effectively added up to life term.

<http://www.miamiherald.com/news/local/crime/article2296479.html>

**34.** Major John Cockerham, while working as an Army contracting officer in Kuwait, awarded contracts for services to be delivered carrying more than \$ 9 million in bribe process. He directed the contractors to pay Carolyn Blake, his sister of Sunnyvale, Texas and his wife Melissa and others in order to conceal receipt of bribe payments. Wife Melissa Cockerham admitted to have stored the cash in safe deposit boxes at banks in Kuwait and Dubai. Carolyn Blake admitted of having accepted over \$3 million bribe proceeds on behalf of her brother. Blake expected 10% of the amount she collected. Having pleaded guilty in March, 2009 before US Magistrate Judge in the Western District of Texas, San Antonio Division, the sister Carolyn Blake faces 20 years in prison and fine upto \$ 500000 or two times the value of laundered funds, whichever is greater. Cockerhams were also convicted on their pleas and faced the imprisonment and fine of the similar quantum.

**35.** In State of Andhra Pradesh v. V. Vasudeva Rao, [(2014) 9 SCC 319] this Court observed "*Corruption is one of the most talked about subjects today in the country since it is believed to have penetrated into every sphere of activity. It is described as wholly widespread and spectacular. Corruption as such has reached dangerous heights and dangerous potentialities. The word 'corruption' has wide connotation and embraces almost all the spheres of our day to day life the world over.*"

**36.** In BC Goswami v. Delhi Administration [AIR 1973 SC 1457], this Hon'ble Court observed: "*Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence*

*broadly stated is that the accused must realize that he has committed an act which is not only harmful to the society of which he forms an integral part but also is harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and re-claim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however reformative aspect is being given somewhat greater importance. Too lenient as well as too harsh sentence both loose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal."*

**37.** The punishment for white collar crimes is not sufficient as we can see in the Coal Scam. As per CAG, the scam was of 185,591 crores, which affected the entire nation but the maximum punishment awarded was 3 years with fine of Rs 50,00,000. CWG scam was a 70,000 Crore, which not only affected our economy but also the integrity of the nation. In this accused was charged with conspiracy, forgery, misconduct and under provisions of PC Act. This clearly shows that not only the sentence under the PCA should be increased but also it should be consecutive.

**38.** In State of M.P v Ram Singh, [(2000) 5 SCC 88], the Court held: "*Corruption in a civilised society is a disease like cancer, which if not detected in time, is sure to malign the polity of the country leading to disastrous consequences. It is termed as a plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is*

*compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence — shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society."*

**39.** Section 31 Cr.P.C. says that subject to the provisions of Section 71 IPC, Court may pass separate sentences for two or more offences of which the accused is found guilty, but the aggregate punishment must not exceed the limit fixed in the proviso (a) and (b) of sub-section (2) of Section 31 Cr.P.C. In Section 31(1) Cr.P.C., since the word "may" is used, when a person is convicted for two or more offences at one trial, the court may exercise its discretion in directing that the sentence for each offence may either run consecutively or concurrently subject to the provisions of Section 71 IPC. But the aggregate must not exceed the limit fixed in proviso (a) and (b) of sub-section (2) of Section 31 Cr.P.C. that is (i) it should not exceed 14 years(ii) it cannot exceed twice the maximum imprisonment awardable by the sentencing court for a single offence.

**40.** There are recommendations to confiscate property, increase the sentence and to run sentence consecutively as offences form a part of several dependent or parallel transactions, the current law is not sufficient and needs to be changed as the sentencing is not sufficient with

the magnitude of the offence as white collar crimes are a bigger threat than other crimes as it affects the economy of the entire nation.

## **GROUND S**

**A.** Because Corruption and money laundering is an insidious plague that has wide range of corrosive effects. It undermines democracy and rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime like terrorism, naxalism, radicalism, smuggling, money laundering, extortion and other threats to human security to flourish. It hurts poor disproportionately by diverting funds intended for development, undermining government's ability to provide basic services, feeding inequality, injustice, and discouraging foreign aid/investment. It's key element in economic underperformance and major obstacle to poverty alleviation and development.

**B.** Because *Right to Life* guaranteed under Article 21 cannot be secured to all citizens and the great golden goals as set out in the Preamble cannot be achieved without curbing the corruption and money laundering. Hence, it is duty of the State to take steps to curb the corruption and money laundering made by illegal means to give a strong message that Government is determined to fight against corruption and black money generation. Executive action should be taken to warn the corrupt that betrayal of the public trust will no longer be tolerated.

**C.** Because it was held in Balkrishna Chhaganlal Soni vs. State of West Bengal [(1974) 3 SCC 567] that "*social and economic offences stand on a graver footing in respect of punishment*"

**D.** Because money laundering is used in financing terrorism, naxalism, separatism, radicalism, gambling, smuggling, money laundering,

kidnapping, extortion, bribing and dowry. It inflates price of crucial commodities as well as major assets like real estate, gold etc.

**E.** Money laundering can be curbed up to great extent by adopting the best practices of US Money Laundering. Thus, in a long way it will help in putting an end to black money generation. Another benefit is that people will deposit their money in banks; government will get good amount of revenue, which can be used for betterment of society.

**F.** Because India cannot move forward without a clean and transparent governance, for which corruption-free society is a basic requirement. There is no country in top 50 of the Human Development Index, which has a significant amount of corruption and money laundering. There is correlation between Welfare of State with appropriate attention to education and public health and absence of corruption and money laundering, so it is obligation of State to take steps to curb corruption.

**G.** This Hon'ble Court in Mohd. Akhtar Hussain case held that "*the basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.*"

**H.** In O. M. Cherian vs. State of Kerela [(2015) 2 SCC 501], this court observed "Discretion to order running of sentences concurrently or consecutively is judicial discretion of the Court which is to be exercised as per established law of sentencing. The court before exercising its discretion under Section 31 Cr.P.C. is required to consider the totality of

the facts and circumstances of those offences against the accused while deciding whether sentences are to run consecutively or concurrently."

**PRAYER**

It is respectfully prayed that this Hon'ble Court may be pleased to issue a writ, order or direction or a writ in the nature of declaration to:

- a)** direct and declare that Section 31, Cr.P.C, 1973, shall not apply to the Special Laws relating to Corruption, Separatism and Terrorism viz. the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988, the Prohibition of Benami Property Transactions Act, 1988, the Prevention of Money Laundering Act, 2002, the Foreign Contribution (Regulation) Act, 2010, the Black Money and Imposition of Tax Act, 2015, and the Fugitive Economic Offenders Act, 2018, etc.;
- b)** direct and declare that for a conviction under the Special Laws relating to Corruption, Separatism and Terrorism viz. the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988, the Prohibition of Benami Property Transactions Act, 1988, the Prevention of Money Laundering Act, 2002, Foreign Contribution (Regulation) Act, 2010, the Black Money and Imposition of Tax Act, 2015, and the Fugitive Economic Offenders Act, 2018 etc., the sentence shall be consecutive;
- c)** direct the Central Government to ascertain the feasibility of adopting the best laws and policies of America, Australia, Israel and Spain against corruption, separatism and terrorism;
- d)** in alternative, direct the Law Commission to examine anti-corruption, anti-separatism and anti-terrorism laws and policies of America, Australia, Israel and Spain and make a report within three months;