

V.S. DREAM COACHING

Indirapuram Ghaziabad

For
H.J.S. P.C.S. (J) A.P.O. & CLAT

Year – 2024



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know something
nobody else knows

NO. 2 OF 2024

NEWSLETTER

February 2024

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V.S. DREAM COACHING

1. Study Material-Law

Trial in absentia under the Bharatiya Nagarik Suraksha Sanhita, 2023 in comparison with Criminal Procedure Code, 1973

Introduction

In the realm of legal proceedings the concept of trial in absentia sparks debate balancing the interests of justice with the rights of the accused. The legal landscape governing such trials is often intricate and defined by statutes and principles aimed at ensuring fairness while dealing with defendants who are missing or evading the judicial process. One such framework is delineated in the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which provides a structured approach to conducting trials in the absence of the accused. This article aims to dissect the legal basis, procedural intricacies and a comparative analysis of the trial in absentia under the BNSS and the Criminal Procedure Code (Cr.P.C.).

Legal Basis and Principles of Trial in Absentia

Under Section 355 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), the judiciary is vested with the authority to conduct trials in absentia under specific circumstances. These circumstances typically revolve around the accused's status as a proclaimed offender and their evasion of trial proceedings. The BNSS mandates a waiting period of ninety days from the framing of charges before commencing the trial ensuring adequate time for procedural requirements and attempts to secure the presence of the accused.

Crucially, the trial in absentia is not an arbitrary decision but is contingent upon meeting three essential conditions: the accused must be declared a proclaimed offender, have absconded to evade trial and there must be no immediate prospect of their arrest. The proclamation of the defendant as an offender is reserved for grave offenses, typically those punishable with imprisonment of ten years or more, life imprisonment or death. This limitation ensures that trial in absentia is not utilized arbitrarily but is reserved for cases of significant magnitude.

Procedures and Rules Governing Trial in Absentia

The procedural framework surrounding trial in absentia under the BNSS is meticulous and aimed at ensuring fairness and due process despite the absence of the accused. The court is mandated to follow a structured process including the issuance of warrants of arrest and publication in newspapers informing relatives or friends of the accused and affixing information in conspicuous locations. These steps are designed to provide ample notice to the accused and allow them to appear before the court.

Moreover, the BNSS incorporates modern technological advancements by allowing the recording of depositions and examinations of witnesses through audio video electronic means. This not only enhances efficiency but also ensures a comprehensive record of proceedings which can be pivotal in upholding the integrity of the trial.

Rights of the absent accused in a Trial in Absentia

While the accused's absence may waive their right to be present physically during the trial, the BNSS still upholds certain rights for the absent accused. Specifically, if the accused is apprehended during the trial and they are granted the opportunity to examine any evidence that may have been presented in their absence. This provision safeguards the accused's right to a fair trial, even in their absence by allowing them to contest evidence and present their case effectively.

Circumstances Warranting a Trial in Absentia

The BNSS provides a structured approach to initiating trial proceedings in cases where the accused is missing or evading trial. By mandating a waiting period following a set of procedural requirements the statute ensures that trial in absentia is not invoked hastily but as a last resort when all efforts to secure the accused's presence have been exhausted.

Comparison between Bharatiya Nagarik Suraksha Sanhita (BNSS) and Code of Criminal Procedure (Cr.P.C.)

A comparative analysis between the BNSS and the Cr.P.C. reveals nuanced differences in their approach to trial in absentia. While both statutes aim to ensure the administration of justice, they diverge in certain aspects. At present and the Cr.P.C. only allows for the recording of pieces of evidence in the absence of the accused but doesn't provide for conducting the trial of an accused and pronouncing the judgment in the absence of an accused.

Chapter VI of the Code of Criminal Procedure (Cr.P.C.) primarily focuses on compelling the appearance of the accused through summons and warrants and notices. However, the Bharatiya Nagarik Suraksha Sanhita (BNSS), introduces modifications to this scheme by clarifying the nature of offenses for which an accused may be declared a proclaimed offender and allowing trials in absentia for such offenders.

Furthermore, the Bharatiya Nagarik Suraksha Sanhita (BNSS), extends the concept of proclaimed offenders to include persons accused of offenses punishable under any law and not limited to the Bharatiya Nagarik Suraksha Sanhita (BNSS). This expansion broadens the scope of trial in absentia potentially impacting a wider range of cases.

Despite these differences, both statutes uphold the principles of fairness and due process. However, concerns regarding the possibility of securing convictions easily and potential misuse of power underscore the importance of implementing safeguards and ensuring accountability in the judicial process.

Conclusion

Trial in absentia, as delineated in the BNSS, represents a nuanced approach to addressing the challenges posed by absent defendants while upholding the principles of justice and due process. By providing a structured framework encompassing legal basis and procedures and rights of the absent defendant, the BNSS aims to strike a balance between the interests of justice and the rights of the accused. While the BNSS introduces modifications to traditional legal procedures and a comparative analysis with the Cr.P.C. highlights both similarities and differences in their approach to trial in absentia. Ultimately, the efficacy of trial in absentia lies not only in its legal framework but also in its implementation ensuring fairness, transparency and accountability in the judicial process.

B. Important Cases February 2024

Important Supreme Court Cases February 2024

S.N.	Subject	Case Reference
1.	Section 304 Part II is in two parts. The section provides for two kinds of punishment to two different situations: Firstly , if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death. Here the important ingredient is the “ intention ”. Secondly , if the act is done with the knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death. Here the important ingredient is “ knowledge ”.	Velthepu Srinivas Vs. State of Andhra Pradesh (Now State of Telangana), decided on 06-02-2024
2.	Discussed principles for the High Court/Appellate court which shall come into play while deciding an appeal from acquittal.	Mallappa and Ors. Vs. State of Karnataka, decided on 12-02-2024
3.	Important factors related to the principle of adverse possession. The plea of adverse possession is a blend of fact and law.	Vasantha (D) through LRS. Vs. Rajalakshmi @ Rajam (D) through LRs., decided on 13-02-2024
4.	Strikes down electoral bonds scheme as unconstitutional and asks SBI to stop issuing EBs	Association for Democratic Reforms and Anr. Vs. Union of India & Ors., decided on 15-02-2024
5.	Delay occurred in filing appeal against acquittal under Sec. 378 Cr.P.C. can be condoned under Limitation Act. The he benefit of Section 5 read with Sections 2 and 3 of the Limitation Act, 1963 can therefore be availed in an appeal against acquittal.	Mohd Abaad Ali & Anr. Vs. Directorate of Revenue Prosecution Intelligence, decided on 20-02-2024
6.	Extra-judicial confession can't be strong evidence if not supported by other evidence on record	Kalinga @ Kushal Vs. State of Karnataka by Police Inspector Hubli, decided on 20-02-2024

7.	Rule disqualifying candidate having more than 2 children from Govt. job doesn't violate Constitution	Ramji Lal Jat Vs. State of Rajasthan, order dated 29-02-2024
8.	Mere demand for ransom after kidnapping won't amount to Sec.364A IPC offence if there's no death threat.	William Stephen Vs. State of Tamil Nadu and Anr., decided on 21-02-2024
9.	Once Magistrate seeks report from police under Sec. 202 Cr.P.C., summons to accused be postponed until police report is received	Shiv Jatia Vs. Gian Chand Malick & Ors., decided on 23-02-2024
10.	Distributor is not an agent. He is an independent contractor.	Bharti Cellular Ltd. (Now Bharti Airtel Ltd.) Vs. Assistant Commissioner of Income Tax, Circle 57, Kolkata and Anr., decided on 28-02-2024
11.	It is in the interest of justice to provide that a reasoned stay order, once granted in any civil or criminal proceedings, if not specified to be time-bound, would remain in operation till the decision of the main matter and until and unless an application is moved for its vacation and a speaking order is passed adhering to the principles of natural justice either extending, modifying, varying, or vacating the same.	High Court Bar Association Allahabad Vs. State of Uttar Pradesh, decided on 29-02-2024 Overruled Asian Resurfacing of Road Agency Private Limited & Anr. Vs. Central Bureau of Investigation (2018) 16 SCC 299
12.	Constitutional courts should refrain from laying down time-bound schedules for cases pending before any other courts. The pattern of pendency of cases in every court including the high court is different and giving out-of-turn priority for certain cases is best left to the concerned judge, who is aware of the grassroots situation of the court.	High Court Bar Association Allahabad Vs. State of Uttar Pradesh, decided on 29-02-2024 Overruled Asian Resurfacing of Road Agency Private Limited & Anr. Vs. Central Bureau of Investigation (2018) 16 SCC 299

IN THE SUPREME COURT OF INDIA

Velthepu Srinivas

Vs.

State of Andhra Pradesh (Now State of Telangana)

Criminal Appeal No. 2852 of 2023

HEADNOTE – Section 304 Part II is in two parts. The section provides for two kinds of punishment to two different situations:

Firstly, if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death. Here the important ingredient is the “**intention**”.

Secondly, if the act is done with the knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death. Here the important ingredient is “**knowledge**”.

JUDGMENT

Pamidighantam Sri Narasimha, J.

1. This criminal appeal by appellants (accused 1 to 4) is against the concurrent conviction under Section 302 read with Section 34 and sentence for life imposed by the Trial as well as the Telangana High Court. For the reasons to follow, while we confirm the judgment and sentence with respect to A-1, A-2 and A-4, the conviction and sentence of A-3 is however modified to Section 304 Part II and sentenced to 10 years imprisonment. The details of the crime, trial, decisions of the Courts, followed by our analyses and conclusions are as follows.

2. The case of the prosecution is that the accused 1 to 4 belonging to the same family, and the deceased, come from the same village - Janda Venkatpur, Asifabad, Telangana. It is alleged that the sister of the deceased and the wife of A-4 were political aspirants and they contested the Gram Panchayat elections. In the said elections, the sister of the deceased succeeded and the wife of A-4 lost and that, unfortunately, led to an animosity between the two groups, eventually leading to the murder of the deceased which is described as follows.

3. On 15.11.2001, at about 8AM, the deceased was going to Luxettipet on some work in an auto-rikshaw. In the same autorikshaw, one Sanga Swamy @ Thruputhi (PW-6) and Smt. Chetimala Rajitha (PW-9) were travelling as co-passengers. When the auto reached the house of A-4, it is alleged that A-1 stopped the auto-rickshaw and dragged the deceased out by pulling his legs. At the same time, A-2 joined A-1 and both the accused dragged the deceased

towards the house of A-4. At that point, it is alleged that A-1 to A-4 attacked the deceased with an axe, a sword, a stone and a knife, thereby inflicting severe bleeding injuries leading to death of the deceased on the spot.

4. The son of the deceased, Kona Kiran Kumar, later examined as PW-1, being an eyewitness, proceeded to the police station and reported the incident at about 9PM by way of a complaint (Exhibit P-1). The Sub-Inspector of Police (PW-17), Luxettipet received the complaint and registered an FIR (Exhibit P-32), and took up the investigation. He then recorded the statement of PW-1.

5. In view of the gravity of the crime, the Circle Inspector of Police (PW-18) took up further investigation and immediately proceeded to the village to examine the scene of offence. He found the body of the deceased in the front yard of A-4's house. He enabled PW-15 to take photographs of the dead body (Exhibits P-21 to 30) and himself drew the sketch of the scene of offence (Exhibit P-37). He also conducted an inquest over the body of the deceased in the presence of PW-10 and PW-12 (panch witnesses).

The inquest report was marked as Exhibit P-5. He also seized a stick (MO.4), control earth (MO.5), blood-stained earth (MO.6), cotton full shirt (MO.7) and a baniyan under cover of a panchnama. PW-18 recorded the statements of PWs 4, 5, 6, 7, 8, 9, and 15. The prosecution maintained that PWs 1, 3, 4, 6, 7 and 8 are eyewitnesses to the incident.

6. The Judicial Magistrate First-Class (PW-16) also recorded the statements of PWs 1 to 9 under Section 164 of the CrPC.

The Postmortem over the dead body of the deceased was conducted by Dr Victor Dinesh (PW-11) at 3PM on 15.11.2001 at the Government Civil Hospital. PW-11, in his report, found 8 incised wounds, 3 partial amputations and 1 deep lacerated wound. It was his opinion that the cause of death was due to cardio-pulmonary arrest due to transaction spinal cord at atlanto occipital joint.

7. The Sub-Inspector (PW-17) is said to have apprehended all the accused on 23.11.2001 and produced them before PW-18 in his office. PW-18 recorded the confessional statement of the accused in the presence of PW-13 and PW-14 (panch witnesses). In pursuance of the confession, all the accused led him and the panch witnesses to the field of one Mr. Appani Gangaiah at Laximpur Shivar.

There, A-1 recovered and showed an axe, A-2 a sword and A-4 a knife which were all hidden behind the bushes in the field. PW-18 seized these objects in front of PW-11 to PW-13, later came to be marked as Exhibits MOs 1 to 3. PW-18 also recovered a lungi belonging to A-1 and one belonging to A-2 (Exhibit

MO's 9 and 10, respectively). These material objects were sent to a Forensic Lab in Hyderabad, the report of which is marked as Exhibit P-16.

8. After completion of the above referred investigation, a chargesheet was filed on 09.01.2002. The Judicial First-Class Magistrate, Luxettipet took cognizance of the offence under Section 302 read with Section 34 of IPC, against all the accused. On production of the accused, the Magistrate furnished copies of the charge-sheet and other connected documents and committed the case to the Court of Sessions and the Learned Sessions Judge numbered the trial as Sessions Case No. 523 of 2003. After the charges were framed, the accused pleaded not guilty and sought trial.

9. At the trial, the prosecution examined 18 witnesses being PW-1 to PW-18, and marked 37 documents and 10 Material Objects (MO's). After the closure of evidence, the accused were examined under Section 313 CrPC with reference to the incriminating material found against them in the evidence of the prosecution witnesses, and they denied the same. There are no defence witnesses.

10. The Trial Court, by its elaborate judgment dated 24.02.2005, found all four accused guilty for the murder of the deceased and convicted them under Section 302 read with Section 34 of the IPC. Accordingly, they were sentenced to undergo imprisonment for life and to pay a fine of Rs. 500 each, in default, to undergo simple imprisonment of one month. All the accused appealed to the High Court.

11. For the completeness of narration, we may indicate that the High Court initially acquitted all the accused by its judgment dated 21.06.2007, but in appeal to this Court, their conviction and sentences were set-aside, and the criminal appeal was remanded back to the High Court for fresh consideration. It is in this background that the order impugned came to be passed by the High Court.

12. After remand, the High Court confirmed the judgment of the Trial Court and dismissed the criminal appeals. The Special Leave Petition filed by the accused was admitted on 01.08.2022 and this is how we have heard Shri Gaurav Agrawal, learned counsel for the appellants and Shri Krishan Kumar Singh learned counsel for the State and Shri Sirajudeen, learned senior counsel for the respondent No. 2.

13. Findings of the Trial Court: The Trial Court had examined the credibility of the Prosecution witness in great detail. According to the Trial Court, PWs 1, 3, 4, 6, 7 and 8 were eyewitnesses to the incident and their testimonies were consistent. Among them, PW- 6's testimony was a clinching piece of evidence as he was privy to the incident from the very beginning.

He was subjected to intense cross-examination with respect to his residence and other details about the incident. Except for minor variations, the Trial Court found his testimony unshaken, being consistent and natural. The Trial Court found the testimonies PW-1, PW-3, PW-4, PW-7, PW-8 corroborating the incident of stopping an auto, dragging the deceased out, and subsequently assaulting the deceased with various weapons.

14. Collectively, the witnesses reiterated that A-1 stopped the auto-rickshaw and pulled the deceased out and A-2 attacking the deceased's hands with a sword. As they reached A-4's house, A-4 took the sword from A-2 and struck the deceased on his head. A-4 also inflicted injuries by a knife. The common account about A-3 is that he hit the deceased on the head with a stone. Accused No. 1 continued the attack and hit the deceased with an axe. Largely, these witnesses recounted a consistent narrative of the attack, identifying the weapons used and the roles of each accused.

15. Judgment of the High Court: According to the High Court, the accounts of PWs 1, 3, 4, 6, 7 and 8, who witnessed the incident, converge and are consistent with the injuries, weapons and motive for the murder of the deceased. The High Court correctly relied on the evidence of PW-6 who was in an auto-rickshaw along with the deceased on the day of the incident. PW6's evidence that he boarded the auto-rickshaw of PW-5, followed by the deceased and Rajitha (PW-9) joining him, was believed by the High Court.

16. The account of PW6 being corroborated by the evidence of PWs 1, 3, 4, 7 and 8, the High Court held that the evidence conclusively establishes the guilt of the accused beyond reasonable doubt. The High Court also noted the submission relating to the contradictions in the Complaint (Ex. P1) and the testimonies of PWs 1, 3, 4, 6, 7 and 8, specifically relating to the acts of assault, however, the High Court came to the conclusion that they were minor in nature.

17. Though the High Court saw that the trial court extensively examined the evidence and considered all the submissions, it has nevertheless considered the evidence afresh and after a detailed examination, arrived at the same conclusion. We have given our anxious consideration and have scrutinised the evidence of all the eye-witnesses in detail.

We are in full agreement with the decision of the Trial Court and the High Court. Their analyses and conclusions are based on correct appreciation of evidence and law. However, there is one aspect which stands out in the abovereferred analyses of the Trial Court and the High Court, and that pertains to the conclusion on the culpability of A-3 for murder. We will now examine the evidence as against A-3.

18. Evidence against Accused No.3: To commence with, the FIR states that A-3 hit the deceased on the head, thereby causing death. The Chargesheet states that A3 used a stone to do the same. However, no further details have been provided. Further as we examine the testimonies of all the eyewitnesses the following picture emerges. PWs 1, 3, 4 and 6 state that the A-3 had used a stone to hit the deceased's head. PW-7 and PW-8 do not speak about his role.

19. PW-1, in his examination-in-chief and cross-examination, has respectively stated as follows:

Chief - "When I was trying to go near the deceased, A-3 threatened me saying that if I go there he would kill me. A-3 hit the deceased with a stone."

Cross - "I read Ex. P-1 complaint and it does not show that A-1 and A-3 threatened me and other eye witnesses to kill if we tried to rescue the deceased"

20. PW-3, in his examination-in-chief and cross-examination, has respectively stated as follows:

Chief - "After hearing the cries of the said Rajitha and Swamy I, PW1, Kona Mallesh Akireddy Ramesh, T.Odaiah rushed to the spot. By the time we reached the spot the deceased was lying on ground with injuries and on seeing us A-3 took a stone and gave threats to us saying that he would hit us if we go there."

Cross - "It is not true to say that I did not state before the police that when land other eye witnesses were going near the place of the incident A-3 armed with a stone threatened to kill us. It is not true to say that for the first time before this court I am deposing that A-3 armed with a stone threatened me and other witnesses to kill"

21. P.W. 4, in his examination-in-chief, has stated as follows:

"A-3 took a stone and hit on the head of the deceased."

22. P.W. 6, in his examination-in-chief, has stated as follows:

"A-3 took a stone and hit on the head of the deceased."

23. A reading of the judgment and order passed by the Trial as well as the High Court would indicate that neither the prosecution or defence, nor the court, have focussed on the role of A-3 as evidenced by the oral and documentary evidence. There is nothing to attribute A-3 with the intent to murder the deceased. In fact, both the Courts have mechanically drawn an inference against A- 3 under Section

34 of the Act merely based on his presence near the scene of offence and his familial relations with the other accused.

24. As per the post-mortem report, the cause of death is "cardio pulmonary arrest due to transection spinal cord at atlanto occipital joint". The atlanto occipital joint is at the back of the neck, which is the exact place where A-1 assaulted the deceased with the help of an axe. This axe was then taken by A-2 and thereafter, by A-4, who also assaulted the deceased. All the eye-witnesses are clear in this account. In other words, it was only A-3 who never took the axe in his hand. He only used a stone to assault the deceased.

25. Considering the statements of the eye-witnesses, coupled with the post-mortem report, it is not possible to contend that A-3 would have had the intention to commit the murder of the deceased and as such, he cannot be convicted under Section 302 IPC.

26. In fact, Victor Dinesh (PW-11), who gave the post-mortem report had indicated the injuries as under:

"1. Incised wound extending from right ear to left cheek 19 cm long 6 cm deep 2 mm wide grievous sharp weapon, Ante mortem.

2. Incised wound on the right eye brow (4cms) simple sharp weapon Ante mortem.

3. Incised wound on the left side of fore head about 9 cms above left eye brow measuring 8 cms sharp weapon Ante mortem.

4. Incised wound on left shoulder measuring 4 cm long 3mm wide. Sharp weapon ante mortem.

5. Incised wound on right should of 8 cm long 1 ½ cm wide sharp weapon, ante mortem.

6. 5 cm x 6 Incised wound (slice) on the vertex. Sharp weapon ante mortem.

7. 8 cms long incised wound backs of left wrist, sharp weapon ante mortem.

8. 12 cms incised wound on the front of left hand, sharp weapon, ante mortem.

9. Partial amputation of middle 3 fingers of left hand, ante mortem.

10. Partial amputation of right thumb. Measuring 2 cms sharp weapon ante mortem.

11. Partial amputation of right index finger measuring 3 cms sharp weapon, ante mortem.

12. Deep lacerated wound on the back of neck measuring 18 cms 7 cms with complete transaction of spinal card and Atlanta occipital joint. Blunt weapon, ante mortem."

27. It is evident from the evidence of PW-11 that the deceased suffered 12 injuries, of which 10 are caused by sharp-edged weapons. The 11th injury is a partial amputation of the middle 3 fingers of left hand. The final injury is a lacerated wound on the back of neck measuring 18 cms x 7 cms with complete transaction of spinal cord and atlanto occipital joint. The Trial Court and the High Court have not analysed the evidence as against A-3. They have proceeded to convict him along with others under Section 302 with the aid of Section 34.

The cumulative circumstances in which A-3 was seen participating in the crime would clearly indicate that he had no intention to commit murder of the deceased for two clear reasons. Firstly, while every other accused took the axe used by A1 initially and contributed to the assault with this weapon, A-3 did not wield the axe at any point of time. Secondly, A-3 only had a stone in his hand, and in fact, some of the witnesses said that he merely threatened in case they seek to intervene and prevent the assault.

Under these circumstances, we hold that A-3 did not share a common intention to commit the murder of the deceased. Additionally, there is no evidence that A-3 came along with the other accused evidencing a common intention. The description of the incident is that when the deceased came to the scene of occurrence, A-1 dragged him to the house of A-4, and the other accused joined A-1. In this context, A-3 picked up a stone to assault the deceased.

28. Even though, A-3 might not have had the common intention to commit the murder, nevertheless, his participation in the assault and the wielding of the stone certainly makes him culpable for the offence that he has committed. While we acquit A-3 of the offence under Section 302 read with Section 34 of the IPC, he is liable for the offence under 304 Part II IPC. The law on Section 304 Part II has been succinctly laid down in Camilo Vaz v. State of Goa, (2000) 9 SCC 1, where it was held that:

14. This section is in two parts. If analysed, the section provides for two kinds of punishment to two different situations:

(1) if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death. Here the important ingredient is the "intention";

(2) if the act is done with the knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death. When a person hits another with a danda on a vital part of the body with such force that the person hit meets his death, knowledge has to be imputed to the accused.

29. In the past, this Court has considered factors such as lack of medical evidence to prove whether the act/injury was individually sufficient to cause death¹, a single blow on head with a hammer² and lack of cogent evidence of the eye-witnesses that the accused shared a common intention to commit murder³ as some factors to commute a sentence from Section 302 to Section 304 Part II IPC.

30. Returning back to the facts of the case, there is certainly no escape from coming to the conclusion that A-3 should have had the knowledge that the use of a stone to hit the head of the deceased is likely to cause death. However, as demonstrated before, the evidence is insufficient to deduce a conclusion that he shared a common intention with the other accused to commit the murder of the deceased.

Considering the role that A-3 has played, we hold him guilty of the offence under Section 304 Part II IPC. 31. The perusal of the evidence would reveal that it is not the case of the prosecution that A-3 was along with the other accused while the deceased was dragged to the house.

The deposition would reveal that after the other accused assaulted the deceased with sword, A-3 came thereafter and assaulted the deceased with stone lying there. We, therefore, find that the prosecution has not been in a position to establish that A-3 shared the common intention with the other accused to cause the murder of the deceased.

32. For the reasons stated above, we uphold the conviction and sentence of A-1, A-2 and A-4 under Section 302 read with Section 34 IPC and dismiss their Criminal Appeal No. 2852 of 2023 against the judgment of the High Court of Telangana in Criminal Appeal No. 308 of 2005 dated 26.04.2022.

We acquit A-3 of the conviction and sentence under Section 302 read with Section 34 and convict him under Section 304 Part II and sentence him to undergo imprisonment for 10 years. To this extent, the appeal of A-3 is allowed by altering the conviction under Section 302 to Section 304 Part II IPC.

33. Pending applications, if any, are disposed of.

.....J. [B.R. Gavai]

.....J. [Pamidighantam Sri Narasimha]

New Delhi;

February 06, 2024

1 Bawa Singh v. State of Punjab, 1993 Supp (2) SCC 754.

2 Sarup Singh v. State of Haryana, (2009) 16 SCC 479.

3 Ghana Pradhan & Ors. v. State of Orissa, 1991 Supp (2) SCC 451.

IN THE SUPREME COURT OF INDIA

Mallappa and Ors.

Vs.

State of Karnataka

Criminal Appeal No(s). 1162 of 2011

HEADNOTE – If the appreciation of evidence leads to two possible views, then the decision of the Trial Court acquitting the accused could not be reversed by the Appellate Court merely because there exists another view that led to the conviction of the accused.

Six principles for the High Court/Appellate court which shall come into play while deciding an appeal from acquittal.

"(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive – inclusive of all evidence, oral or documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favor of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, the mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts.

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity, or error of law or fact in the decision of the Trial Court."

JUDGMENT

Satish Chandra Sharma, J.

1. The wheels of justice may grind slow, but they grind fine. Mallappa S/o Ningappa Kanner, Hanamanth S/o Ningappa Kanner and Dharamanna S/o Ningappa Kanner are the appellants before us who were put on a trial, as accused no. 3, 4 and 5, for the commission of murder of deceased namely Marthandappa and were acquitted by the Trial Court/Fast Track Court-I at Gulbarga on 24.03.2005.

The judgment was not meant to finally seal the fate of the appellants as the State of Karnataka preferred an appeal against the order of the Trial Court before the

High Court of Karnataka which was registered as Criminal Appeal No. 1363/2005. On 31.05.2010, the High Court reversed the order of acquittal and held the appellants guilty of the commission of murder of deceased Marthandappa. Accordingly, the appellants stood convicted and were sentenced to undergo life imprisonment. The appellants stand before us assailing the order of conviction of the High Court and praying for a declaration of innocence.

2. Pertinently, eight accused persons were tried and acquitted by the Trial Court. The High Court agreed with the acquittal of all the accused persons, except the three appellants before us.

Prosecution Case

3. The case of the prosecution begins from one Nagamma, who is the wife of Accused No. 5 and deceased Marthandappa was allegedly having an illicit relationship with her. On account of the alleged illicit relationship, the relations between A1-A8 and Marthandappa were strained. On 28.06.1997, the fateful day, Marthandappa (the deceased), PW3 and PW4 were travelling in a bullock-cart from village Aidbhavi to the village Nagaral for cultivating their lands.

They left the house of PW-2 (father of the deceased) at around 9 A.M. in a bullock cart to go to village Nagaral. PW-2 had agricultural lands at Aidbhavi as well as Nagaral. While they were travelling to village Nagaral, they crossed village Shantpur as they were proceeding on the bullockcart towards Nagaral village. At around 4 P.M., when their bullock-cart arrived near the land of Balwantappa Channur, A1 to A8 came out of their hiding place and stopped the bullock-cart.

4. As per the prosecution case, A3, A4 and A6 were armed with axes (MO1s. 5, 6 &7), A5 was armed with knife (MO8) and A1, A2, A7 and A10 were armed with clubs (MOs 9, 10 and 1). The accused persons started by threatening Marthandappa stating that on account of his illegal acts, village women folk are not able to lead their life peacefully and then they proceeded towards Marthandappa, with the intention to kill him. A3 assaulted him with an axe on his right leg and caused injuries.

A4 also assaulted him with an axe five/six times on the right side of the stomach. A5 assaulted with a knife on the lip and back of Marthandappa, A6 assaulted with an axe on the right and left temple region and chin of Marthandappa. He also assaulted with an axe on the lap of Marthandappa. As the offensive act continued, A7 assaulted with a bullock-cart peg on the head of Marthandappa. A1, A2 and A8 assaulted with clubs on the back of Marthandappa.

5. Fearing for his life, PW-4 tried to run away and at that point of time, A3 assaulted him with an axe on the head, back and on the scrotum. PW-4 sustained injuries, became unconscious and fell on the ground.

6. PW-3, an eye witness of the incident, rushed to save himself and went inside the jali-trees. He saw the incident hiding from that particular place. Eventually, Marthandappa fell on the ground and A1 to A8, believing that Marthandappa was no more, left the place. Finding it safe for him, PW3 then went to Marthandappa and found that Marthandappa was no more. He noticed that PW-4 was also lying unconscious with blood flowing out of his injuries. Thereafter, PW-3, fearing for his life, kept on hiding amidst the jali-trees and sometime during the night, he left the jali-trees and left for Devpura.

On the next day, PW-3 reached the house of PW-2 at Aidbhavi and informed him regarding the incident. PW-2 then visited the scene of offence and saw the dead body of Marthandappa. He also saw PW-4 lying on the ground in an unconscious condition. Thereafter, on 29.06.1997 at around 3 P.M., he went to P.S. Shorapur and lodged a written complaint to the PW- 10 as per Ex.P1 and PW-10 registered a case as Crime No. 78/97 and sent FIR (Ex.P13) through PW-1 to the Judicial Magistrate First Class2, Shorapur. The copy of FIR was handed over to JMFC at around 4:30 P.M.

7. The facts further reveal that on 29.06.1997 at about 12:30 P.M., PW-4 went to the Government Hospital, Shorapur, and met the doctor (PW-8). He showed his injuries to PW-8 and PW-8 found three injuries (simple) on PW-4 and gave treatment to him, and later sent him for further treatment to the Government Hospital, Gulbarga. The doctor at Gulbarga treated PW-4 and issued a simple injury certificate to PW-8 (Ex.P12). After registering the case, PW-10 went to the scene of offence at Shorapur village along with PW-9 and saw the dead body of Marthandappa and collected panchas (PW-7 and Malleshi).

In the presence of Panchas, he conducted inquest mahazar on the dead body of Marthandappa, as per Ex.P9. On 29.06.1997, between 4.30 P.M. to 6.00 P.M. and thereafter, he handed over the dead body of Marthandappa to PW-9 with the requisition letter (Ex.P2) directing PW-9 to take the dead body to Government Hospital, Kakkeri for getting the postmortem examination done.

PW-9 took the dead body of Marthandappa to the Government Hospital, Kakkeri, and handed over the dead body to PW-5 (doctor) for post-mortem examination on 30.06.1997 at about 6.30 A.M. On 29.06.1997, PW-10, in the presence of Panchas (PW7 and Malleshi) conducted mahazar of scene of offence as per Ex.P10. From the scene of offence, he seized MO-1 (bullock-cart peg), MO-12 (pair of chappal), MO-13 (towel), MO-14 (blood stained mud), MO-15

(sample mud), MO-16(taita) and MO-17 (waist thread) and slips were affixed bearing signatures of the Panchas on them.

8. On 30.06.1997, PW-5 (doctor) conducted postmortem examination on the dead body of Marthandappa from 6.30 am to 9.30 am. The doctor found 9 ante mortem injuries on him and issued a post-mortem report as per Ex.P3 stating the cause of death to be haemorrhage shock as a result of laceration of liver tissue. Notably, the report stated the time of death to be 36 to 48 hours prior to the post mortem examination. The doctor further handed over clothes and articles (MOs) found on the dead body as well as the dead body to PC (PW9).

Thereafter, PW9 handed over the dead body to the relatives of Marthandappa for burial. The clothes and articles found on the dead body were brought to Kakkera by PW9, who produced them before PW-10. PW-10 seized them in the presence of panchas (PW7 and Malleshi) and also conducted mahazar of seizure as per Ex.P11 (MOs 1 to 4). Thereafter, he went to Aidbhavi village and recorded the statement of witnesses. Thereafter, he went to Mudagal and recorded the statement of Nagamma (wife of A5).

9. On 01.07.1997, PW-10 recorded statement of Balvantappa. On 04.07.1997, at about 5.30 A.M. at Tintini Bridge, PW-10 arrested A5 and interrogated him. A5 gave him information that he could produce knife from his house, thereby leading to discovery as per Ex.P14. A5, thereafter, took PW10 and panchas PW6 and Yamanappa) to his house situated in Aidbhavi vilage and from his house, he produced one knife (MO-8) and one axe (MO-5). PW-10 seized them as per Ex.P14. PW-10, thereafter obtained judicial custody remand of A5 from JMFC, Shorapur and obtained permission to retain properties.

On 14.07.1997 at about 4.00 A.M., PW-10 arrested A1 to A4 from Shorapur Bus Stand and brought them to the police station for interrogation. A1 gave information leading to discovery as per Ex.P15. A2 gave information leading to discovery as per Ex.P16 and A3 gave information leading to discovery as per Ex.P17. Thereafter, on 15.07.1997, A1 led police and panchas (PW6 and Yamanappa) to his house and from his house, he produced one stick (MO9) before the police and panchas and PW-10 conducted mahazar of seizure as per Ex.P5.

PW-10 took the signatures of the panchas on it. Thereafter, A2 led police and panchas to his house and from his house, he produced one stick (MO-10). PW-10 conducted mahazar of seizure of these articles, as per Ex.P7. A3 led police and panchas to his house at Aidbhavi and from his house, he produced one axe (MO7) and PW- 10 seized the same as per mahazar (Ex.P6) and took signatures

of the panchas on it. PW-10 thereafter obtained judicial custody remand of A1 to A4 from JMFC, Shorapur.

On 25.07.1997, PW10 arrested A7 from his house and remanded him to judicial custody and on 17.07.1997 at 6.30 a.m., arrested A6 from Gurgunta bus stand and interrogated him. A6 gave him information leading to discovery as per Ex.P18 and from his house, one knife (MO8) was recovered and PW-10 seized it under mahazar Ex.P8. Thereafter, A6 was also remanded to judicial custody. On 07.10.1997, PW-10 sent all the seized articles to FSL, Bangalore through PW9.

10. On 07.08.1997, PW-10 recorded the statement of PW4. On 22.08.1997, PW10 collected post-mortem report (Ex.P3) from the doctor (PW-5). On 30.08.1997, PW9 returned from Bangalore FSL Office and PW-9 produced all the articles in re-sealed condition before PW10 and seized them. On the same day, he collected injury certificate of Laxman (PW4) as per Ex.P12. On 14.09.1997, PW-10 received FSL report as per Ex.P19 and Ex.P20.

11. After completing investigation, he filed the charge-sheet before JMFC, Shorapur on 29.09.1997. The JMFC Court, Shorapur, passed the order of committal on 19.01.1998 and the accused persons appeared before the Principal Sessions Judge, Gulbarga on 22.03.2002. The Principal Sessions Judge framed charges against the accused persons for the commission of offences under Sections 147, 148, 149, 302, 307 and 504 of the Indian Penal Code and all the accused persons pleaded not guilty and claimed trial.

The prosecution examined PW1 to PW10 as witnesses for the prosecution, got marked Ex.P1 to Ex.P21 as well as MOs. 1 to 17 as exhibits and materials in support of the prosecution case and closed the prosecution evidence. The defence marked Ex.D1 in support of their case. The trial court, after appreciating the evidence on record, acquitted all the persons under Section 235 Cr.P.C. The order of acquittal was assailed before the High Court and vide order dated 31.05.2010, the High Court convicted A3 to A5 (present appellants) and upheld the acquittal order with respect to accused Nos. 1, 2, 6, 7 and 8.

12. In the course of this proceeding, we have been informed that appellant no. 3 is no more, and the present appeal is confined only to appellant Nos. 1 and 2.

13. Before we proceed to lay down the case set up by the parties before us, we may briefly highlight the reasons that prevailed upon the trial court while ordering acquittal. The trial court, after appreciating the evidence on record, acquitted the accused persons by assigning the following reasons:

i. The evidence of eyewitness PW3 is not worthy of credit and his conduct after the alleged murder was artificial.

ii. PW3 witnessed the assault on the deceased as well as on PW4, as per the prosecution version, however, he chose to hid behind the bushes till the sunset as he got frightened.

iii. PW-3 admitted that there were number of buses plying on the route between Lingasgur to Shorapur and Gulbarga. However, his version, that he could catch the bus only on the next day at 6.00 A.M., is artificial. He could have availed the transport facility on 28.06.1997 itself after the assailants had left.

iv. PW-3 states that his relatives are residing in Nagaral village, which is 4 km from the scene, but he did not go and inform them.

v. PW-3 did not inform the people at Devpura or the passengers plying in the bus in which he travelled to go to Gurugunte. From there, he caught another bus to Aidbhavi village. The incident took place around 4 P.M. and it took more than 18 hours for PW-3 to inform the father of the deceased PW-2. In the meanwhile, although he had opportunity, he did not inform the out-post police, which must have come in the course of his journey from Devpura to Aidbhavi.

vi. PW-3 admitted that he was conscious that he should get PW-4 treated after the incident, yet he did not make any sincere effort to get him treated. The deceased and PW-4 were assaulted by the accused. There was no reason for the accused persons to not assault PW-3. His version that he escaped and hid behind the bushes is artificial. Further, the evidence of PW-4 that he was unconscious till he was taken to hospital is artificial. There is no evidence to show the nature of treatment given to PW4 and to show his physical condition at Gulbarga Hospital.

vii. The father's name of PW-4 is shown as Siddaramegowda, whereas in the MLC register the name of the father of PW-4 is shown as Narasappa.

viii. In the wound certificate, it is mentioned that PW-4 "self admitted" at the hospital. The doctor PW-8 states that PW-4 was unconscious. In the wound certificate of PW-4, it is stated that the assault took place in the night. Whereas, the FIR shows that the incident took place around 4 P.M. in the day hours. The Trial Court finds that the evidence of PW-3 and PW-4 is incredible and thus, acquitted the accused.

14. The High Court, in appeal, after re-appreciating the evidence on record, held that the post-mortem report supported the case of the prosecution that the death of Marthandappa was homicidal. It further held that the prosecution has successfully proved the motive and occurrences of incidents on the basis of evidence of PW-3 and PW-4. The High Court further held that Wound Certificate of PW-4 corroborated the evidence of PW-4 regarding the injuries caused to him in the assault.

15. On the question of credibility, the High Court held that PW-4 is an injured witness and he has categorically stated that A1, A2, A7 and A8 assaulted the deceased with clubs on the head and on back, and A3, A4 and A6 assaulted the deceased with axe. His evidence established that A7 assaulted the deceased with knife and he was assaulted by A3 with an axe.

The High Court has arrived at the conclusion that evidence of PW-4 is quite natural and there is nothing to disbelieve his veracity. It has also been observed that PW-4, after the assault, was found lying unconscious. He was admitted to the hospital on the next date at 12.30 P.M. The contents of the wound certificate at Ex.P8 show that PW-4 was semiconscious and it corroborates the version of PW-4 about his condition that he fell unconscious and was semi-conscious at the time when he was admitted to the hospital.

16. In those circumstances, the High Court has arrived at a conclusion that there is no reason to disbelieve the evidence of PW-4, and also that he was a witness to the assault on the deceased and was also a victim of assault.

17. The High Court also considered the evidence of PW-3 who was the eye witness of the incident. The High Court has observed that PW-3 certainly had several options, like informing by-standers at the bus-stop, going to Nagara village or going to the police, but he went to the village of the deceased father at his Aidbhavi village as he was keen on informing PW-2, as he was the most appropriate person to be informed about the incident.

In such circumstances, the High Court has arrived at the conclusion that the conduct of PW-3 in not informing others and going to Aidbhavi village to inform PW-2, could not be a reason to disbelieve his statement. The High Court has arrived a conclusion that the evidence of PW-3 and PW-4, if read together, proves the alleged incident and the evidence of PW-3 and PW-4 establishes that A1, A2, A7 and A8 assaulted the deceased with clubs, however, there are no injuries reflected on the dead body of the deceased.

18. It has been further held that in respect of A3 to A6, the evidence of PW-3 and PW-4 is consistent and establishes their involvement in the assault and proves their guilt. The manner of assault in the overt acts of A3 to A6 corresponds with the injuries noted in the wound certificate and the post-mortem report. In those circumstances, the High Court has set aside the acquittal of A3, A4 and A5, and convicted them for offences punishable under Sections 302 read with Section 34 of the Indian Penal Code and confirmed the order of acquittal in respect of A1, A2, A7 and A8.

19. Assailing the order of the High Court, the appellants submit that the High Court has erred in re-appreciating the entire evidence without finding any fault with the appreciation of evidence by the Trial Court. They submit that re-appreciation of the entire evidence at the appellate stage is not permissible until and unless a grave error has been identified in the view taken by the Trial Court. It is further submitted that if appreciation of evidence leads to two possible views, then the decision of the Trial Court could not be reversed merely because another view was possible.

20. Per contra, it is submitted by the respondent State that the Trial Court did not appreciate the evidence in a proper manner which led to the acquittal of the accused persons. It is further submitted that the testimonies of PW-3 and PW-4 were incorrectly rejected by the Trial Court despite the fact that one of them was an eye witness of the entire incident and the other one was a victim of the assault. It is further submitted that once a grave error is found in the decision of the Trial Court, the High Court is fully empowered to re-appreciate the entire evidence and reach a different conclusion.

21. We have heard the rival submissions of the parties and have also carefully gone through the record.

22. We may now proceed to answer the principal question i.e. whether the High Court was correct in reversing the order of acquittal of the Trial Court and thereby convicting the accused persons under Section 302 IPC.

23. At the outset, it is relevant to note that accused Nos. 1 to 5 are brothers inter se and accused no. 6 to 8 are relatives of accused Nos. 1 to 5, residing at Aidbhavi, Taluk Lingasgur. The complainant PW-2 (Narsappa) is the father of the deceased Marthandappa and PW-4 and PW-3 are the nephews of PW2, and they are residing at village Aidbhavi. The accused persons are not unknown to the victims and complainant.

24. We may firstly discuss the position of law regarding the scope of intervention in a criminal appeal. For, that is the foundation of this challenge. It is the cardinal principle of criminal jurisprudence that there is a presumption of innocence in favour of the accused, unless proven guilty. The presumption continues at all stages of the trial and finally culminates into a fact when the case ends in acquittal.

The presumption of innocence gets concretized when the case ends in acquittal. It is so because once the Trial Court, on appreciation of the evidence on record, finds that the accused was not guilty, the presumption gets strengthened and a higher threshold is expected to rebut the same in appeal.

25. No doubt, an order of acquittal is open to appeal and there is no quarrel about that. It is also beyond doubt that in the exercise of appellate powers, there is no inhibition on the High Court to re-appreciate or re-visit the evidence on record. However, the power of the High Court to re-appreciate the evidence is a qualified power, especially when the order under challenge is of acquittal.

The first and foremost question to be asked is whether the Trial Court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is whether the finding of the Trial Court is illegal or affected by an error of law or fact. If not, the third consideration is whether the view taken by the Trial Court is a fairly possible view. A decision of acquittal is not meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.

26. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The 'two-views theory' has been judicially recognized by the Courts and it comes into play when the appreciation of evidence results into two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence.

And therefore, when two views are possible, following the one in favour of innocence of the accused is the safest course of action. Furthermore, it is also settled that if the view of the Trial Court, in a case of acquittal, is a plausible view, it is not open for the High Court to convict the accused by reappreciating the evidence. If such a course is permissible, it would make it practically impossible to settle the rights and liabilities in the eyes of law. In *Selvaraj v. State of Karnataka*³,

"13. Considering the reasons given by the trial court and on appraisal of the evidence, in our considered view, the view taken by the trial court was a possible one. Thus, the High Court should not have interfered with the judgment of acquittal. This Court in *Jagan M. Seshadri v. State of T.N.* [(2002) 9 SCC 639] has laid down that as the appreciation of evidence made by the trial court while recording the acquittal is a reasonable view, it is not permissible to interfere in appeal. The duty of the High Court while reversing the acquittal has been dealt with by this Court, thus:

"9. We are constrained to observe that the High Court was dealing with an appeal against acquittal. It was required to deal with various grounds on which acquittal had been based and to dispel those grounds. It has not done so. Salutary

principles while dealing with appeal against acquittal have been overlooked by the High Court. If the appreciation of evidence by the trial court did not suffer from any flaw, as indeed none has been pointed out in the impugned judgment, the order of acquittal could not have been set aside. The view taken by the learned trial court was a reasonable view and even if by any stretch of imagination, it could be said that another view was possible, that was not a ground sound enough to set aside an order of acquittal."

(emphasis supplied)

In *Sanjeev v. State of H.P.*⁴, the Hon'ble Supreme Court analyzed the relevant decisions and summarized the approach of the appellate Court while deciding an appeal from the order of acquittal. It observed thus:

"7. It is well settled that:

7.1. While dealing with an appeal against acquittal, the reasons which had weighed with the trial court in acquitting the accused must be dealt with, in case the appellate court is of the view that the acquittal rendered by the trial court deserves to be overturned (see *Vijay Mohan Singh v. State of Karnataka*⁵, *Anwar Ali v. State of H.P.*⁶)

7.2. With an order of acquittal by the trial court, the normal presumption of innocence in a criminal matter gets reinforced (see *Atley v. State of U.P.*⁷)

7.3. If two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the appeal against acquittal (see *Sambasivan v. State of Kerala*⁸)"

27. In this case, the case of the prosecution substantially rests on the testimonies of PW-3 and PW-4 read with various documents, especially the reports of medical examination and post mortem. PW3 is the eye witness of the incident. His testimony has been rejected by the Trial Court by terming it as artificial. PW-3 deposed that he was present at the place of incident when the accused persons started assaulting the deceased and PW-4 on 28.06.1997 at around 4 P.M. PW-3 deposed that A3 had assaulted PW-4 as he was running for his life along with PW-3. PW-4 was attacked from the back and PW-3 successfully managed to hide behind the bushes.

Notably, PW-3 hid behind the bushes and observed the assault till Marthandappa was dead and PW-4 was unconscious. He then came out to check them and fearing for his life, he again rushed behind the bushes. He admitted that he was hiding behind the bushes till sunset. Thereafter, he came out and started walking towards Devpura, although he admitted that there were a number of buses plying

on the route. But PW-3 takes no bus and keeps walking towards Devpura. On reaching there, he sat at the bus stand and kept on sitting there. Fast forward to the next morning, PW-3 catches the bus only at 6 A.M. on the next morning.

The explanation as to how PW-3 spent the entire intervening night of 28-29.06.1997 is missing from the chain of circumstances. The statement that he was simply sitting at the bus stand for the entire night, while Marthandappa was dead and PW-4 was severely injured and unconscious, fails to inspire confidence. More so, when the entire reason for hiding behind the bushes was the fear of life. Despite such fear, PW-3 did not choose to inform the police out-post, on the way from Devpura to Aidbhavi, and rather, he kept on sitting at the Devpura bus stop.

He also admitted that his relatives were residing around 4 km from the place of incident at Nagara. However, he chose not to inform them either. He also admitted that he took no steps to provide medical treatment to PW-4 who was lying unconscious at the place of incident as a result of the assault. The said fact could have been entertained if the place of incident was completely secluded. Such is not the case, as it is admitted that the place of incident fell on a bus route and buses were indeed plying.

28. It was almost 18 hours after the assault that PW-3 managed to reach Aidbhavi to inform PW-2 about the incident. The High Court found the conduct of PW-3 to be perfectly natural, as it was understandable that PW-3 wanted to inform PW-2 before anyone else. Such conduct would have been justified if PW-2 was residing in close proximity of the place of incident.

The very fact that PW-3 did not even contemplate about providing medical help to PW-4 or to seek protection from the local police despite such a drastic assault and instead, chose to wait for 18 hours, raises a reasonable doubt on the credibility of his version. This circumstance assumes a greater importance in light of the fact that PW4 was the cousin brother of PW3 and not some stranger. The conduct of PW-3 was not that of a reasonable man placed in such circumstances and the Trial Court was right in terming it as artificial.

29. The conduct of PW-3 renders his very presence at the place of incident as doubtful. Despite a heavy assault by multiple accused persons, he did not suffer any injury at all. That too when he was indeed chased by A3 while attacking PW-4. It is extremely doubtful that the assailants simply chose to give up on PW-3 and did not pursue him behind the bushes, despite knowing that PW-3 could turn out to be an eye witness of the incident.

The story that follows the story of hiding behind the bushes is equally doubtful and leaves one speculating. The timelines, the route taken by PW-3, complete

disregard for severely injured PW-4, failure to inform the police post despite access to it etc. are some of the factors that raise a reasonable doubt on the entire story. The chain of circumstances created by the testimony of PW-3 is not consistent with the outcome of guilt.

30. The version of PW-4 is that he was attacked from the back by A3 and thereafter, he fell unconscious. As per his testimony and the testimony of PW-3, PW-4 was attacked by an axe on his head, back and scrotum. The first point of corroboration is to be seen from the circumstances following the assault. The assault on PW-4 took place at around 4 P.M. and he was admittedly unconscious thereafter. He remained as such until he was "self-admitted" in the hospital at around 12:30 P.M. the following day.

The second point for corroboration of this version could be taken from the wound certificate issued by PW-8 during the treatment of PW-4 at Government Hospital, Shorapur. The Trial Court relied upon the wound certificate and noted a contradiction between the condition of PW-4 at the time of admission. In the certificate, PW-4 is stated to be "self-admitted" but at the same time, he is stated to be unconscious. The High Court rejected this contradiction as material by observing that PW-4 was semi-conscious at the time of admission and therefore, he could have admitted himself in the hospital. However, the inherent contradictions in the statement of PW-4 are not limited to this point.

31. The injuries found on PW-4, as per the wound certificate, were simple in nature. PW-8 gave some treatment to PW-4, however the nature of treatment is not indicated. Thereafter, PW-8 forwarded him to a hospital at Gulbarga where injury certificate Ex.P12 was prepared. Ex.P12 also recorded the nature of injury to be simple in nature. The nature of injury is to be corroborated with the nature of assault, as deposed by PW-4 and PW-3.

They deposed that A3 had attacked PW-4 with an axe at three sensitive places i.e. head, back and scrotum. The attack was so severe that PW-4 immediately fell unconscious. In the ordinary course of natural events, an injury inflicted by an axe, that too in a manner that the injured immediately fell unconscious and remained unconscious for almost 20 days, could not have been a simple injury. More so, a simple injury of a standard that required no admission in the hospital.

32. Furthermore, PW-4 travelled to the hospital at Shorapur by a bus, but he failed to inform any passenger about the assault. Despite such injuries, including on the head, no one noticed his condition. He was unconscious for over 20 days and after he regained consciousness, his statement was recorded by PW-10. It is difficult to comprehend as to how a severely injured person, who could not gain

consciousness before 20 days, managed to go to the hospital on his own by using a public bus and later, to another hospital at a different place.

It is difficult to comprehend that PW-4 was conscious enough to undertake two journeys to two different hospitals, by public transport, but did not have the senses to give a statement to the IO PW-10 before the passage of almost 30 days. During cross examination, PW-4 had deposed that he had sustained injuries on head and testicles only, and there was no other injury. The said statement was a material improvement from the versions initially put forth by PW-3 and PW-4 whereby, PW-4 had sustained injuries on the back as well.

However, no such injury was recorded in the wound certificate and in all likelihood, the improvement was made for that reason. The testimony of PW-4 is impeachable for another reason - the time of the offence. As per his version, the time of assault was around 4 P.M., whereas, as per the wound certificate Ex.P12, the time of injury was at night. Similar issue with respect to timing was noticeable in the post mortem report as well.

33. Notably, all these aspects have been carefully analysed and appreciated by the Trial Court, but the High Court rejected all the doubts by observing that PW-4 was an injured witness and there was no reason to disbelieve his testimony. The High Court omitted to take note of two material aspects - the fact that the statement of PW-4 was recorded after a period of one month from the date of incident and the factum of family relationship between the deceased and PW-4.

The former aspect raises a grave suspicion of credibility, whereas the latter raises the suspicion of being an interested witness. In normal circumstances, where a testimony is duly explained and inspires confidence, the Court is not expected to reject the testimony of an interested witness, however, when the testimony is full of contradictions and fails to match evenly with the supporting evidence (the wound certificate, for instance), a Court is bound to sift and weigh the evidence to test its true weight and credibility.

34. Pertinently, the Trial Court had reached its decision after a thorough appreciation of evidence and we have no doubt in observing that the view taken by the Trial Court was indeed a legally permissible view. The High Court went on to reverse the decision by taking its own view on a fresh appreciation of evidence. Moreover, the High Court did so without recording any illegality, error of law or of fact in the decision of the Trial Court. In our considered view, the same was not permissible for the High Court, in light of the law discussed above. Setting aside an order of acquittal, which signifies a stronger presumption of innocence, on a mere change of opinion is not permissible. A low standard for

turning an acquittal into conviction would be fraught with the danger of failure of justice.

35. So far as the question of independent appreciation of evidence by the High Court is concerned, be it noted that the High Court was fully empowered to do so, but in doing so, it ought to have appreciated the evidence in a thorough manner. In the present case, the High Court has not done so. Even the aspects discussed by the Trial Court have not been fully addressed and the High Court merely relied on a limited set of facts to arrive at a finding.

The factors which raised reasonable doubts in the case of the prosecution were ignored by the High Court. For instance, the contradictions pertaining to time, which were carefully analyzed by the Trial Court, were not examined by the High Court at all. Similarly, the contradictions qua the nature of injuries were also not discussed. In an appeal, as much as in a trial, appreciation of evidence essentially requires a holistic view and not a myopic view.

Appreciation of evidence requires sifting and weighing of material facts against each other and a conclusion of guilt could be arrived at only when the entire set of facts, lined together, points towards the only conclusion of guilt. Appreciation of partial evidence is no appreciation at all, and is bound to lead to absurd results. A word of caution in this regard was sounded by this Court in *Sanwat Singh v. State of Rajasthan*⁹, wherein it was observed thus:

"9. The foregoing discussion yields the following results:

(1) an appellate court has full power to review the evidence upon which the order of acquittal is founded;

(2) the principles laid down in *Sheo Swarup* case [LR 61 IA 398] afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and

(3) the different phraseology used in the judgments of this Court, such as, (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons", are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified."

(emphasis supplied)

36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:

(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive - inclusive of all evidence, oral or documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court.

37. In this case, the appellants, as a separate argument, have also submitted that the case is not based on circumstantial evidence and is based on direct evidence of PW-3 and PW-4, and therefore, the principles of circumstantial evidence shall not apply. The submission is erroneous for various reasons. First, the direct evidence of PW-3 and PW-4 is to be tested on its own strength, especially in light of their subsequent conduct after the incident.

As per their version, they were accessories to the fact, however, their subsequent conduct left much to be desired and therefore, their direct testimony was found to be incredible, as already discussed above. Secondly, in the absence of credible direct evidence, the case essentially falls back on the circumstantial evidence, and thirdly, the prosecution has failed to complete the chain of circumstances.

The contradictions between oral testimonies and medical examination reports, failure to seize essential materials from the scene of crime, failure to explain the mode of conveyance while going from one place to another, failure to prove the presence of PW-3 at the place of incident, failure to corroborate the injuries etc.

are some of the deficiencies in the chain of circumstances. It would be apposite to refer to the decision of this Court in *Sharad Birdhichand Sarda v. State of Maharashtra*¹⁰, wherein the "Panchsheel" or five principles of circumstantial evidence were laid down as follows:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793] where the observations were made:

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

38. The circumstances in this case are far from conclusive and a conclusion of guilt could not be drawn from them. To sustain a conviction, the Court must form the view that the accused "must have" committed the offence, and not "may have". As noted in *Sharad Birdichand Sarda*¹¹, the distinction between "may have" and "must have" is a legal distinction and not merely a grammatical one.

39. In light of the foregoing discussion, we hereby conclude that the High Court had erred in reversing the decision of acquittal, without arriving at any finding of illegality or perversity or error in the reasoning of the Trial Court. Even on a fresh appreciation of evidence, we find ourselves unable to agree with the

findings of the High Court. Accordingly, the impugned order and judgment are set aside.

We find no infirmity in the order of the Trial Court and the same stands restored. Consequently, the appellants are acquitted from all the charges levelled upon them. The appellants are directed to be released forthwith, if lying in custody.

40. The captioned appeal stands disposed of in the aforesaid terms. Interim applications, if any, shall also stand disposed of.

41. Parties to bear their own costs.

.....J. [Bela M. Trivedi]

.....J. [Satish Chandra Sharma]

New Delhi

February 12, 2024

1 MO = Material Object

2 Hereinafter referred as "JMFC"

3 (2015) 10 SCC 230

4 (2022) 6 SCC 294

5 (2019) 5 SCC 436

6 (2020) 10 SCC 166)

7 AIR 1955 SC 807

8 (1998) 5 SCC 412

9 AIR 1961 SC 715

10 (1984) 4 SCC 116

11 Supra

IN THE SUPREME COURT OF INDIA

Vasantha (D) through LRS.
Vs.
Rajalakshmi @ Rajam (D) through LRS.

[Civil Appeal No. 3854 of 2014]

HEADNOTE – Important factors related to the principle of adverse possession. The plea of adverse possession is a blend of fact and law. The person who claims adverse possession must show the following:

- (a) on what date he came into possession;
- (b) what was the nature of his possession;
- (c) whether the factum of possession was known to the other party;
- (d) how long his possession has continued; and
- (e) his possession was open and undisturbed.

JUDGMENT

Sanjay Karol, J

1. The action that set in motion the instant dispute was in the year 1947, when a mother transferred property inherited at the death of her husband, in one form to her two sons and in another, to her daughter. Some forty-odd years later, the daughter's husband filed a suit in respect of such property, in 1993.

The Additional District Munsiff¹ decided the matter in 1999. The Additional District and Session Judge² returned a decision on the First Appeal in 2002. The Second Appeal was decided by the High Court³ in 2012. It is against this order and judgment in Second Appeal that the present civil appeal has been preferred.

Background Facts

2. It would be necessary to advert to the facts underlying the present dispute.

3. On 10th July 1947, one Thayammal executed a settlement deed⁴ granting rights in her property to her two sons namely Raghavulu Naidu and Chinnakrishnan @ Munusamy Naidu⁵ for their lives and thereafter to the former's two daughters namely Saroja and Rajalakshmi (present Respondent now represented through LRs). Saroja pre-deceased Thayammal as also her father and uncle, in 1951.

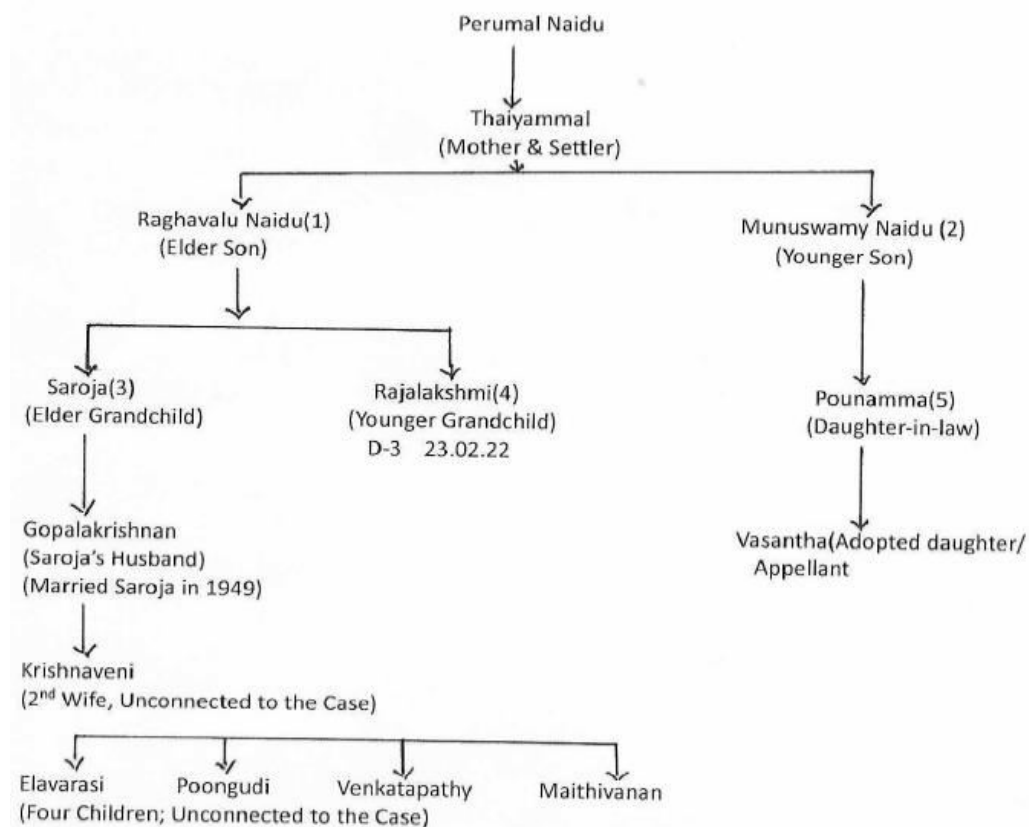
3.1 Subsequently, Raghavulu and Munusamy executed a Settlement Deed dated 31st July 1952⁶ reverting the said interests in the properties back to their mother.

3.2 Thayamma, soon thereafter, executed a further Settlement Deed⁷ dated 18th August 1952, bequeathing absolute interest in such properties only in favour of her two sons namely Raghavulu Naidu and Munusamy Naidu, with the consequence of extinguishing the rights, if any, of Saroja and Gopalakrishnan.

3.3 Munusamy had no children. His wife Pavunammal enjoyed life interest in the property bequeathed to her husband. They had an adopted daughter, Vasantha (present Appellant, now represented through LRs).

3.4 In 1993, during the lifetime of Pavunammal, Gopalakrishnan (Husband of Saroja) filed a suit, subject matter of the present lis, praying for a declaration as the owner of the properties since he was the sole heir of Saroja in terms of the First Settlement Deed.

4. It is in this brief background of facts that the dispute entered the courts. It would be useful to have a summary of family relations forming the backdrop of, and parties to, the dispute by way of a chart, as immediately hereunder:-



- Pounamma is also referred to as Pavanuammal at some places, as was so done by the Courts below.

Proceeding Before The Trial Court

A. Complaint

5. Plaintiff (Gopalakrishnan) filed a suit for declaration and to establish his vested rights and interest in the property.

5.1 It was urged that only the First Settlement Deed had legal sanctity. Accordingly, the wife of Munusamy is only entitled to possession and enjoyment till her lifetime. There is no right of transfer in her favour.

5.2 The Second Settlement Deed is only for the lifetime of Thayammal, and the same would not impact the vested right created in favour of deceased Saroja, inherited by Gopalakrishnan, as her husband and sole heir.

5.3 The adoption of Vasantha is illegal. Also, the vested right in favour of Saroja was created prior to such adoption and, therefore, would not affect the rights of Gopalakrishnan.

B. Written Statement

6. The written statement is of denial of all claims made by Gopalakrishnan.

6.1 It is incorrect to state that the two sons Raghavulu and Munasamy, were in possession of suit properties according to the First Settlement Deed. No claim of any vested rights can be accepted.

6.2 The claim that Gopalakrishnan is the sole legal heir of Saroja, cannot be accepted as after her death in the year 1951, he has remarried and relocated to Pondicherry.

6.3 Even if the First Settlement Deed is accepted as genuine, then Pavanuammal alone would be the heir to such properties.

6.4 Munasamy had, during his lifetime, on 7th October, 1976 executed a settlement deed in favour of Pavanuammal without any coercion. The patta of the said property was also transferred in her name.

6.5 Since Munasamy and Pavanuammal did not have any children, they adopted a child namely Vasantha. Pavanuammal of her own volition executed a settlement deed in favour of Vasantha on 19th July, 1993. Any denial of the same cannot be accepted.

6.6 On 18th August 1952, Thayammal had vide the Third Settlement Deed given exclusively, the suit properties to her two sons who have made separate and

individual deeds in regards to their shares and sold portions thereof to other parties. The suit suffers from non-joinder of necessary parties.

C. Findings

7. The Learned Additional District Munsif framed four following issues to be considered:

- a) Whether the settlement deed suggested by the plaintiff is genuine?
- b) Whether the plaintiff cannot claim any right in the suit property?
- c) Whether the plaintiff is entitled to get the relief prayed in the plaint?
- d) What are the relief for which plaintiff is entitled to?

7.1 Placing reliance upon the deposition of PW1 (Gopalakrishnan), the first issue was decided in favour of the plaintiff and the First Settlement Deed was upheld as genuine. Also, DW1 (Vasantha) in her deposition had not completely denied the execution and genuineness of First Settlement Deed. After considering both, the First and the Second Settlement Deeds, it held that Raghavulu Naidu and Munusamy Naidu must have executed the Second Settlement Deed in favour of Thayammal as the Second Settlement Deed could not be executed without the first deed having been in existence.

7.2 In regard to the second issue, it was observed that plaintiff himself has admitted the execution of Second Settlement Deed and that possession was handed over to Thayammal. Plaintiff has not taken any action in respect of the document executed in the year 1974 and filed the suit in the year 1993 and held that the suit is barred by Limitation and the rights of the plaintiff were abated.

7.3 The third and fourth issues were decided against the plaintiff since he cannot claim any rights in the suit property, therefore, the declaration cannot be made in respect of one-half of the defendant's share in the suit property after her lifetime would come to the plaintiff.

Proceeding Before The First Appellate Court

8. Two following questions were considered by the First Appellate Court:

- a) Whether the plaintiff is the legal heir of Saroja Ammal?
- b) Whether the plaintiff is entitled for the share in the suit property?

8.1 It was held that the plaintiff has never taken any steps to revoke various transactions that have taken place in regard to the suit properties. He was also unaware about the real possession of the properties in question. Further, it was observed that the plaintiff failed to prove dispossession within a period of twelve years, i.e. the time period within which the claim of adverse possession has to be made.

8.2 In the above terms, the judgment and decree of the Trial Court was confirmed and the appeal was dismissed.

Proceeding Before The High Court

9. The High Court under Second Appeal framed the following substantial questions of law:

- a) Whether in law the courts below are right in failing to see that under Section 19 of the Transfer of Property Act, a vested interest is not defeated by the death of the transferee before the possession.
- b) Whether in law the courts below are not wrong in omitting to see that the matter in issue would be squarely covered by the illustrations (i) and (iii) of Section 119 of the Indian Succession Act?
- c) Whether in law the courts below are right in failing to see that a limited interest owner could not prescribe title by adverse possession as held in AIR 1961 SCC 1442?

9.1 Having taken note of various decisions, the learned Single Judge held that the interest vested in Saroja was full and not life interest. Therefore, upon her death,, the interest does not revert to the settlor. In other words, that Saroja died before her interest stood fructified, is an incorrect statement. It is only the right of enjoyment that stood postponed till the life interest of Raghavulu Naidu and Munusamy Naidu.

9.2 On the question of limitation, it was observed that the documents executed between Thayammal, her sons and subsequently, Pavanummam and Vasantha, were only in respect of life interest i.e. a limited right. The other two deeds of settlement executed after the First Settlement Deed are against or beyond the competency of the executants and therefore, not binding on the plaintiff. That being the case the requirement of twelve years within which to initiate a suit, does not arise. Further, it was held that since, in the suit, the life estate holder has been impleaded in the suit and Gopalakrishnan had the option of filing the suit even after her lifetime, the same is not barred by limitation.

9.3 It was in such terms that it was held that according to the First Settlement Deed the plaintiff will be entitled to half share of the property after the lifetime of Vasantha, a life estate holder.

Submissions

10. We have heard at length, Mr. Dama Seshadri Naidu, learned senior counsel for the Appellants and Mr. V. Ramasubramanian, learned counsel for the Respondents. The main contentions urged have been recorded as under:-

A. APPELLANTS

(i) It is submitted that all questions raised in this Appeal are pure questions of law and in accordance with Yeswant Deorao Deshmukh v. Walchand Ramchand Kothari(3-Judge Bench)⁸ and National Textile Corporation Ltd. v. Nareshkumar Badrikumar Jagad(2-Judge Bench)⁹, a question of law can be raised at any stage.

(ii) It is urged that the original plaintiff (Gopalakrishnan) lacked a cause of action. Since the suit was filed while Pounammal was alive, even if his right is termed as 'vested', the same does not become enforceable till her death. In other words, till 2004 no right stood accrued in favour of the plaintiff. Reference was made to Fateh Bibi v. Charran Dass (3-Judge Bench)¹⁰. Further, upon such rights having accrued, no application to amend the plaint was filed. Any which way, if he had by amendment, sought the relief of possession, it would be as if an entirely new cause of action is sought to be introduced amounting to substitution, which ought not to be allowed. Reference was made to M/s Ganesh Trading Co. v. Moji Ram(2-Judge Bench)¹¹.

(iii) As per Section 34 of the Specific Relief Act, 1963¹² the declaration of a right or status is a matter of discretion. However, the proviso restricts the application of such discretion in terms that it is not to be exercised when the complainant seeks only a declaration of title when he is able to seek further relief. Reference is made to Ram Saran & Anr. v. Ganga Devi (3-Judge Bench)¹³, Vinay Krishna v. Keshav Chandra & Anr. (3-Judge Bench)¹⁴ and UOI v. Ibrahim Uddin (2-Judge Bench)¹⁵.

(iv) It is submitted that Article 65 Explanation (a) read with Section 27 of the Limitation Act, 1963 hits the right of Gopalkrishnan. Succession to the estate only accrues on the death of the life estate holder which was in 2004. Till date, no suit stands filed. The learned senior counsel relied on Goplakrishna (Dead) Through LRs v. Narayanagowda(Dead) Through LRs(2-Judge Bench) ¹⁶.

(v) It is argued that the right of Saroja created as per the First Settlement Deed was in fact a contingent interest. It states that if Munusamy has a male heir then

one half will belong to him and Saroja will get the other half after the life of Raghavulu and Munusamy. Therefore, on her death in 1951, her interest was spes successionis i.e. it did not achieve concrete form and is only an expectation of succeeding. The contingency upon which Saroja's interest rests is two-fold; Munusamy either having or not having children.

If he does, they would get half share; if he doesn't then two eventualities exist: half of Munusamy's share goes to Saroja upon his death, and the other half after the life interest of Pavunammal is exhausted, goes to Saroja, the remainder woman. Reliance is placed on Harmath Kaur v. Inder Bahadur Singh¹⁷. Further, reliance is placed on Mahadeo Prasad Singh¹⁸ to state that when there is an expectation simpliciter of succession, neither a transfer nor a contract to transfer is permissible.

B. RESPONDENTS

(i) The fact that the First Settlement Deed was acted upon i.e. the rights given to two sons of Thayammal were returned to her by a subsequent deed in 1952, shows that the first one gave rights in presenti. Therefore, in Saroja rests a 'vested' right as per Section 19 of the Transfer of Property Act, 1882¹⁹, a vested right once accrued cannot be defeated by the death of the transferee prior to possession. Reference is made to Sreenivasa Pai v. Saraswathi Ammal(2- Judge Bench)²⁰.

(ii) The Second Settlement Deed reverting the life interest awarded to the two sons only gives Thayammal a life interest and therefore subsequent settlement deeds were non est in law and thus need not be challenged.

(iii) So far as the non-seeking of relief within twelve years is concerned, it is submitted that the possession of the property was only available to Gopalkrishnan upon the death of Pavunammal (in 2004). Since a suit is pending, the limitation for seeking possession is arrested. The plea of adverse possession will be applicable only if the possession with the opposing party had become adverse on the date of the plaint. The learned counsel relies on Tribhuvan Shankar v. Amrutlal (2-Judge Bench)²¹.

(iv) The enjoyment of the property bequeathed on Raghavulu and Munusamy was in the nature of life interest. The Second Settlement Deed, therefore, is hit by Section 6(d) of TPA. They cannot convey a better title than they have received.

(v) None of the conditions mentioned in Section 126, TPA for revocation/suspension of settlement are met in the present case, meaning thereby that the settlement cannot be revoked.

(vi) Since the title to the properties stood vested in Saroja, Gopalakrishnan had cause of action to file a suit for declaration. The reason for filing of the suit in 1993 is a settlement deed executed by Pavunammal in favour of Vasantha. Since the former was alive the suit was filed without seeking the relief of possession. It is submitted that the proviso uses the term 'further relief' which implies that such relief had to be available on the date of filing the plaint which it was not as possession rested with Pavunammal therefore, a suit only for declaration was maintainable on the date of filing.

(vii) Reliance on Section 213 of the Indian Succession Act, 1925 is misconceived as the same is only applicable to wills covered by Section 57 (a) and (b) of the said Act i.e wills executed within the local limits of the civil jurisdiction of the High Courts of Bombay and Madras.

Questions for Our Consideration

11. Various contentions have been canvassed by either party to the dispute. However, if this Court is to decide those issues, two questions must be considered at the threshold. They are:-

(i) Whether Gopalakrishnan's suit for declaration based on the First Settlement Deed, eventually filed in the year 1993 barred by limitation?

(ii) Whether the suit for declaration simpliciter was maintainable in view of Section 34 of the SRA, 1963? To emphasise, we restate that if the answer to the aforementioned questions is in the affirmative, we need not refer to the other contentions raised across the bar.

Analysis & Consideration Issue 1

12. The provisions of the Limitation Act, 1963 relevant to the instant dispute, i.e, Section 27 and Articles 58 and 65 of the First Schedule to the Act, are reproduced hereinbelow for ready reference:-

"27. Extinguishment of right to property.-

At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

Art.	Description of suit	Period of limitation	Time begins
58.	To obtain any other declaration.	Three years	When first
65.	For possession of immovable property or	Twelve years	When the

	any interest therein based on title.		adverse.
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Explanation.- For the purposes of this article-

(a) Where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession;"

13. We notice that before us, are different interpretations of when the limitation period would expire thereby making the possession of the suit property, hostile to the rights supposedly vesting in Gopalakrishnan, as the heir of Saroja upon whom, the First Settlement Deed vested a right in the property. The learned Trial Court observed that, given the contention of the original plaintiff (Gopalakrishnan) that the Second Settlement Deed was invalid, he ought to have challenged the transfer caused thereby within 12 years of such date.

Further, it was observed that another possibility of challenge arose in 1974 when Munasamy executed a settlement deed in favour of Vasantha and subsequently in 1976, when another deed was executed in favour of his wife, Pavanuaamal, his daughter. On both these occasions, the heir of the alleged vested interest of Saroja, was silent. Therefore, on both counts the suit filed by Gopalakrishnan was barred by limitation. The First Appellate Court agreed with this reasoning.

14. On the other hand, the learned senior counsel for the Appellants has contended, if at all, Gopalakrishnan has a right in the disputed property, then the period of limitation for establishing the adverse possession of Vasantha began in the year 2004 upon the death of the life estate holder i.e, Pavanuaamal, then by 2016 Vasantha had perfected the title by adverse possession. Since no suit for recovery of possession stands filed till date, Gopalakrishnan's claim today is barred by limitation.

15. The question before us is, from when will the period of limitation run, for Gopalakrishnan to stake a claim on the properties?

16. If the period of limitation is to run from the date of the Second Settlement Deed, then the rights should be extinguished in 1964. If the same were to run from either 1974 or 1976, then after 1986 or 1988 respectively, Gopalakrishnan had no right in the property on the plea of adverse possession.

17. We notice that this Court in Gopalakrishna (supra) had observed that a reversioner ordinarily must file a suit for possession within 12 years from the death of the limited heir or widow. That metric being applied to the instant facts,

it is after the death of Pavunammal, that the reversioner, or in this case the heir of the reversioner (Gopalakrishnan) ought to have filed the suit.

The suit, the subject matter of appeal before us is a suit for declaration simpliciter and not possession. So, the possession still rests with heir of Pavunammal. The twelveyear period stood expired in 2016 (with the death of Pavanummal in the year 2004) therefore, in our considered view, the suit is barred by limitation, which was filed in 1993.

18. The learned counsel for the respondents contended that since the suit stood filed in respect of the property, the clock for adverse possession stopped ticking. He relied on Tribhuvanshankar (supra) to buttress this claim.

19. A perusal of the said decision shows a reference has been made to Sultan Khan v. State of MP²² to hold that if a suit for recovery of possession has been filed then the time period for adverse possession is arrested. The instant decision is distinguishable from the current set of facts on two grounds: one, that the holding of the Madhya Pradesh High Court was in respect of Section 248 of the MP Land Revenue Code and had been referenced in an appeal arising from the State of MP itself; two, in the present facts, Gopalakrishnan has filed only a suit for declaration and not one for possession.

The said declaration suit was filed in the year 1993. It was after the death of Pavunammal (in 2004) that the relief of possession became available to him. However, no such relief has been claimed. This decision does not in any way support the claim of the respondents.

20. In Saroop Singh v. Banto (2-Judge Bench)²³, this Court observed that Article 65 states that the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse.

Further relying on Karnataka Board of Wakf v. Govt. of India (2-Judge Bench)²⁴, it observed that the physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases related to adverse possession. Plea of adverse possession is not a pure question of law but a blend of fact and law.

Therefore, a person who claims adverse possession should show : (a) on what date he came into possession; (b) what was the nature of his possession; (c) whether the factum of possession was known to the other party; (d) how long his possession has continued; and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is

trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to prove his adverse possession.

21. This Court in *Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan* (2-Judge Bench)²⁵, reiterating the observations made in *P.T. Munichikkanna Reddy v. Revamma* (2-Judge Bench)²⁶ in respect of the concept of adverse possession observed that efficacy of adverse possession law in most jurisdictions depends on strong limitation statutes by operation of which, right to access the court expires through efflux of time. As against the rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property.

Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights but to protect those who have maintained the possession of property for the time specified by the statute under a claim of right or colour of title.

22. In *Bharat Barrel and Drum Mfg. Co. Ltd. v. ESI Corpn.*²⁷, (2-Judge Bench) while discussing the object of Limitation Act, this Court opined that:

"The law of limitation appertains to remedies because the rule is that claims in respect of rights cannot be entertained if not commenced within the time prescribed by the statute in respect of that right. Apart from Legislative action prescribing the time, there is no period of limitation recognised under the general law and therefore any time fixed by the statute is necessarily to be arbitrary. A statute prescribing limitation however does not confer a right of action nor speaking generally does not confer on a person a right to relief which has been barred by efflux of time prescribed by the law.

The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant without asserting them in a court of law. The principle which forms the basis of this rule is expressed in the maximum *vigilantibus, non dormientibus, jura subveniunt* (the laws give help to those who are watchful and not to those who sleep).

Therefore the object of the statutes of limitations is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims. While this is so there are two aspects of the statutes of limitation the one concerns the extinguishment of the right if a claim or action is not commenced within a particular time and the other merely bars the claim without affecting the right which either remains merely as a moral obligation or can be availed of to furnish the consideration for a fresh enforceable obligation. Where a statute, prescribing the limitation extinguishes the right, it affects substantive rights while that which purely pertains to the commencement of action without touching the right is said to be procedural."

(Emphasis Supplied)

23. Part III of the Schedule to the Limitation Act details the time period within which the declarations may be sought for: (a) declaration of forgery of an instrument either issued or registered; (b) declaring an adoption to be invalid or never having taken place; and (c) to obtain any other declaration. Point (c) or in other words Article 58 governs the present dispute.

This Court has in *Shakti Bhog Food Industries Ltd. v. Central Bank of India*²⁸, (3-Judge Bench) taken note of Article 58 of the Limitation Act 1963 vis-a-vis Article 113 (Any suit for which no period of limitation stands provided in the Schedule) and observed that the right to sue accrues 'from the date on which the cause of action arose first'. In the present case, the suit for declaration was filed in 1993. This implies that the cause of action to seek any other declaration i.e. a declaration of Gopalakrishnan in the property, should have arisen only in the year 1990.

There is nothing on record to show any cause of action having arisen at this point in time. The possible causes of action would be at the time of the Second Settlement Deed (1952) or Munusamy's deed of settlement in favour of Pavunammal (1976) or at the time of Pavunammal's vesting of the property in favour of Vasantha (1993) or at the death of Pavunammal (2004) where apart from declaration, he ought to have sought the relief of possession as well. It is clear from the record that on no such possible occasion, a declaration was sought, much less within the stipulated period of three years.

Issue II

24. We now proceed to examine whether the suit for declaration simpliciter was maintainable in view of Section 34 of the SRA, 1963.

25. Section 34 reads as: 34. Discretion of Court as to declaration of status or right.- Any person entitled to any legal character, or to any right as to any

property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

(Emphasis Supplied)

26. The learned senior counsel for the appellant has contended that it has been settled by the Courts below that the appellant has been in possession of the subject property since 1976. In view of the proviso to Section 34, the suit of the plaintiff could not have been decreed since the plaintiff sought for mere declaration without the consequential relief of recovery of possession.

27. The learned counsel for the Respondent, in rebuttal, contended that since at the time of filing of the suit, the life interest holder was alive, she was entitled to be in possession of the property and therefore, the Plaintiff not being entitled to possession at the time of institution of the suit, recovery of possession could not have been sought.

28. We now proceed to examine the law on this issue. As submitted by the learned senior counsel for the Appellant, in *Vinay Krishna v. Keshav Chandra* (2-Judge Bench)²⁹, this Court while considering Section 42 of the erstwhile Specific Relief Act, 1877 to be *pari materia* with Section 34 of SRA, 1963 observed that the plaintiff's not being in possession of the property in that case ought to have amended the plaint for the relief of recovery of possession in view of the bar included by the proviso.

29. This position has been followed by this Court in *Union of India v. Ibrahim Uddin* (2-Judge Bench)³⁰, elaborated the position of a suit filed without the consequential relief. It was observed:

"55. The section provides that courts have discretion as to declaration of status or right, however, it carves out an exception that a court shall not make any such declaration of status or right where the complainant, being able to seek further relief than a mere declaration of title, omits to do so.

56. In *Ram Saran v. Ganga Devi* [(1973) 2 SCC 60] this Court had categorically held that the suit seeking for declaration of title of ownership but where possession is not sought, is hit by the proviso of Section 34 of the Specific Relief Act, 1963 and, thus, not maintainable.

In *Vinay Krishna v. Keshav Chandra* [1993 Supp (3) SCC 129] this Court dealt with a similar issue where the plaintiff was not in exclusive possession of property and had filed a suit seeking declaration of title of ownership. Similar view has been reiterated observing that the suit was not maintainable, if barred by the proviso to Section 34 of the Specific Relief Act. (See also *Gian Kaur v. Raghubir Singh* [(2011) 4 SCC 567])

57. In view of the above, the law becomes crystal clear that it is not permissible to claim the relief of declaration without seeking consequential relief.

58. In the instant case, the suit for declaration of title of ownership had been filed, though Respondent 1-plaintiff was admittedly not in possession of the suit property. Thus, the suit was barred by the provisions of Section 34 of the Specific Relief Act and, therefore, ought to have been dismissed solely on this ground. The High Court though framed a substantial question on this point but for unknown reasons did not consider it proper to decide the same."

30. In *Venkatarama and Ors. v. Vidyane Doureradjaperumal (Dead) thr. LRs (2-Judge Bench)*³¹, the purpose behind Section 34 was elucidated by this Court. It was observed that the purpose behind the inclusion of the proviso is to prevent multiplicity of proceedings. It was further expounded that a mere declaratory decree remains non-executable in most cases. This Court noted that the suit was never amended, even at a later stage to seek the consequential relief and therefore, it was held to be not maintainable. This position of law has been reiterated recently in *Akkamma and Ors. v. Vemavathi and Ors. (2-Judge Bench)*³².

31. This Court in *Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar v. Chandran and Others (2-Judge Bench)*³³ while reversing the High Court decree, observed that because of Section 34 of the SRA, 1963, the plaintiff not being in possession and claiming only declaratory relief, ought to have claimed the relief of recovery of possession. It was held that the Trial Court rightly dismissed the suit on the basis that the plaintiff has filed a suit for a mere declaration without relief for recovery, which is clearly not maintainable.

32. That apart, it is now well settled that the lapse of limitation bars only the remedy but does not extinguish the title. Reference may be made to Section 27 of the Limitation Act. This aspect was overlooked entirely by the High Court in reversing the findings of the Courts below. It was not justified for it to have overlooked the aspect of limitation, particularly when deciding a dispute purely civil in nature.

33. Adverting to the facts of the present case, on a perusal of the plaint, it is evident that the plaintiff was aware that the appellant herein was in possession of the suit property and therefore it was incumbent upon him to seek the relief which follows. Plaintiff himself has stated that defendant no. 1 was in possession of the subject property and had sought to transfer possession of the same to defendant no.2, thereby establishing that he himself was not in possession of the subject property.

We are not inclined to accept the submission of the learned counsel for the respondent on this issue. We note that after the death of the life-estate holder in 2004, there was no attempt made by the original plaintiff to amend the plaint to seek the relief of recovery of possession. It is settled law that amendment of a plaint can be made at any stage of a suit³⁴, even at the second appellate stage³⁵.

34. In view of the above, the second issue is answered in the favour of the Appellants herein and against the Respondent.

Conclusion

35. As evidenced from the discussion hereinabove, the judgment impugned before us fails scrutiny at the threshold stage itself, i.e. on limitation as also maintainability of the suit. This being the case, the judgment of the Trial Court in O.S. No. 726 of 1993 as also the First Appellate Court in S.C. Appeal Suit 47/99 FTC-II Appeal Suit 113/2002 which dismissed the suit of Gopalakrishnan on the grounds of limitation cannot be faulted with.

36. The impugned judgment in Second Appeal No. 1926 of 2004 dated 27th September 2012 titled as Gopalakrishnan & Anr. v. Vasantha & Ors. is set aside.

The appeal is allowed in the above terms. Pending application(s) if any, shall stand disposed of. The holding in the judgments of the Learned Trial Court as also the First Appellate Court are restored.

.....**J. (Hrishikesh Roy)**

.....**J. (Sanjay Karol)**

New Delhi;

February 13, 2024.

1 "Trial Court"

- 2 "First Appellate Court"
- 3 "Impugned judgment"
- 4 "First Settlement Deed"
- 5 "Munusamy"
- 6 "Second Settlement Deed"
- 7 "Third Settlement Deed"
- 8 1950 SCR 852
- 9 (2011) 12 SCC 695
- 10 (1970) 1 SCC 658
- 11 (1978) 2 SCC 91
- 12 "SRA, 1963"
- 13 (1973) 2 SCC 60
- 14 (1993) Supp 3 SCC 129
- 15 (2012) 8 SCC 148
- 16 (2019) 4 SCC 592
- 17 AIR 1922 PC 403
- 18 AIR 1931 PC 1989
- 19 "TPA"
- 20 (1985) 4 SCC 85
- 21 (2014) 2 SCC 788
- 22 1991 MP LJ 81
- 23 (2005) 8 SCC 330
- 24 (2004) 10 SCC 779

25 (2009) 16 SCC 517

26 (2007) 6 SCC 59

27 (1971) 2 SCC 860

28 (2020) 17 SCC 260

29 1993 Supp (3) SCC 129

30 (2012) 8 SCC 148

31 (2014) 14 SCC 502

32 2021 SCC Online SC 1146

33 (2017) 3 SCC 702

34 Harcharan v. State of Haryana, (1982) 3 SCC 408 (2-Judge Bench)

35 Rajender Prasad v. Kayastha Pathshala, (1981) Supp 1 SCC 56 (2-Judge Bench)

IN THE SUPREME COURT OF INDIA

Association for Democratic Reforms & Anr.

Vs.

Union of India & Ors.

[Writ Petition (C) No. 880 of 2017]

[Writ Petition (C) No. 59 of 2018]

[Writ Petition (C) No. 975 of 2022]

[Writ Petition (C) No. 1132 of 2022]

HEADNOTE – Strikes down electoral bonds scheme as unconstitutional and asks SBI to stop issuing EBs

JUDGMENT

Dr. Dhananjaya Y. Chandrachud, CJI

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- c. Validity of Section 154 of the Finance Act amending Section 182(3) to the Companies Act
- G. Challenge to unlimited corporate funding
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 - a. Arbitrariness as a facet of Article 14
 - b. Beyond Shayara Bano: entrenching manifest arbitrariness in Indian jurisprudence
 - ii. Validity of Section 154 of the Finance Act 2017 omitting the first proviso to Section 182 of the Companies Act
- H. Conclusion and Directions

1. The petitioners have instituted proceedings under Article 32 of the Constitution challenging the constitutional validity of the Electoral Bond Scheme¹ which introduced anonymous financial contributions to political parties. The petitioners have also challenged the provisions of the Finance Act 2017² which, among other things, amended the provisions of the Reserve Bank of India Act 1934³, the Representation of the People Act 1951⁴, the Income Tax Act 1961⁵, and the Companies Act 2013⁶.

A. Background

2. Section 31 of the RBI Act stipulates that only the RBI or the Central Government authorized by the RBI Act shall draw, accept, make, or issue any bill of exchange or promissory note for payment of money to the bearer of the note or bond. The Finance Act amended the RBI Act by including Section 31(3) which permits the Central Government to authorize any scheduled bank to issue electoral bonds.

3. To understand the context in which the legislative amendments were introduced, it is necessary to juxtapose the amendments with the regime on financial contributions to political parties. The law relating to financial

contributions to political parties focusses on (a) contributions by corporate entities; (b) disclosure of information on contributions; and (c) income tax exemptions for donations.

i. Corporate Contributions

4. The Companies Act 1956 and the provisions of the RPA, when they were enacted did not regulate contributions to political parties by companies and individuals. The Companies (Amendment) Act 1960 included Section 293A⁷ to regulate contributions by companies. The provision stipulated that companies cannot contribute to (a) any political party; and (b) to any individual or body for any political purpose, amounts exceeding twenty-five thousand rupees in a financial year or five percent of its average net profits during the three financial years immediately preceding the contribution, whichever is greater.

Companies were also required to disclose the amount contributed in a financial year in their profit and loss accounts and furnish particulars of the total amount contributed and the name of the party, individual or entity to which or to whom such amount was contributed. Companies defaulting in complying with the disclosure requirement were punishable with a fine which could extend to rupees five thousand.

5. The Companies (Amendment) Act 1969 amended Section 293A⁸ so as to ban contributions to political parties and for political purposes. Companies acting in contravention of the prohibition were punishable with a fine which could extend to five thousand rupees, and every officer who defaulted was punishable with imprisonment which could extend to three years, besides being liable to fine.

6. The Companies (Amendment) Act 1985 amended Section 293A⁹ to permit contributions to political parties and for political purposes once again. The explanation of the phrase "political purpose" included donations made to a person who in the knowledge of the donor is carrying out any activity at the time of donation which can be regarded as public support to a political party.

Further, the direct or indirect expenditure by companies on advertisements by or on behalf of political parties or publications for the advantage of a political party were also regarded as contributions for political purposes. Three other restrictions, in addition to the earlier restriction prescribing a cap on contributions and disclosure requirement were included.

First, the company (which is not a government company) should have been in existence for more than three years; second, contributions could only be made when a resolution authorizing the contributions had been passed at a meeting of the Board of Directors; and third, the penal consequences attached to the

violations of the provision were made more stringent. A fine extendable to three times the amount contributed could be imposed, and every officer of the company who was in default of the provision was punishable for a term which could extend to three years and be liable for fine.

7. Section 182 of the Companies Act 2013 substantively incorporated the provisions of Section 293-A of the 1956 Act, as amended in 1985. Section 182 enables a company to contribute any amount directly or indirectly to any political party. The provision bars a Government company and a company which has been in existence for less than three financial years from contributing to a political party. The provisos to the provision prescribe the following two conditions:

a. The aggregate of the amount contributed by the company in any financial year shall not exceed seven and a half per cent of its average net profits during the three immediately preceding financial years;¹⁰ and

b. A contribution can be made only if the Board of Directors issues a resolution authorizing the contribution at a meeting. Such a resolution shall, subject to the other provisions of the Section, be deemed to be a justification in law for the making and acceptance of the contribution authorized by the Board.¹¹

8. Sub-section (3) of Section 182 mandates every company to disclose in its profit and loss account any amount contributed by it to any political party during the financial year with specific particulars of the total amount contributed along with the name of the political party to which the contribution was made.

9. Section 182 of the Companies Act 2013 made two modifications from Section 293-A of the Companies Act 1956: (a) the cap on the contributions which can be made by companies was increased from 5 % to 7.5% of their average net profits; and (b) more stringent consequences for violation of were imposed. The fine was extendable to five times (instead of three times prescribed in the earlier provision) of the contribution.

10. The Finance Act 2017 made three changes to Section 182 of the Companies Act:

a. The first proviso to Section 182(1) which prescribed a cap on corporate funding was omitted;

b. Section 182(3) was amended to only require a disclosure of the total amount contributed to political parties by a company in a financial year and excluded the requirement to disclose the particulars of the amount contributed to each political party; and

c. Sub-section 3A was introduced, by which a company could contribute to a political party only by a cheque, bank draft, or electronic clearing system. The proviso to the sub-section states that a company may also contribute through any instrument issued pursuant to any scheme notified under any law for the time being in force for contribution to political parties.

ii. Curbing black money

11. The Taxation Laws (Amendment) Act 1978 included Section 13A to the IT Act exempting the income of political parties through financial contributions and investments from income tax. The objects and reasons of the Amending Act stipulated that tax exemption would increase disposable funds from "legitimate sources". However, to secure the benefit of exemption, the following conditions prescribed in the proviso were required to be fulfilled:

a. The political party was required to keep and maintain books of account and other documents which would enable the Assessing Officer to properly deduce its income;¹²

b. The political party had to maintain a record of voluntary contributions in excess of twenty thousand rupees¹³, along with the name and address of the person who made such contributions;¹⁴ and

c. The accounts of the political party were required to be audited by an accountant.¹⁵

12. By the Election and Other Related Laws (Amendment) Act 2003, Sections 80GGB¹⁶ and 80GGC¹⁷ were inserted in the IT Act making contributions made to political parties tax deductible. The speech of Mr Arun Jaitley, the then Minister of Law and Justice while moving the Bill indicates that contributions were made tax deductible to "incentivize contributions" through cheque and other banking channels.

13. The Finance Act 2017 made the following amendments to Section 13A of the IT Act:

a. The political party was not required to maintain a record of contributions if the contribution was received by electoral bonds;¹⁸ and

b. The political party must receive a donation in excess of two thousand rupees only by a cheque, bank draft, electronic clearing system or through an electoral bond.¹⁹

iii. Transparency

14. The Election and Other Related Laws (Amendment) Act 2003 amended the provisions of the RPA. Section 29C of the RP Act was introduced for requiring each political party to declare the details of the contributions received. The treasurer of a political party or any other person authorized by the political party must in each financial year prepare a report in respect of the contributions in excess of twenty thousand rupees received by the party from a person or company other than Government companies in that financial year. The report prepared must be submitted to the Election Commission before the due date for furnishing a return of income of that financial year under the IT Act.²⁰ A political party which fails to submit the report shall not be entitled to any tax relief as provided under the IT Act.²¹

15. The provision was amended by the Finance Act 2017 to include a proviso by which the political party was not required to disclose details of contributions received by electoral bonds. Annexure I to this Judgment depicts in a tabular form the amendments to the provisions of the RP Act, the IT Act, the Companies Act, and the RBI Act by the Finance Act 2017.

16. The effect of the amendments introduced by the Finance Act to the above legislations is that:

- a. A new scheme for financial contribution to political parties is introduced in the form of electoral bonds;
- b. The political parties need not disclose the contributions received through electoral bonds;
- c. Companies are not required to disclose the details of contributions made in any form; and d. Unlimited corporate funding is permissible.

iv. Objections of RBI and ECI to the Electoral Bond Scheme

17. On 2 January 2017, the RBI wrote a letter to the Joint Secretary in the Ministry of Finance on the proposal of the Government of India to enable Scheduled Banks to issue electoral bearer bonds for the purpose of donations to political parties before the Finance Act 2017 was enacted. The RBI objected to the proposal on the ground that:

- a. The amendment would enable multiple non-sovereign entities to issue bearer instruments. The proposal militated against RBI's sole authority for issuing bearer instruments which has the potential of becoming currency. Electoral bonds can undermine the faith in banknotes issued by the Central Bank if the bonds are issued in sizable quantities;

b. Though the identity of the person or entity purchasing the bearer bond will be known because of the Know Your Customer²² requirement, the identities of the intervening persons/entities will not be known. This would impact the principles of the Prevention of Money Laundering Act 2002; and

c. The intention of introducing electoral bonds can be accomplished by cheque, demand draft, and electronic and digital payments. There is no special need for introducing a new bearer bond in the form of electoral bonds.

18. On 30 January 2017, the Finance Ministry responded to the observations of RBI and stated that:

a. RBI has not understood the core purpose of electoral bonds which is to keep the identity of the donor secret while at the same time ensuring that the donation is only made from tax paid money; and

b. The fear that electoral bonds might be used as currency is unfounded because there is a time limit for redeeming the bonds.

19. By a letter dated 4 August 2017, the Deputy Governor of the RBI stated that India can consider issuing the electoral bonds on a transitional basis through the RBI under the existing provisions of Section 31(1) of the RBI Act. The RBI recommended the incorporation of the following safeguards to minimize the inherent scope of misuse of the bonds for undesirable activities:

a. The electoral bonds may have a maximum tenure of fifteen days;

b. The electoral bonds can be purchased for any value in multiples of a thousand, ten thousand, or a lakh of rupees;

c. The purchase of electoral bonds would be allowed from a KYC compliant bank account of the purchaser;

d. The electoral bonds can be redeemed only upon being deposited into the designated bank account of an eligible political party;

e. The sale of electoral bonds will be open only for a limited period, may be twice a year for seven days each; and

f. The electoral bonds will be issued only at RBI, Mumbai.

20. The draft of the Electoral Bond Scheme was circulated to the RBI for its comments. The draft conferred notified scheduled commercial banks, apart from the RBI, with the power to issue electoral bonds. The RBI objected to the draft

Scheme by a letter dated 14 September 2017. The RBI stated that permitting a commercial bank to issue bonds would "have an adverse impact on public perception about the Scheme, as also the credibility of India's financial system in general and the central bank in particular."

The RBI again flagged the possibility of shell companies misusing bearer bonds for money laundering transactions. The RBI recommended that electoral bonds may be issued in electronic form because it would (a) reduce the risk of their being used for money laundering; (b) reduce the cost; and (c) be more secure.

21. The Electoral Bond Scheme was placed for deliberation and guidance by the RBI before the Committee of the Central Board. The Committee conveyed serious reservations on the issuance of electoral bonds in the physical form. The reservations were communicated by the RBI to the Finance Minister by a letter dated 27 September 2017. The reservations are catalogued below:

- a. Issuance of currency is a 'monopolistic function' of a central authority which is why Section 31 of the RBI Act bars any person other than the RBI from issuing bearer bonds;
- b. Issuance of electoral bonds in the scrips will run the risk of money laundering since the consideration for transfer of scrips from the original subscriber to a transferee will be paid in cash. This will not leave any trail of transactions. While this would provide anonymity to the contributor, it will also provide anonymity to several others in the chain of transfer;
- c. Issuance of electoral bonds in the scrip form could also expose it to the risk of forgery and cross-border counterfeiting besides offering a convenient vehicle for abuse by "aggregators"; and
- d. The electoral bond may not only be seen as facilitating money laundering but could also be projected (albeit wrongly) as enabling it.

22. On 26 May 2017, the Election Commission of India²³ wrote to the Ministry of Law and Justice that the amendments to the IT Act, RPA, and Companies Act introduced by the Finance Act 2017 will have a "serious impact on transparency of political finance/funding of political parties."

The letter notes that the amendment to the RPA by which donations through electoral bonds were not required to be disclosed is a retrograde step towards transparency of donations:

"2(ii) It is evident from the Amendment which has been made, that any donation received by a political party through electoral bond has been taken out of the

ambit of reporting under the Contribution Report as prescribed under Section 29C of the Representation of the People Act 1951 and therefore, this is a retrograde step as far as transparency of donations is concerned and this proviso needs to be withdrawn.

(iii) Moreover, in a situation where contributions received through Electoral Bonds is not reported, on perusal of the Contribution reports of the political parties, it cannot be ascertained whether the political party has taken any donation in violation of provisions under Section 29B of the Representation of the People Act 1951 which prohibits the political parties from donations from Government Companies and Foreign sources."

23. Referring to the deletion of the provision in the Companies Act requiring companies to disclose particulars of the amount contributed to specific political parties, the ECI recommended that companies contributing to political parties must declare party-wise contributions in the profit and loss account to maintain transparency in the financial funding of political parties. Further, the ECI also expressed its apprehension to the deletion of the first proviso to Section 182(1) by which the cap on corporate donations was removed. The ECI recommended that the earlier provision prescribing a cap on corporate funding be reintroduced because:

- a. Unlimited corporate funding would increase the use of black money for political funding through shell companies; and
- b. Capped corporate funding ensured that only profitable companies with a proven track record could donate to political parties.

v. Electoral Bond Scheme

24. On 2 January 2018, the Ministry of Finance in the Department of Economic Affairs notified the Electoral Bond Scheme 2018 in exercise of the power under Section 31(3) of the RBI Act. The Electoral Bond is a bond issued in the nature of promissory note which is a bearer banking instrument and does not carry the name of the buyer.²⁴ The features of the Scheme are as follows:

- a. The Bond may be purchased by a person who is (i) a citizen of India; or (ii) incorporated or established in India.²⁵ 'Person' includes (a) an individual; (b) a Hindu undivided family; (c) a company; (c) a firm; (d) an association of persons or a body of individuals, whether incorporated or not; (e) every artificial juridical person, not falling within any of the above categories; and (f) any agency, office, or branch owned or controlled by such a person. An individual can buy bonds either singly or jointly with other individuals;²⁶

b. An Electoral Bond can only be encashed by an eligible political party.²⁷ A political party, to be eligible to receive an electoral bond, has to be registered under Section 29A of the RP Act, and ought to have secured not less than one per cent of the votes polled in the last general election to the House of the People or the Legislative Assembly of the State.²⁸ An eligible political party can encash a bond only through a bank account with an authorised bank.²⁹ The scheme has notified the State Bank of India as the bank authorised to issue and encash bonds;³⁰

c. The instructions issued by the Reserve Bank of India regarding KYC apply to buyers of the bond. The authorised bank may call for additional KYC documents if necessary;³

d. Payments for the issuance of the bond are accepted in Indian rupees, through demand draft, cheque, Electronic Clearing System or direct debit to the buyer's account. Where payment is made by cheque or demand draft, it must be drawn in favour of the issuing bank at the place of issue;³²

e. The bonds are issued in denominations of Rs 1000, 10,000, 1,00,000, 10,00,000 and 1,00,00,000;³³

f. The bond is valid for fifteen days from the date of issue. No payment will be made to a political party if the bond is deposited after the expiry of fifteen days³⁴. If the bond is not encashed within fifteen days, it will be deposited by the authorised bank with the Prime Minister's Relief Fund;³⁵

g. A buyer who wishes to purchase electoral bond(s) can apply in the format specified in Annexure II of the Scheme.³⁶ The issuing branch shall issue the bond if all the requirements are fulfilled.³⁷ The application shall be rejected if the application is not KYC compliant or if the application does not meet the requirements of the scheme;³⁸

h. The bond issued is non-refundable;³⁹

i. The information furnished by the buyer is to be treated as confidential by the authorized bank. It shall be disclosed only when demanded by a competent court or upon the registration of criminal case by any law enforcement agency;⁴⁰

j. The bond shall be available for purchase for a period of ten days on a quarterly basis, in the months of January, April, July, and October as specified by the Central Government.⁴¹ Bonds will be available for an additional period of thirty days as specified by the Central Government in a year when General Elections to the House of People are to be held;⁴²

k. No interest is payable on the bond.⁴³ No commission, brokerage, or any other charges for issue of a bond shall be payable by the buyer against purchase of the bond;⁴⁴

l. The value of the bonds shall be considered as income by way of voluntary contributions received by an eligible political party for the purpose of exemption from Income Tax under Section 13A of the IT Act;⁴⁵ and

m. The bonds are not eligible for trading.⁴⁶

25. The petitioners instituted proceedings under Article 32 seeking a declaration that Electoral Bond Scheme and the following provisions be declared unconstitutional:

a. Section 135 of the Finance Act 2017 and the corresponding amendment in Section 31 of the RBI Act;

b. Section 137 of the Finance Act 2017 and the corresponding amendment in Section 29C of the RP Act;

c. Section 11 of the Finance Act 2017 and the corresponding amendment in Section 13A of the IT Act; and

d. Section 154 of the Finance Act 2017 and the corresponding amendment to Section 182 of the Companies Act.

26. In its order dated 13 April 2019, this Court observed that the amendments which have been challenged give rise to weighty issues which have a bearing on the sanctity of the electoral process. This Court directed all political parties, in the interim to submit details of contributions received through electoral bonds (with particulars of the credit received against each bond, date of credit, and particulars of the bank account to which the amount has been credited) to the ECI in a sealed cover. The prayer for interim relief was rejected by observing that the operations under the scheme are not placed behind "iron curtains incapable of being pierced":

"25. The financial statements of companies registered under the Companies Act, 2013 which are filed with the Registrar of Companies, are accessible online on the website of the Ministry of Corporate Affairs for anyone. They can also be obtained in physical form from the Registrar of Companies upon payment of prescribed fee.

Since the Scheme mandates political parties to file audited statement of accounts and also since the Companies Act requires financial statements of registered

companies to be filed with the Registrar of Companies, the purchase as well as encashment of the bonds, happening only through banking channels, is always reflected in documents that eventually come to the public domain. All that is required is a little more effort to cull out such information from both sides (purchaser of bond and political party) and do some "match the following". Therefore, it is not as though the operations under the Scheme are behind iron curtains incapable of being pierced."

27. The petitioners have also challenged the introduction of the Finance Act as a Money Bill under Article 110 of the Constitution. The issue of the scope of Article 110 has been referred to a seven-Judge Bench and is pending adjudication.⁴⁷ The petitioners submitted that they would press the grounds of challenge to the Finance Act independent of the issue on Money Bills in view of the upcoming elections to Parliament.

28. By an order dated 31 October 2023, the batch of petitions was directed to be listed before a Bench of at least five-Judges in view of the provisions of Article 145(3) of the Constitution. It is in this background that the challenge to the Electoral Bond Scheme and the amendments is before the Constitution Bench.

B. Issues

29. The present batch of petitions gives rise to the following issues:

- a. Whether unlimited corporate funding to political parties, as envisaged by the amendment to Section 182(1) of the Companies Act infringes the principle of free and fair elections and violates Article 14 of the Constitution; and
- b. Whether the non-disclosure of information on voluntary contributions to political parties under the Electoral Bond Scheme and the amendments to Section 29C of the RPA, Section 182(3) of the Companies Act and Section 13A(b) of the IT Act are violative of the right to information of citizens under Article 19(1)(a) of the Constitution.

C. Submissions

i. Submissions of petitioners

30. Mr Prashant Bhushan, learned counsel made the following submissions:

- a. There is no rational basis for the introduction of electoral bonds. The main objective of introducing the Electoral Bond Scheme as reflected in the article written by the then Finance Minister, Mr. Arun Jaitley was that it would enhance transparency in electoral funding since electoral bond transactions can only be

made through legitimate banking channels. However, cash donations are still permitted even after the introduction of the Electoral Bond Scheme;

b. The Central Government ignored the objections which were raised by both the RBI and the ECI to the Electoral Bond Scheme;

c. The statutory amendments and the Electoral Bond Scheme which mandates non-disclosure of information of electoral funding are unconstitutional because:

i. They defeat the purpose of introducing provisions mandating disclosure of information on political funding in the RPA and the Companies Act which was to enhance transparency in electoral funding;

ii. They violate Article 19(1)(a) which guarantees to the voter the right to information concerning the affairs of the public and the government.⁴⁸ This includes the right to information about financial contributions to political parties because the Constitution through the Tenth Schedule recognizes that political parties have a decisive control over the formation of Government and voting by members of the Legislature in the Legislative Assembly;

iii. They violate Article 21 because the non-disclosure of information of political contributions promotes corruption⁴⁹ and quid pro quo arrangements. The available data indicates that more than ninety four percent of the total electoral bonds are purchased in denominations of rupees one crore. This indicates that bonds are purchased by corporates and not individuals. The limited disclosure clause in the Electoral Bond Scheme prevents investigating agencies such as the Central Bureau of Investigation and Enforcement Directorate from identifying corruption; and

d. They violate the rights of shareholders of Companies who are donating money to political parties by preventing disclosure of information to them; and

e. The statutory amendments and the Electoral Bond Scheme subvert democracy and interfere with free and fair elections because the huge difference in the funds received by ruling parties in the States and Centre vitiates a level playing field between different parties and between parties and independent candidates.

31. Mr Kapil Sibal, learned senior counsel made the following submissions:

a. The amendments and the Electoral Bond Scheme skew free and fair elections by permitting unlimited contributions to political parties by corporate entities and removing the requirement of disclosure of information about political funding;

b. Freedom of a voter in the negative connotation refers to the freedom to cast their vote without interference and intimidation. Freedom in the positive connotation includes the freedom to vote on the basis of complete and relevant information. This includes information about financial contributions to political parties;

c. The argument of the Union of India that Courts should show judicial restraint is erroneous because the amendments in question relate to the electoral process and do not pertain to economic policy;

d. The presumption of constitutionality should not apply to statutes which alter the ground rules of the electoral process. The principle underlying the presumption of constitutionality is that the legislature represents the will of the people and that it is validly constituted through free and fair elections. It would be paradoxical to accord a presumption of constitutionality to the very laws or rules that set the conditions under which the legislature comes into being⁵⁰;

e. Corporate funding per se is violative of the Constitution because corporate entities are not citizens and thus, are not entitled to rights under Article 19(1)(a);

f. The funds contributed to the Electoral Bond Scheme can be used in any manner and their use is not restricted to electoral campaigns;

g. The Electoral Bond Scheme severs the link between elections and representative democracy because those elected are inclined to fulfill the wishes of the contributors and not the voters. This could be through direct quid pro quo where an express promise is made to enact a policy in favour of the donor and indirect quid pro quo where there is an influence through access to policy makers;

h. The Scheme promotes information asymmetry where the information about political donations is not disclosed to voters but the Central Government is privy to such information through the State Bank of India which is the authorized bank under the Scheme. The information asymmetry will ensure that a larger portion of the donations would be made to the ruling party at the Centre. According to the data, the political party at the center has received fifty seven percent of the total contributions made through electoral bonds;

i. The Electoral Bond Scheme skews the principle of one person, one vote because it gives the corporates a greater opportunity to influence political parties and electoral outcomes;

j. The amendment to Section 182(3) permits: (i) loss making companies to contribute to political parties; (ii) unlimited contributions to political parties

enabling significant policy influence; and (iii) non-disclosure of information on political funding to shareholders;

k. The amendments permitting non-disclosure of information on political funding are violative of the right to information under Article 19(1)(a). The right to information on funding of political parties is a natural consequence of the judgment of this Court in ADR (supra) and PUCL (supra) because the underlying principle in the judgments is that an informed voter is essential for a functioning democracy. Information about funding to political parties is necessary for an informed voter since the Symbols Order 1968 and the provisions of the Tenth Schedule allow political parties to influence legislative outcomes and policies;

l. The infringement of the right to information does not satisfy the proportionality standard vis-à-vis the purpose of curbing black money. Even if the argument that the Electoral Bond Scheme fulfills the purpose is accepted, non-disclosure of information on political funding is not the least restrictive means to achieve the purpose;

m. The infringement of the right to information does not satisfy the proportionality standard vis-à-vis the purpose of guaranteeing informational privacy because:

i. Protecting donor privacy is not a legitimate purpose. There is no legitimate expectation of informational privacy to political contributions. The argument that it lies at the heart of privacy conflates speech with money. Secrecy of voting cannot be equated to political donations because while the former is an expression of political equality, the latter is contrary to political equality because it depends on the economic capacity of the contributor;

ii. Political funding is made to influence public policy. They are public acts which are by their very nature subject to public scrutiny; and

iii. Even if donor privacy is necessary, on a balance, the public interest in free and fair elections trumps the private interest in confidentiality. Further, this Court has to balance between the possibility of victimization on the disclosure of information and the infringement of the right to know; and

n. The amendment to Section 31 of the RBI Act is unconstitutional because of excessive delegation since it does not set out the contours of the Scheme.

32. Mr Shadan Farasat, learned counsel made the following submissions:

a. The Scheme does not effectively curb black money. Clause 14 of the Electoral Bond Scheme prohibits de jure trading of the bonds. However, trading is de facto

permissible. Nothing prevents person A from purchasing the bond and trading it with person B who pays through cash;

b. The right to information on political funding which is traceable to Article 19(1)(a) can only be restricted on the grounds stipulated in Article 19(2). The purposes of curbing black money and recognizing donor privacy is not traceable to the grounds in Article 19(2);

c. Even if the purposes are traceable to Article 19(2), the Scheme is unreasonable and disproportionate to the purpose of "increasing political funding through banking channels and reducing political funding through non-banking channels" because:

i. The purpose is not satisfied: The regime still permits cash funding up to Rupees two thousand. The operation of the Scheme increases anonymous funding through electoral bonds at the cost of contributions through regular banking channels;

ii. There is no rational nexus between the means and the purpose;

iii. Other less restrictive means of contributing through banking channels are available; and

iv. The fifth prong of the proportionality analysis as laid down in *Gujarat Mazdoor Sabha v. State of Gujarat*⁵¹ and *Ramesh Chandra Sharma v. State of Uttar Pradesh*⁵² that the legislation should have sufficient safeguard to prevent abuse has also not been satisfied.

d. The statutory amendments and the Scheme are manifestly arbitrary because (i) large scale corruption and quid pro quo arrangements would go unidentified due to the non-disclosure of information about political funding; (ii) they enable capture of democracy by wealthy interests; and (iii) they infringe the principle of 'one person-one vote' because a selected few overpower the voice of the masses because of their economic wealth;

e. The deletion of the limit on corporate contributions is manifestly arbitrary⁵³ because it (i) permits donations by loss making companies; (ii) removes the control of shareholders over the decisions of the Board; (iii) permits unlimited contribution by corporates and thereby abrogates democratic principles;

f. The provision permitting non-disclosure of funding by companies is violative of the shareholders' rights under:

i. Article 25 which includes the right of the shareholder to know how the resources generated from their property are utilized. Once a shareholder comes to know that a company is financing a political party and their conscience does not permit it, as an exercise of the right to conscience, the shareholder should be entitled to sell those shares; and

ii. If the shareholder feels that the political contributions are not a sound business decision, they must be entitled to exit the business by selling the shares. The information that would enable the shareholder to make such a decision is not disclosed, thus, infringing upon their right under Article 19(1)(g).

33. Mr Nizam Pasha, learned counsel made the following submissions:

a. The Electoral Bond Scheme and the amendments are arbitrary as they permit Indian registered companies to purchase electoral bonds without considering their ownership and control. This goes against foreign investment laws in India, treating companies owned or controlled by nonresident Indian citizens as 'foreign owned or controlled companies,' without rational justification;

b. The Electoral Bond Scheme is arbitrary due to its discriminatory and non-transparent nature. It contradicts existing laws requiring transparency and verification of the beneficial ownership and source of funds; and

c. The amendments to Section 29C of the RPA and Section 182 of the Companies Act serve no purpose other than perpetuating illegal ends, as they exempt companies' purchase of electoral bonds from public disclosure. This fails to achieve the scheme's stated objective of curbing cash donations.

34. Mr Vijay Hansaria, learned senior counsel made the following submissions:

a. The objects and reasons of the Election and Other Related Laws (Amendment) Act 2003 which amended the Companies Act 1956, IT Act 1961, and the RPA indicates that the amendments were made to incentivize contributions through banking channels. Thus, the amendments to Section 13A of the Income Tax Act and Section 29C of the RPA are contrary to the object of inserting Section 13A and Section 80GGB and Section 80GGC of the Income Tax Act;

b. Since 1959, when companies were permitted to contribute to political parties, all companies were required to mandatorily disclose the total contributions made and the name of party to which they have contributed. Further, ceiling limits for total contribution by companies were prescribed. The Finance Act 2017 does away with these transparency requirements; and

c. International perspectives on political funding regulations, including those from the United States, the United Kingdom, Switzerland and Singapore, emphasize the importance of transparency, disclosure, and reporting in political contributions. These examples underscore the global consensus on transparency in the political funding process.

35. Mr Sanjay R. Hegde, learned senior counsel made the following submissions:

a. Public listed companies are subject to scrutiny since they raise funds from the public. Information pertaining to the company is essential to be brought to the public domain. This will enable informed debates and discussions regarding the use of money by such companies. Such information must particularly be made available to shareholders to enable them to make an informed choice with regard to trading of securities. Thus, the amendment to the Companies Act which removes the requirement of disclosure of information about political contributions is violative of the right to information of shareholders which flows from Article 19(1)(a);

b. Public listed companies should not be allowed to make contributions without the consent of the majority of the shareholders or the consent of three-fourths of shareholders;

c. Non-disclosure of information about political funding denies shareholders the right to choice that flows from Article 21. Shareholders are incapacitated from making a choice about whether they wish to invest in shares of a company which has contributed to a political party whose ideology that shareholder does not agree with; and

d. The amendment to Section 182(3) perpetuates the pre-existing inequality in power between shareholders and the Board/Promoters/management and puts the shareholders in an even weaker position violating the right to substantive equality under Article 14.

36. Mr PB Suresh, learned counsel made the following submissions:

a. The Scheme and amendments violate Articles 14 and 15 by disproportionately impacting regional political parties and political parties which represent marginalised and backward sections of the society. The representation of the backward classes is low in the corporate sector. Thus, the Scheme has a disparate impact on parties whose social base is derived from the SC/STs and backward classes;

b. The presumption of constitutionality does not apply in full rigour to electoral laws because the incumbent legislators have a vested interest in shaping the laws that would make it easier for them to be re-elected;

c. The removal of the cap on corporate donations has strengthened the position of major political parties and created more barriers for the entry of new political parties; and

d. Political parties have a right to know the funding sources of rival political parties to enable them to critique it before the public.

ii. Submissions of Union of India

37. The learned Attorney General for India made the following submissions:

a. Political parties are an integral product of a free and open society and play an important role in the administration of the affairs of the community. Accordingly, they are entitled to receive all support, including financial contributions;

b. The Electoral Bond Scheme allows any person to transfer funds to political parties of their choice through legitimate banking channels instead of other unregulated ways such as direct transfer through cash;

c. The Scheme ensures confidentiality of the contributions made to political parties. The benefit of confidentiality to contributors ensures and promotes contribution of clean money to political parties;

d. Citizens do not have a general right to know regarding the funding of political parties. Right to know is not a general right available to citizens;

e. This Court has evolved the right to know for the specific purpose of enabling and furthering the voter's choice of electing candidates free from blemish; and

f. The influence of contributions by companies to political parties ought not to be examined by this Court. It is an issue of democratic significance and should be best left to the legislature.

38. The learned Solicitor General of India made the following submissions:

a. The legal framework prior to the enactment of the Electoral Bond Scheme was mostly cash-based which incentivized infusion of black money into political parties, and consequently, into the electoral process in India. The Electoral Bond Scheme is an improvement on the prior legal framework;

b. Donors to a political party often apprehended retribution from other political parties. Such apprehension incentivized donors to contribute unaccounted money to political parties to avoid identification and victimization by other political parties. The Electoral Bond Scheme maintains the confidentiality of donors and thereby incentivizes them to contribute clean money to political parties;

c. In case the donor is a public company, they will have to declare the amount contributed in their books of account without disclosing the name of the political party. Similarly, the political parties will also have to disclose the total amount received through electoral bonds in their annual audited accounts filed before the Election Commission of India. This framework ensures a balance between clean money coming into the system as against the right to information of citizens;

d. The state has a positive obligation to safeguard the privacy of its citizens, which necessarily includes the citizens' right to political affiliation. The right of a buyer to purchase electoral bonds without having to disclose their preference of political party secures the buyer's right to privacy;

e. The Electoral Bond Scheme has been enacted in pursuance of a legitimate state interest - to shift from cash driven, unregulated and unaccounted cash based political donations to a regulated, digital and legal political donation framework. The provisions of the Electoral Bond Scheme have a specific object and purpose of curbing black money and protecting donor privacy:

i. Clause 3(3) imposes a pre-condition that only a registered political party which has secured at least 1 per cent of the votes polled in the last general election would be eligible to receive bonds. This provision ensures that ghost political parties are barred from seeking and receiving political funding;

ii. Clause 4 requires a buyer of electoral bonds to meet the requisite KYC Norms. This ensures that only KYC compliant persons are entitled to buy electoral bonds;

iii. The limited validity period of fifteen days ensures that the bond is not used as a parallel currency;

iv. Clause 7(4) mandates the authorized bank to treat the information furnished by a buyer as confidential which shall not be disclosed to any authority, except when directed by a competent court or upon registration of criminal case by any law enforcement agency. This provision protects the privacy and personal details of the buyer vis-à-vis the state; and

v. Clause 11 mandates that all payments for the purchase of electoral bonds shall be accepted through banking channels. This provision curbs the circulation of black money.

f. The right of a citizen to know how political parties are being funded must be balanced against the right of a person to maintain privacy of their political affiliations. Donating money to one's preferred party is a form political self-expression, which lies at the heart of privacy;

g. Maintaining anonymity of donations to political parties is a part of the concept of secret ballot because it enables a person to make political choices without any fear of victimization or retaliation;

h. The right to information only operates against information in the possession or in the knowledge of the state. It cannot operate for seeking information not in the knowledge or possession of the state;

i. The amendments to the RBI Act, RPA, and the IT Act are intended to curb donations made by way of cash and other means to political parties and secure the anonymity of donors;

j. The amendment to Section 182 of the Companies Act removes the limitation of seven and a half percent of the net profits on the amount contributed by political parties. The removal of the contribution limit was intended to disincentivize creation of shell companies;

k. This Court has recognized that the legislature has a wide latitude in matters concerning economic policy. Further, the mere possibility that the law might be abused cannot be a ground for holding the provision procedurally or substantially unreasonable; and

l. The fact that one party receives substantially more support through donations than other parties cannot in itself be a legal ground to challenge the validity of the Electoral Bond Scheme.

D. The Scope of Judicial Review

39. The Union of India submitted that this Court must exercise judicial restraint while deciding the challenge to the Electoral Bond Scheme and the statutory amendments because they relate to economic policy. For this purpose, the Union of India relied on a series of decisions where this Court has held that Courts must follow judicial restraint in matters concerning economic and financial policy.⁵⁴

40. It is a settled position of law that Courts must adopt a less stringent form of judicial review while adjudicating challenges to legislation and executive action which relate to economic policy as compared to laws relating to civil rights such as the freedom of speech or the freedom of religion.⁵⁵

More recently, in *Swiss Ribbons v. Union of India*⁵⁶, this Court while deciding a challenge to the constitutional validity of provisions of the Insolvency and Bankruptcy Code 2016 observed that the legislature must be given "free play" in the joints to experiment with economic policy. This position was also followed in *Pioneer Urban Land and Infrastructure Limited v. Union of India*⁵⁷, where amendments to the Insolvency and Bankruptcy Code were challenged.

41. The question is whether the amendments under challenge relate to economic policy. While deciding on a constitutional challenge, the Court does not rely on the ipse dixit of the government, that a legislation is an economic legislation. Courts before classifying the policy underlying a legislation as economic policy must undertake an analysis of the true nature of the law.

The amendment to Section 31 of the RBI Act can be classified as a financial provision to the extent that it seeks to introduce a new form of a bearer banking instrument. However, any resemblance to an economic policy ends there. The amendments in question can be clubbed into two heads: first, provisions mandating non-disclosure of information on electoral financing; and second, provisions permitting unlimited corporate funding to political parties. Both these amendments relate to the electoral process.

42. In fact, it is evident from the correspondence between the Ministry of Finance and RBI (which have been summarized above) on the apprehensions of the Bonds being used as an alternative currency that the Bonds were introduced only to curb black money in the electoral process, and protect informational privacy of financial contributors to political parties. The Union of India has itself classified the amendments as an "electoral reform". Thus, the submission of the Union of India that the amendments deal with economic policy cannot be accepted.

43. The second argument that this Court needs to address is to determine the scope of judicial review to decide this batch of petitions. The petitioners submitted that the presumption of constitutionality does not apply since the Scheme deals with the electoral process. The premise of the argument is that the presumption of constitutionality is based on the principle that the elected body must be trusted to make decisions and that principle should not be applied when the rules changing the electoral process are themselves in challenge.⁵⁸ It was submitted that in such cases if a prima facie case of constitutional violation is made out, the State bears a heavy burden of justifying the law.

44. The presumption of constitutionality is based on two premises. First, it is based on democratic accountability, that is, legislators are elected representatives who are aware of the needs of the citizens and are best placed to frame policies to resolve them⁵⁹. Second, legislators are privy to information necessary for policy making which the Courts as an adjudicating authority are not. However, the policy underlying the legislation must not violate the freedoms and rights which are entrenched in Part III of the Constitution and other constitutional provisions.

It is for this reason that previous judgments of this Court have held that the presumption of constitutionality is rebutted when a prima facie case of violation of a fundamental right is established. The onus then shifts on the State to prove that the violation of the fundamental right is justified. In *Dharam Dutt v. Union of India*⁶⁰, a two-Judge Bench of this Court elucidated the principle in the following terms:

"49. In spite of there being a general presumption in favour of the constitutionality of the legislation, in a challenge laid to the validity of any legislation allegedly violating any right or freedom guaranteed by clause (1) of Article 19 of the Constitution, on a prima facie case of such violation having been made out, the onus would shift upon the respondent State to show that the legislation comes within the permissible limits of the most relevant out of clauses (2) to (6) of Article 19 of the Constitution, and that the restriction is reasonable.

The Constitutional Court would expect the State to place before it sufficient material justifying the restriction and its reasonability. On the State succeeding in bringing the restriction within the scope of any of the permissible restrictions, such as, the sovereignty and integrity of India or public order, decency or morality etc. the onus of showing that restriction is unreasonable would shift back to the petitioner.

Where the restriction on its face appears to be unreasonable, nothing more would be required to substantiate the plea of unreasonability. Thus the onus of proof in such like cases is an ongoing shifting process to be consciously observed by the Court called upon to decide the constitutional validity of a legislation by reference to Article 19 of the Constitution."

45. The broad argument of the petitioners that the presumption of constitutionality should not apply to a specific class of statutes, that is, laws which deal with electoral processes cannot be accepted. Courts cannot carve out an exception to the evidentiary principle which is available to the legislature based on the democratic legitimacy which it enjoys. In the challenge to electoral law, like all legislation, the petitioners would have to prima facie prove that the

law infringes fundamental rights or constitutional provisions, upon which the onus would shift to the State to justify the infringement.

E. The close association of politics and money

46. The law does not bar electoral financing by the public. Both corporates and individuals are permitted to contribute to political parties. The legal regime has not prescribed a cap on the financial contributions which can be received by a political party or a candidate contesting elections. However, Section 77 of the RPA read with Rule 90 of the Conduct of Election Rules 1961⁶¹ prescribes a cap on the total expenditure which can be incurred by a candidate or their agent in connection with Parliamentary and Assembly elections between the date on which they are nominated and the date of the declaration of the result.

The maximum limit for the expenditure in a Parliamentary constituency is between Rupees seventy five lakhs to ninety five lakhs depending on the size of the State and the Union Territory.⁶² The maximum limit of election expenses in an Assembly constituency varies between rupees twenty eight lakhs and forty lakhs depending on the size of the State.⁶³ However, the law does not prescribe any limits for the expenditure by a political party.

Explanation 1 to Section 77 stipulates that the expenditure incurred by "leaders of a political party" on account of travel for propagating the programme of the political party shall not be deemed to be election expenditure. Thus, there is an underlying dichotomy in the legal regime. The law does not regulate contributions to candidates. It only regulates contributions to political parties. However, expenditure by the candidates and not the political party is regulated. Be that as it may, the underlying understanding of the legal regime regulating electoral finance is that finance is crucial for the sustenance and progression of electoral politics.

47. It is believed that money does not vote but people do. However, studies have revealed the direct and indirect influence of money on electoral politics.⁶⁴ The primary way through which money directly influences politics is through its impact on electoral outcomes.

48. One way in which money influences electoral outcomes is through vote buying. Another way in which money influences electoral outcomes is through incurring electoral expenditure for political campaigns. Campaigns have a measurable influence on voting behavior because of the impact of television advertisements, campaign events, and personal canvassing.⁶⁵

An informed voter is one who is assumed to be aware of the policy positions of the candidate or the party they represent and votes on a thorough analysis of the

pros and cons of electing a candidate. On the other hand, an uninformed voter is assumed to not possess knowledge of the policy positions of the candidates.⁶⁶ Campaigns have an effect on the voting behavior of both an informed and an uninformed voter.

The impact of campaigns on an informed voter is supplementary because campaign activities enable an informed voter to be further informed about the policies and ideology of the political party and the candidate, and their views on specific issues. Electoral campaigns reduce the uncertainty about candidates for an informed voter. For an uninformed voter, electoral campaigns play a much more persuasive role in influencing electoral behavior because campaigns throw more light on candidates.

49. Political parties use innovative techniques of campaigning by going beyond the traditional methods of advertisements, door-to-door campaigning and processions to increase outreach. For example, political parties sponsor religious festivals and community fairs, organize sporting matches and literary competitions where cash awards are given.⁶⁷ These outreach techniques leave a lasting impression on the minds of uninformed voters. Thus, enhanced campaign expenditure proportionately increases campaign outreach which influences the voting behavior of voters.

50. Money also creates entry-barriers to politics by limiting the kind of candidates and political parties which enter the electoral fray. Studies have shown that money influences the selection of candidates by political parties because parties would prefer fielding candidates who would be able to substantially self-finance their campaign without relying on the party for finance.⁶⁸ In this manner, candidates who belong to socio-economically weaker sections face added barriers because of the close association of money and politics.

51. Money also excludes parties which are new to the electoral fray, and in particular, parties representing the cause of marginalized communities. Political parties which do not have enough finance have had to form electoral coalitions with other established political parties who would in exchange shoulder a lion's share of the campaign expenditure of the newly established political party extending to costs related to coalition propaganda, print and digital advertising, vehicle and equipment hire, political rallies, food transportation, and daily expenditure for party cadres⁶⁹.

The compromises which newly formed political parties have to make lead to a dilution of the ideology of the party in exchange of its political sustenance. In this manner, money creates an exclusionary impact by reducing the democratic space for participation for both candidates and newer and smaller political parties.

52. The judgments of this Court have recognized the influence of money on politics. They take a critical view of the role played by big business and "big money" in the electoral process in India. The decision in *Kanwar Lal Gupta v. Amar Nath Chawla*,⁷⁰ notices that money serves as an asset for advertising and other forms of political solicitation that increases a candidate's exposure to the public.

The court observed that the availability of large funds allows a candidate or political party "significantly greater opportunity for the propagation of its programme" in comparison to their political rivals. Such political disparity, it was observed, results in "serious discrimination between one political party or individual and another on the basis of money power and that in turn would mean that "some voters are denied an 'equal' voice and some candidates are denied an 'equal chance'".

53. In *Vatal Nagaraj v. R Dayanand Sagar*,⁷¹ Justice V R Krishna Iyer noted that candidates often evade the legal ceiling on expenditure by using big money channelled by political parties. The court acknowledged that large monetary inputs are "necessary evils of modern elections", which they hoped would be eradicated sooner rather than later.

In *P Nalla Thampy Terah v. Union of India*,⁷² a Constitution Bench of this Court was called upon to decide the validity of Explanation 1 to Section 77 of the RPA which allowed unlimited channelling of funds by political parties for the election of their candidates. While upholding the constitutional validity of the explanation, the Court noted that the petitioners were justified in criticizing the statute for "diluting the principle of free and fair elections."

54. In *Common Cause (A Registered Society) v. Union of India*,⁷³ this Court dwelt on the ostentatious use of money by political parties in elections to further the prospects of candidates set up by them. Justice Kuldeep Singh described the role of money in the electoral process, which is relevant for contextualizing the issue:

"18. [The General Elections] is an enormous exercise and a mammoth venture in terms of money spent. Hundreds and thousands of vehicles of various kinds are pressed on to the roads in 543 parliamentary constituencies on behalf of thousands of aspirants to power, many days before the general elections are actually held. Millions of leaflets and many million posters are printed and distributed or pasted all over the country. Banners by the lakhs are hoisted. Flags go up, walls are painted, and hundreds of thousands of loudspeakers play out the loud exhortations and extravagant promises. VIPs and VVIPs come and go, some of them in helicopters and air-taxis.

The political parties in their quest for power spend more than one thousand crore of rupees on the General Election (Parliament alone), yet nobody accounts for the bulk of money so spent and there is no accountability anywhere. Nobody discloses the source of the money. There are no proper accounts and no audit. From where does the money come from nobody knows. In a democracy where rule of law prevails this naked display of black money, by violating the mandatory provisions of law, cannot be permitted."

55. The challenge to the statutory amendments and the Electoral Bond Scheme cannot be adjudicated in isolation without a reference to the actual impact of money on electoral politics. This Court has in numerous judgments held that the effect and not the object of the law on fundamental rights and other constitutional provisions must be determined while adjudicating its constitutional validity. The effect of provisions dealing with electoral finance cannot be determined without recognizing the influence of money on politics. Therefore, we must bear in mind the nexus between money and electoral democracy while deciding on the issues which are before us in this batch of petitions.

F. The challenge to non-disclosure of information on electoral financing

56. Section 29C of the RPA as amended by the Finance Act 2017 stipulates that the political party need not disclose financial contributions received through electoral bonds. Similarly, Section 13A of the IT Act as amended does not require the political party to maintain a record of contributions for contributions received through electoral bonds.

Section 182 of the Companies Act 2013 as amended by the Finance Act 2017 by which the earlier requirement of disclosure of particulars of the amount contributed by companies to political parties in their profit and loss accounts was deleted. The company which has made financial contributions is now only required to disclose the total amount contributed to political parties without disclosing specific particulars about the political party to which the contribution was made.

57. Maintaining the anonymity of the contributor is a crucial and primary characteristic of the Electoral Bond Scheme. The electoral bond is defined as a bearer banking instrument which does not carry the name of the buyer.⁷⁴ The law mandates the authorized bank to not disclose the information furnished by the buyer except when demanded by a competent court or upon the registration of a criminal case by law enforcement agencies.⁷⁵

58. The amendments introduced by the Finance Act 2017 and the Electoral Bond Scheme are challenged on the ground that the non-disclosure of information

about electoral contributions is violative of the right to information of the voter which is traceable to Article 19(1)(a) of the Constitution.

i. Infringement of the right to information of the voter

59. This segment of the judgment will discuss whether the amendments and the Electoral Bond Scheme infringe the right to information of the voter. For this purpose, we will discuss the scope of the right to information, and whether the right extends to information on contributions to political parties.

a. The scope of Article 19(1)(a): tracing the right to information

60. Article 19(1)(a) has been held to guarantee the right to information to citizens. The judgments of this Court on the right to information can be divided into two phases. In the first phase, this Court traced the right to information to the values of good governance, transparency and accountability. These judgments recognize that it is the role of citizens to hold the State accountable for its actions and inactions and they must possess information about State action for them to accomplish this role effectively.

61. In the first phase, this Court delineated the scope of the right to information in the context of deciding the disclosure of evidence relating to affairs of the State. Provisions of the Indian Evidence Act stipulate that evidence which is relevant and material to proceedings need not be disclosed to the party if the disclosure would violate public interest.⁷⁶

In the 1960's, this Court framed the issue of disclosure of documents related to the affairs of the State in terms of a conflict between public interest and private interest. This Court observed that the underlying principle in the provisions of the Indian Evidence Act bearing on the disclosure of evidence related to the affairs of the State is that if such disclosure is denied, it would violate the private interest of the party.⁷⁷

So, when a party seeks the disclosure of documents, and when such disclosure is denied on the ground that it would violate public interest, there is a conflict between private interest and public interest. In subsequent cases, the courts cast the principle underlying the provisions of disclosure in the Indian Evidence Act as a conflict between two conceptions of public interest. This Court held that disclosure of information aids the party to the proceedings. But beyond that, disclosure also serves the public interest in the administration of justice.⁷⁸

62. In *State of Uttar Pradesh v. Raj Narain*⁷⁹, the respondent sought to summon documents in an election petition. The State made a claim of privilege from disclosure of documents. In his concurring opinion in the Constitution Bench,

Justice KK Mathew observed that there is a public interest in the impartial administration of justice which can only be secured by the disclosure of relevant and material documents. The learned Judge reaffirmed this proposition by tracing the right to information to Article 19(1)(a) of the Constitution:

"74. In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security.[...]"

63. This principle was further elucidated in *SP Gupta v. Union of India*⁸⁰. The Union of India claimed immunity against the disclosure of the correspondence between the Law Minister, the Chief Justice of the High Court of Delhi, and the Chief Justice of India on the reappointment of Additional Judges. Justice P N Bhagwati while discussing the position of law on claims of non-disclosure, observed that the Constitution guarantees the "right to know" which is necessary to secure "true facts" about the administration of the country.

The opinion recognised accountability and transparency of governance as important features of democratic governance. Democratic governance, the learned Judge remarked, is not restricted to voting once in every five years but is a continuous process by which the citizens not merely choose the members to represent themselves but also hold the government accountable for their actions and inactions for which citizens need to possess information⁸¹.

64. Our discussion indicates that the first phase of the jurisprudence on the right to information in India focussed on the close relationship between the right and open governance. The judgments in this phase were premised on the principle that the citizens have a duty to hold the government of the day accountable for their actions and inactions, and they can effectively fulfil this duty only if the government is open and not clothed in secrecy.

65. In the second phase of the evolution of the jurisprudence on the right to information, this Court recognised the importance of information to form views on social, cultural and political issues, and participate in and contribute to discussions.⁸² Courts recognised that the relevance of information is to not only to hold the government accountable but also to discover the truth in a marketplace of ideas which would ultimately secure the goal of selfdevelopment.⁸³ This Court also recognised that freedom of speech and

expression includes the right to acquire information which would enable people to debate on social, moral and political issues.

These debates would not only foster the spirit of representative democracy but would also curb the prevalence of misinformation and monopolies on information. Thus, in the second phase, the Court went beyond viewing the purpose of freedom of speech and expression through the lens of holding the government accountable, by recognising the inherent value in effective participation of the citizenry in democracy.

This Court recognised that effective participation in democratic governance is not just a means to an end but is an end in itself. This interpretation of Article 19(1)(a) is in line with the now established position that fundamental freedoms and the Constitution as a whole seek to secure conditions for self-development at both an individual and group level.⁸⁴ A crucial aspect of the expansion of the right to information in the second phase is that right to information is not restricted to information about state affairs, that is, public information.

It includes information which would be necessary to further participatory democracy in other forms and is not restricted to information about the functioning of public officials. The right to information has an instrumental exegesis, which recognizes the value of the right in facilitating the realization of democratic goals. But beyond that, the right to information has an intrinsic constitutional value; one that recognizes that it is not just a means to an end but an end in itself.

b. Right to information of a voter: exploring the judgments in ADR and PUCL

66. In *Union of India v. Association for Democratic Reforms*⁸⁵ ("ADR"), this Court traced the right of voters to have information about the antecedents, including the criminal past, of candidates contesting elections, to Article 19(1)(a) of the Constitution. In ADR (supra), proceedings under Article 226 of the Constitution were instituted before the High Court of Delhi seeking a direction to implement the Law Commission's recommendations to (a) debar candidates from contesting elections if charges have been framed against them by a Court in respect of certain offences; and (b) ensure that candidates furnish details regarding criminal cases which are pending against them.

The High Court held that the Court cannot direct Parliament to implement the recommendations of the Law Commission. However, the High Court directed the ECI to secure information relating to (a) the details of cases in which a candidate is accused of any offences punishable with imprisonment; (b) assets possessed by a candidate, their spouse and dependents; (c) facts bearing on the candidate's

competence, capacity, and suitability for representing the people; and (d) any other information which ECI considers necessary for judging the capacity of the candidate fielded by the political party.

67. The Union of India appealed against the decision of the High Court before this Court. This Court held that voters have a right to be sufficiently informed about candidates so as to enable them to exercise their democratic will through elections in an intelligent manner. Such information was held to be necessary for elections to be conducted in a "free and fair manner":

"34. the members of a democratic society should be sufficiently informed so that they may influence intelligently the decisions which may affect themselves and this would include their decision of casting votes in favour of a particular candidate. If there is a disclosure by a candidate as sought for then it would strengthen the voters in taking appropriate decision of casting their votes.

[...] we fail to understand why the right of a citizen/voter - a little man - to know about the antecedents of his candidate cannot be held to be a fundamental right under Article 19(1)(a). In our view, democracy cannot survive without free and fair election, without free and fairly informed voters. Votes cast by uninformed voters in favour of X or Y candidate would be meaningless.

As stated in the aforesaid passage, onesided information, disinformation, misinformation and noninformation, all equally create an uninformed citizenry which makes democracy a farce. Therefore, casting of a vote by a misinformed and non-informed voter or a voter having onesided information only is bound to affect the democracy seriously. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions."

68. This Court rejected the argument that information about a candidate contesting elections cannot be compelled to be disclosed because it is not "public information". The three-Judge Bench held that information that candidates are required to disclose is only limited to aiding the voters in assessing whether they could cast their vote in a candidate's favour. The Court observed that the criminal background of a candidate and assets of the candidate (through which it could be assessed if the candidate has amassed wealth through corruption when they were elected previously) would aid the voters to cast their vote in an informed manner. This Court directed the ECI to call for the following information on affidavit as a part of nomination:

a. Whether the candidate has been convicted, acquitted or discharged of any criminal offence in the past and if convicted, whether they are punished with imprisonment or fine;

b. In the six months prior to the filling of nomination papers, whether the candidate was accused in any pending case for an offence punishable with imprisonment for two years or more, and in which a charge is framed or cognizance is taken by the court of law;

c. The assets (immovable, movable, bank balances and others) of a candidate and of his/her spouse and that of dependents;

d. Liabilities, if any, particularly whether there are any over dues to any public financial institution or government dues; and

e. The educational qualifications of the candidate.

69. This Court observed that the ECI can ask candidates to disclose information about the expenditure incurred by political parties to maintain the purity of elections.⁸⁶ However, the operative portion of the judgment did not reflect this observation.

70. Pursuant to the decision of this Court in ADR (supra), Parliament amended the RPA to incorporate some of the directions issued by this Court.⁸⁷ Section 33-B of RPA stipulated that the candidate need not disclose any other information (other than the information required by law) notwithstanding any judgment.

In PUCL v. Union of India⁸⁸, proceedings were initiated before this Court under Article 32 for challenging Section 33-B of the RPA. Justice M B Shah, writing for the majority, noted that the decision of the three-Judge Bench in ADR (supra) tracing the right to know the antecedents of candidates contesting elections had attained finality and Section 33-B was unconstitutional because it had the effect of rendering the judgment of this Court inoperative. The learned Judge on an independent interpretation also held that the right to information of a voter is a facet of Article 19(1)(a).⁸⁹

71. Justice Venkatarama Reddi observed in his concurring opinion that there are two postulates which govern the right to vote : first, the formulation of an opinion about candidates, and second, the expression of choice based on the opinion formulated by casting votes in favour of a preferred candidate.

A voter must possess relevant and essential information that would enable them to evaluate a candidate and form an opinion for the purpose of casting votes.⁹⁰ The learned Judge observed that the Constitution recognises the right of a voter to know the antecedents of a candidate though the right to vote is a statutory right⁹¹ because the action of voting is a form of expression protected by Article 19(1)(a):

"Though the initial right cannot be placed on the pedestal of a fundamental right, but, at the stage when the voter goes to the polling booth and casts his vote, his freedom to express arises. The casting of vote in favour of one or the other candidate tantamounts to expression of his opinion and preference and that final stage in the exercise of voting right marks the accomplishment of freedom of expression of the voter. That is where Article 19(1)(a) is attracted."

72. In the context of the decision of this Court in ADR (supra), the learned Judge observed that the Court issued specific directions for the disclosure of certain information about candidates because of a legislative vacuum, and that the directions issued to the ECI will fill the vacuum until Parliament legislates on the subject. Thus, the five directions which were issued by this Court in ADR (supra) were not construed to be inflexible and immutable theorems. The learned Judge observed that though the voters have a fundamental right to know the antecedents of candidates, all the conceptions of this right formulated by this Court in ADR (supra) cannot be elevated to the realm of fundamental rights.

73. The majority was of the view that the voters have a fundamental right to all the information which was directed to be declared by this Court in ADR (supra). Justice Venkatarama Reddi disagreed. In the opinion of the learned Judge, only certain information directed to be disclosed in ADR (supra) is "crucial" and "essential" to the right to information of the voter:

"109. In my view, the points of disclosure spelt out by this Court in Assn. for Democratic Reforms case [Ed.: See full text at 2003 Current Central Legislation, Pt. II, at p. 3] should serve as broad indicators or parameters in enacting the legislation for the purpose of securing the right to information about the candidate.

The paradigms set by the Court, though pro tempore in nature as clarified supra, are entitled to due weight. If the legislature in utter disregard of the indicators enunciated by this Court proceeds to make a legislation providing only for a semblance or pittance of information or omits to provide for disclosure on certain essential points, the law would then fail to pass the muster of Article 19(1)(a). Though certain amount of deviation from the aspects of disclosure spelt out by this Court is not impermissible, a substantial departure cannot be countenanced.

The legislative provision should be such as to promote the right to information to a reasonable extent, if not to the fullest extent on details of concern to the voters and citizens at large. While enacting the legislation, the legislature has to ensure that the fundamental right to know about the candidate is reasonably secured and information which is crucial, by any objective standards, is not denied.

[...] The Court has to take a holistic view and adopt a balanced approach, keeping in view the twin principles that the citizens' right to information to know about the personal details of a candidate is not an unlimited right and that at any rate, it has no fixed concept and the legislature has freedom to choose between two reasonable alternatives.

[...] But, I reiterate that the shape of the legislation need not be solely controlled by the directives issued to the Election Commission to meet an ad hoc situation. As I said earlier, the right to information cannot be placed in straitjacket formulae and the perceptions regarding the extent and amplitude of this right are bound to vary."

74. Justice Reddi held that Section 33-B was unconstitutional because:

a. Parliament cannot impose a blanket ban on the disclosure of information other than the disclosure of information required by the provisions of RPA. The scope of the fundamental right to information may be expanded in the future to respond to future exigencies and necessities. The provision had the effect of emasculating the freedom of speech and expression of which the right to information is a facet; and

b. The provision failed to give effect to an essential aspect of the fundamental right, namely the disclosure of assets and liabilities of the candidates.

75. Justice Reddi then proceeded to juxtapose the directions for disclosure issued by this Court in ADR (supra) with the scope of the provisions of the RPA mandating disclosure. The learned judge observed that the extent of disclosure mandated in RPA is fairly adequate with respect to past criminal records but not with regard to pending cases.⁹²

With respect to assets and liabilities, the learned Judge observed that the disclosure of assets and liabilities is essential to the right to information of the voter because it would enable voters to form an opinion about whether the candidate, upon being elected in the past, had amassed wealth in their name or their family. Additionally, information about dues which are payable by the candidate to public institutions would enable voters to know the candidate's dealing with public money in the past.

76. Justice Reddi observed that the requirement to disclose assets of the candidate's family was justified because of the prevalence of Benami transactions. Though mandating the disclosure of assets and liabilities would infringe the right to privacy of the candidate and their family, the learned Judge observed that disclosure which is in furtherance of the right to information would trump the former because it serves the larger public interest.

Justice Reddi then observed that disclosure of the educational qualifications of a candidate is not an essential component of the right to information because educational qualifications do not serve any purpose for the voter to decide which candidate to cast a vote for since the characteristics of duty and concern of the people is not "monopolised by the educated". A conclusion to the contrary, in the learned Judge's opinion, would overlook the stark realities of the society.⁹³

77. The following principles can be deduced from the decisions of this Court in ADR (supra) and PUCL (supra):

a. The right to information of voters which is traced to Article 19(1)(a) is built upon the jurisprudence of both the first and the second phases in the evolution of the doctrine, identified above. The common thread of reasoning which runs through both the first and the second phases is that information which furthers democratic participation must be provided to citizens. Voters have a right to information which would enable them to cast their votes rationally and intelligently because voting is one of the foremost forms of democratic participation;

b. In ADR (supra), this Court observed that while the disclosure of information may violate the right to privacy of candidates and their families, such information must be disclosed because it furthers public interest.⁹⁴ The opinion of Justice Venkatarama Reddi in PUCL (supra) also followed the same line of reasoning. Justice M B Shah writing for himself and Justice D M Dharmadhikari held that the right to privacy would not be infringed because information about whether a candidate is involved in a criminal case is a matter of public record. Similarly, the assets or income are normally required to be disclosed under the provisions of the Income Tax Act; and

c. The voters have a right to the disclosure of information which is "essential" for choosing the candidate for whom a vote should be cast. The learned Judges in PUCL (supra) differed to the extent of what they considered "essential" information for exercising the choice of voting.

78. While relying on the judgments of this Court in ADR (supra) and PUCL (supra) the petitioners argue that non-disclosure of information on the funding of political parties is violative of the right to information under Article 19(1)(a). This Court needs to consider the following two issues to answer the question:

a. Whether the requirements of disclosure of information about "candidates" can be extended to "political parties"; and b. If the answer to (a) above is in the affirmative, whether information on the funding of political parties is "essential" for exercising choice on voting.

c. The focal point of the electoral process: candidate or political party

79. The decisions in ADR (supra) and PUCL (supra) recognise the right to information of a voter about candidates, which enables them to cast their vote in an effective manner. The relief which was granted by this Court in PUCL (supra) and ADR (supra) was restricted to the disclosure of information about candidates contesting the election because of the limited nature of the reliefs sought. The ratio decidendi of the two judgments of this Court is that voters have a right to receive information which is essential for them to cast their votes. This Court has to first analyse if the 'political party' is a relevant 'political unit' in the electoral process to answer the question whether funding details of political parties are essential information for the voter to possess.

80. The Constitution of India did not make a reference to political parties when it was adopted. A reference was made when the Tenth Schedule was included in the Constitution by the Constitution (Fifty-Second) Amendment Act 1985. However, even though the Constitution on its adoption did not make a reference to political parties, statutory provisions relating to elections accorded considerable importance to political parties, signifying that political parties have been the focal point of elections.

81. The ECI notified the Election Symbols (Reservation and Allotment) Order 1968⁹⁵ in exercise of the powers conferred by Article 344 of the Constitution read with Section 29A of the RPA and Rules 5⁹⁶ and 10⁹⁷ of the Conduct of Election Rules 1961. In terms of the provisions of the Symbols Order, the ECI shall allot a symbol to every candidate contesting the election.

The Symbols Order classifies political parties into recognised political parties and unrecognised political parties. The difference in the procedure under the Symbols Order for allotting symbols to recognised political parties, registered but unrecognised political parties and independent candidates indicates both the relevance and significance of political parties in elections in India.

82. A party is classified a National⁹⁸ or a State recognised party⁹⁹ based on the total percentage of votes secured at the last general elections and (or) the number of candidates who have been returned to the Legislative Assembly. Symbols are reserved for allocation to recognised political parties.¹⁰⁰ All candidates who are being set up by a national or a State recognised party are to be allotted the symbol reserved for that party for the purpose of contesting elections.¹⁰¹

83. Symbols other than those reserved for recognised political parties shall be available for allotment to independent candidates and candidates set up by political parties which are not recognised political parties in terms of the Symbols

Order.¹⁰² Candidates set up by a registered but unrecognised political party may also be allotted a common symbol if they fulfil certain conditions laid down in the Symbols Order.¹⁰³

84. Thus, the Symbols Order creates a demarcation between candidates set up by political parties and candidates contesting individually. Political parties are allotted a Symbol such that all candidates who are set up by that political party are allotted the Symbol of their political party while contesting elections. Even within candidates who are set up by political parties, the Symbols Order creates a distinction between unrecognised but registered political parties and recognised political parties.

Recognised political parties shall continue to be allotted the same symbol for all General elections until the time these political parties fulfil the conditions for recognition under the Symbols Order.¹⁰⁴ The effect of the provisions of the Symbols Order is that the symbols of certain political parties, particularly those which have enjoyed the status of a recognised political party for long are entrenched in the minds of the voters that they associate the symbol with the political party.

85. For unrecognised but registered political parties, though a common symbol is allotted for all candidates being set up by the political parties, the symbol is not "reserved" for the Party. The ECI could allot different symbols to that political party in each General election. The candidates of a registered but unrecognised political party may be represented by a common symbol but the people would not attach a specific symbol to the political party because the symbol by which it is represented may change with every election.

86. The purpose of allotting symbols to political parties is to aid voters in identifying and remembering the political party. The law recognises the inextricable link between a political party and the candidate though the vote is cast for a candidate. The literacy rate in India was 18.33 percent when the first General Election was held in 1951. Most of the voters identified a political party only with its symbol and this still continues to the day. In a few cases, the voters would not possess any knowledge of the candidate being set up by the political party.

They would vote solely based on the symbol which is allotted to the political party; knowledge of which they have obtained through campaigning activities or its sustained presence in the electoral fray. Gayatri Devi, the third Maharani consort of Jaipur who was later set up as a candidate by the Swatantra Party, recalls in her Autobiography that her team spent hours trying to persuade the voters that they had to vote for the Symbol Star (which was the symbol of the

Swatantra Party) and not a symbol showing a horse and a rider because she also rode a horse:¹⁰⁵

"Since most of India is illiterate, at the polls people vote according to a visual symbol of their party. [...] The Swatantra Party had a star. Baby, all my other helpers and I spent endless frustrating hours trying to instruct the women about voting for the star. On the ballot sheet, we said, over and over again, this is where the Maharani's name will appear and next to it will be a star. But it was not as simple as that. They noticed a symbol showing a horse and a rider, agree with each other that the Maharani rides so that must be her symbol. Repeatedly we said, "No, no, that's not the right one."

Then they caught sight of the emblem of a flower. Ah, the flower of Jaipur - who else could it mean but the Maharani? "No, no, no, not the flower." All right, the star. Yes, that seems appropriate for the Maharani, but look, here is the sun. If the Maharani is a star, then the sun must certainly mean the Maharaja. We'll vote for both. Immediately the vote would have been invalidated. Even up to the final day, Baby and I were far from sure that we had managed to get our point across."

87. Symbols also gain significance when the names of political parties sound similar. For example, political parties by the names of "Dravida Munnetra Kazhagam", "All Indian Anna Dravida Munnetra Kazhagam", "Dravida Kazhagam", "Desiya Murpokku Dravida Kazhagam", "Makkal Desiya Murpokku Dravida Kazhagam", "Kongu Desa Makkal Katchi", "Kongunadu Makkal Desia Katchi", and "Kongunadu Makkal Katchi" contest elections in Tamil Nadu.

The names of all the political parties bear similarities due to the usage of the same words with certain additions or deletions. The allocation of Symbols to political parties would help voters identify and distinguish between political parties which have similar sounding names. It is precisely because of the close association of the symbol with the political party by voters that both factions of the party vie for the symbol that is allotted to the Party when there is a split in a recognised political party.

88. India follows the open-list first past the post form of election in which votes are cast for a candidate and the candidate who secures the highest number of votes is chosen to represent the people of that constituency. It could be argued that this system of elections gives prominence to candidates and not political parties unlike the system of closed list of elections where the voters do not have any knowledge of the candidates that are set up by the Political Party.¹⁰⁶

89. However, it cannot be concluded that the decision of voting is solely based on the individual candidate's capabilities and not the political party merely because

the voter has knowledge of the candidate who has been set up by the political party. Such a conclusion cannot be definitively drawn particularly in view of the design of the electoral voting machine which has a list of the names of the candidates who are contesting the election from the constituency along with the symbol of the political party which is fielding the candidate. Voters casts their votes based on two considerations: the capability of the candidate as a representative and the ideology of the political party.

90. Political parties publish electoral manifestos containing the ideology of the party, major policies of the political party, plans, programmes and other considerations of governance which would be implemented if they came to power.¹⁰⁷ While political manifestos do not necessarily always translate to policies when the party is elected to power, they throw light upon the integral nature of political parties in the electoral system. By publishing an election manifesto, a political party communicates to the voters that they must accord preference to the political party. Party manifestos prod voters to look away from a candidate centric and towards a party centric perception of elections.

91. Lastly, the prominence of political parties as electoral units is further heightened by the form of government in India. India follows a Westminster system of government which confers prominence to political parties without strictly separating between the legislature and the executive. The timehonoured convention of the cabinet form of government is that the leader of the political party with absolute majority must be called to form the government.¹⁰⁸

The Council of Ministers is appointed by the President on the aid and advice of the Prime Minister.¹⁰⁹ Political parties are intrinsic to this form of government because of the very process of government formation. The recommendations of the Sarkaria Commission on the exercise of discretion by the Governor when no single political party commands an absolute majority, which has been given judicial recognition in *Rameshwar Prasad v. Union of India*,¹¹⁰ also prioritises political parties making them central to the governance structure.¹¹¹

92. The centrality of political parties in the electoral system is further accentuated by the inclusion of the Tenth Schedule. The Tenth Schedule deals with disqualification on the ground of defection from the political party which set up the elected individual as its candidate. Paragraph 2 provides the following grounds of defection:

a. Voluntarily giving up membership of the political party; and

b. Voting or abstaining from voting in the House contrary to direction issued by the political party without obtaining prior permission from the political party and when such voting has not been condoned by the political party.

93. The underlying principle of anti-defection law which has been recognised by a seven-Judge Bench of this Court in *Kihoto Hollohon v. Zachillhu*,¹¹² is that a candidate set up by a political party is elected on the basis of the programme of that political party. In the course of years, while deciding disputes related to the Tenth Schedule, judgments of this Court have further strengthened the centrality of political parties in the electoral system.

In *Ravi S Naik v. Union of India*¹¹³, this Court observed that voluntarily giving up membership of a political party has a wider connotation and includes not just resignation of the member from the party and an inference can also be drawn from the conduct of the member. In *Subash Desai v. Principal Secretary, Governor of Maharashtra*,¹¹⁴ a Constitution Bench of this Court while interpreting the provisions of the Tenth Schedule held that the political party and not the legislature party (which consists of the members of the House belonging to a particular political party) appoints the Whip of a political party for the purposes of Paragraph 2(1)(b) of the Tenth Schedule.¹¹⁵

94. In summation, a 'political party' is a relevant political unit in the democratic electoral process in India for the following three reasons:

- a. Voters associate voting with political parties because of the centrality of symbols in the electoral process;
- b. The form of government where the executive is chosen from the legislature based on the political party or coalition of political parties which has secured the majority; and
- c. The prominence accorded to political parties by the Tenth Schedule of the Constitution.
- d. The essentiality of information about political funding for the effective exercise of the choice of voting

95. In *ADR (supra)* and *PUCL (supra)*, this Court held that a voter has a right to information which is essential for them to exercise their freedom to vote. In the previous section, we have concluded that political parties are a relevant political unit. Thus, the observations of this Court in *PUCL (supra)* and *ADR (supra)* on the right to information about a candidate contesting elections is also applicable to political parties.

The issue whether information about the funding received by political parties is essential for an informed voter must be answered in the context of the core tenets of electoral democracy. The Preamble to the Constitution resolves to constitute a social, economic, and politically just society where there is equality of status and opportunity. The discourse which has emanated within and outside the Courts is often restricted to the ideals of social and economic justice and rarely includes political inequality.

96. Electoral democracy in India is premised on the principle of political equality which the Constitution guarantees in two ways. First, by guaranteeing the principle of "one person one vote" which assures equal representation in voting. The Constitution prescribes two conditions with respect to elections to seats in Parliament which guarantee the principle of "one person one vote" with respect to every voter and amongst every State:

a. Each State shall be divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it shall be the same throughout the State;¹¹⁶ and

b. The total number of seats allotted to each State in Parliament should be such that the ratio between the number of seats, and the population of the State is the same for all States.¹¹⁷

97. Second, the Constitution ensures that socio-economic inequality does not perpetuate political inequality by mandating reservation of seats for Scheduled Castes and Scheduled Tribes in Parliament¹¹⁸ and State Assemblies.¹¹⁹

98. The Constitution guarantees political equality by focusing on the 'elector' and the 'elected'. These two constitutional precepts foster political equality in the following two ways. First, the Constitution mandates that the value of each vote is equal. This guarantee ensures formal political equality where every person's vote is accorded equal weightage. Second, the Constitution ensures that members of socially marginalized groups are not excluded from the political process. This guarantee ensures (a) equality in representation; and (b) equality in influence over political decisions.

99. However, political inequality continues to persist in spite of the constitutional guarantees. One of the factors which contributes to the inequality is the difference in the ability of persons to influence political decisions because of economic inequality. In a politically equal society, the citizens must have an equal voice to influence the political process.¹²⁰ We have already in the preceding section elucidated the close association of money and politics where we explained the influence of money over electoral outcomes.

However, the influence of money over electoral politics is not limited to its impact over electoral outcomes. It also spills over to governmental decisions. It must be recalled here that the legal regime in India does not distinguish between campaign funding and electoral funding. The money which is donated to political parties is not used by the political party only for the purposes of electoral campaign. Party donations are also used, for instance, to build offices for the political party and pay party workers.

Similarly, the window for contributions is not open for a limited period only prior to the elections. Money can be contributed to political parties throughout the year and the contributed money can be spent by the political party for reasons other than just election campaigning. It is in light of the nexus between economic inequality and political inequality, and the legal regime in India regulating party financing that the essentiality of the information on political financing for an informed voter must be analyzed.

100. Economic inequality leads to differing levels of political engagement because of the deep association between money and politics. At a primary level, political contributions give a "seat at the table" to the contributor. That is, it enhances access to legislators.¹²¹ This access also translates into influence over policy-making.

An economically affluent person has a higher ability to make financial contributions to political parties, and there is a legitimate possibility that financial contribution to a political party would lead to quid pro quo arrangements because of the close nexus between money and politics. Quid pro quo arrangements could be in the form of introducing a policy change, or granting a license to the contributor.

The money that is contributed could not only influence electoral outcomes but also policies particularly because contributions are not merely limited to the campaign or pre-campaign period. Financial contributions could be made even after a political party or coalition of parties form Government. The possibility of a quid pro quo arrangement in such situations is even higher. Information about political funding would enable a voter to assess if there is a correlation between policy making and financial contributions.

101. For the information on donor contributions to be relevant and essential, it is not necessary that voters have to take the initiative to peruse the list of contributors to find relevant information which would enable them to cast their vote effectively. Electronic and print media would present the information on contributions received by political parties, and the probable link between the contribution and the licenses which were given to the company in an accessible

format. The responses to such information by the Government and political parties would go a long way in informing the voter.

102. However, to establish the argument of quid pro quo arrangements between the contributor and the political party, it is necessary that the political party has knowledge of the particulars of funding to its party. The political party to whom contributions are made cannot enter into a quid pro quo arrangements if it is unaware of the donor.

The Scheme defines electoral bond "as a bond issued in the nature of promissory note which shall be a bearer banking instrument and shall not carry the name of the buyer or payee."¹²² The Scheme also stipulates that the information furnished by the buyer shall be treated as confidential which shall not be disclosed by any authority except when demanded by a competent court or by a law enforcement agency upon the registration of criminal case.¹²³

103. The submission of the Union of India is that the political party which receives the contribution does not know of identity of the contributor because neither the bond would have their name nor could the bank disclose such details to the political party. We do not agree with this submission. While it is true that the law prescribes anonymity as a central characteristic of electoral bonds, the de jure anonymity of the contributors does not translate to de facto anonymity. The Scheme is not fool-proof. There are sufficient gaps in the Scheme which enable political parties to know the particulars of the contributions made to them.

Clause 12 of the Scheme states that the bond can be encashed only by the political party by depositing it in the designated bank account. The contributor could physically hand over the electoral bond to an office bearer of the political party or to the legislator belonging to the political party, or it could have been sent to the office of the political party with the name of the contributor, or the contributor could after depositing the electoral bond disclose the particulars of the contribution to a member of the political party for them to cross-verify.

Further, according to the data on contributions made through electoral bonds, ninety four percent of the contributions through electoral bonds have been made in the denomination of one crore. Electoral bonds provide economically resourced contributors who already have a seat at the table selective anonymity vis-à-vis the public and not the political party.

104. In view of the above discussion, we are of the opinion that the information about funding to a political party is essential for a voter to exercise their freedom to vote in an effective manner. The Electoral Bond Scheme and the impugned provisions to the extent that they infringe upon the right to information of the

voter by anonymizing contributions through electoral bonds are violative of Article 19(1)(a).

ii. Whether the infringement of the right to information of the voter is justified

105. The next issue which falls for analysis is whether the violation of the right to information is justified. This Court has laid down the proportionality standard to determine if the violation of the fundamental right is justified.¹²⁴ The proportionality standard is as follows:

a. The measure restricting a right must have a legitimate goal (legitimate goal stage);

b. The measure must be a suitable means for furthering the goal (suitability or rational connection stage);

c. The measure must be least restrictive and equally effective (necessity stage); and

d. The measure must not have a disproportionate impact on the right holder (balancing stage).

106. The legitimate goal stage requires this Court to analyze if the objective of introducing the law is a legitimate purpose for the infringement of rights. At this stage, the State is required to discharge two burdens. First, the State must demonstrate that the objective is legitimate. Second, the State must establish that the law is indeed in furtherance of the legitimate aim that is contended to be served.¹²⁵

107. The then Finance Minister, Mr. Arun Jaitley encapsulated the objective of introducing the Electoral Bond Scheme thus:

a. An attempt was made in the past to incentivize donations to political party through banking channels. Both the donor and the donee were granted exemption from payment of tax if accounts of contributions were maintained and returns were filed. However, the situation had only marginally improved. Political parties continued to receive funds through anonymous sources; and

b. Donors have been reluctant in donating through the banking channel because the disclosure of donor identity would entail adverse consequences.

108. In other words, Mr. Jaitley stated that the main purpose of the Scheme is to curb black money in electoral financing and this purpose could be achieved only if information about political donations is kept confidential. That is, donor

privacy is a means to incentivize contributions through the banking channel. However, Mr. Tushar Mehta argued that protecting donor privacy is an end in itself. We will now proceed to determine if the infringement of the right to information of the voters is justified vis-à-vis the purposes of (a) curbing black money; and (b) protecting donor privacy.

a. Curbing Black money

109. The petitioners argue that the infringement of the right to information which is traceable to Article 19(1)(a) can only be justified if the purpose of the restriction is traceable to the grounds stipulated in Article 19(2). They argue that the purpose of curbing of black money cannot be traced to any of the grounds in Article 19(2), and thus, is not a legitimate purpose for restricting the right to information.

110. Article 19(2) stipulates that the right to freedom of speech and expression can only be restricted on the grounds of: (a) the sovereignty and integrity of India; (b) the security of the State; (c) friendly relations with foreign states, (d) public order; (e) decency or morality; (f) contempt of court; (g) defamation; and (h) incitement to an offence. The purpose of curbing black money is traceable to public interest. However, public interest is not one of the grounds stipulated in Article 19(2). Of the rights recognized under Article 19, only Article 19(1)(g) which guarantees the freedom to practice any profession or to carry on any occupation, trade or business can be restricted on the ground of public interest.¹²⁶

111. In *Sakal Papers v. The Union of India*¹²⁷, the constitutional validity of the Newspaper (Price and Page) Act 1965 and the Daily Newspaper (Price and Page) Order 1960 which regulated the number of pages according to the price charged, prescribed the number of supplements to be published and regulated the area for advertisements in the newspapers was challenged on the ground that it violated the freedom of press under Article 19(1)(a). The Union of India submitted that the restriction on the freedom of press was justified because the purpose of the law was to prevent unfair competition which was in furtherance of public interest.

It was argued that the restriction was justified because the activities carried out by newspapers were also traceable to the freedom to carry out a profession which could be restricted on the ground of public interest under Article 19(6). Justice JR Mudholkar writing for the Constitution Bench observed that the impugned legislation "directly and immediately" curtails the freedom of speech guaranteed under Article 19(1)(a), and the freedom cannot be restricted on any ground other than the grounds stipulated in Article 19(2).¹²⁸

In *Express Newspapers v. Union of India*,¹²⁹ a Constitution Bench while deciding the constitutional challenge to the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act 1955 held that a law violating Article 19(1)(a) would be unconstitutional unless the purpose of the law falls "squarely within the provisions of Article 19(2)".¹³⁰ In *Kaushal Kishor v. State of Uttar Pradesh*,¹³¹ a Constitution Bench of this Court answered the issue whether the grounds stipulated in Article 19(1)(a) are exhaustive of the restrictions which can be placed on the right to free speech under Article 19(1)(a) affirmatively.

112. However, in the specific context of the right to information, this Court has observed that the right can be restricted on grounds not traceable to Article 19(1)(a). In *PUCL (supra)*, one of the submissions was that dangerous consequences would follow if the right to information is culled out from Article 19(1)(a) because the grounds on which the right can be restricted as prescribed in Article 19(2) are very limited. Justice Reddi in his concurring opinion in *PUCL (supra)* observed that the right under Article 19(1)(a) can be restricted on grounds which are not "strictly within the confines of Article 19(2)".¹³² For this purpose, Justice Reddi referred to the observations of Justice Jeevan Reddy in *The Secretary, Ministry of Information v. Cricket Association of Bengal*¹³³:

"99. [...] This raises the larger question whether apart from the heads of restriction envisaged by sub-article (2) of Article 19, certain inherent limitations should not be read into the article, if it becomes necessary to do so in national or societal interest. The discussion on this aspect finds its echo in the separate opinion of Jeevan Reddy, J. in *Cricket Assn. case [(1975) 4 SCC 428]*.

The learned Judge was of the view that the freedom of speech and expression cannot be so exercised as to endanger the interest of the nation or the interest of the society, even if the expression "national interest" or "public interest" has not been used in Article 19(2). It was pointed out that such implied limitation has been read into the First Amendment of the US Constitution which guarantees the freedom of speech and expression in unqualified terms."

113. In *Cricket Association of Bengal (supra)*, one of the submissions of the petitioner (Union of India) was that the right to broadcast can be restricted on grounds other than those stipulated in Article 19(2). Justice P B Sawant writing for himself and Justice S Mohan observed while summarizing the law on freedom of speech and expression that Article 19(1)(a) can only be restricted on the grounds mentioned in Article 19(2).¹³⁴

The learned Judge specifically refuted the argument that the right can be restricted on grounds other than those stipulated in Article 19(2). Such an argument, the learned Judge states, is to plead for unconstitutional measures.

However, while observing so, Justice P B Sawant states that the right to telecast can be restricted on the grounds mentioned in Article 19(2) and the "dictates of public interest":

"78. [...] If the right to freedom of speech and expression includes the right to disseminate information to as wide a section of the population as is possible, the access which enables the right to be so exercised is also an integral part of the said right. The wider range of circulation of information or its greater impact cannot restrict the content of the right nor can it justify its denial. The virtues of the electronic media cannot become its enemies. It may warrant a greater regulation over licensing and control and vigilance on the content of the programme telecast. However, this control can only be exercised within the framework of Article 19(2) and the dictates of public interest."

(emphasis supplied)

114. Justice Jeevan Reddy in the concurring opinion segregated the grounds stipulated in Article 19(2) into grounds in furtherance of "national interest" and "societal interest". The learned Judge observed that the grounds of sovereignty and integrity of India, the security of the State, friendly relations with foreign State and public order are grounds referable to national interest, and the grounds of decency, morality, contempt of court, defamation and incitement of offence are referable to state interest.

The learned Judge then referred to the judgment of the Supreme Court of the United States in *FCC v. National Citizens Committee for Broadcasting*¹³⁵, where it was held that a station license can be denied on the ground of public interest. Justice Reddy observed that public interest is synonymous to state interest which is one of the grounds underlying Article 19(2):

"189. Reference may also be made in this connection to the decision of the United States Supreme Court in *FCC v. National Citizens Committee for Broadcasting* [56 L Ed 2d 697 : 436 US 775 (1978)] referred to hereinbefore, where it has been held that "to deny a station licence because the public interest requires it is not a denial of free speech". It is significant that this was so said with reference to First Amendment to the United States Constitution which guarantees the freedom of speech and expression in absolute terms.

The reason is obvious. The right cannot rise above the national interest and the interest of society which is but another name for the interest of general public. It is true that Article 19(2) does not use the words "national interest", "interest of society" or "public interest" but as pointed hereinabove, the several grounds

mentioned in clause (2) are ultimately referable to the interests of the nation and of the society."

(emphasis supplied)

115. The observations of Justice Sawant and the concurring opinion of Justice Jeevan Reddy in Cricket Association of Bengal (supra) that the right under Article 19(1)(a) can be restricted on the ground of public interest even though it is not stipulated in Article 19(2) must be understood in the specific context of that case. Cricket Association of Bengal (supra), dealt with the access to and use of a public good (that is, airwaves) for dissemination of information.

The Court distinguished airways from other means of dissemination of information such as newsprint and held that since broadcasting involves the use of a public good, it must be utilized to advance free speech rights and plurality of opinion (that is, public interest).¹³⁶ The observations in Cricket Association of Bengal (supra) cannot be interpreted to mean that other implied grounds of restrictions have been read into Article 19(2).

116. From the above discussion, it is clear that the right to information under Article 19(1)(a) can only be restricted based on the grounds stipulated in Article 19(2). It could be argued that curbing black money can be traced to the ground of "public order". However, a Constitution Bench of this Court has interpreted the ground "public order" to mean "public safety and tranquility" and "disorder involving breaches of local significance in contradistinction to national upheavals, such as civil strife, war, affecting the security of the State."¹³⁷ Thus, the purpose of curbing black money is not traceable to any of the grounds in Article 19(2).

117. We proceed to apply the subsequent prongs of the proportionality standard, even assuming that curbing black money is a legitimate purpose for restricting the right to information. The second prong of the proportionality analysis requires the State to assess whether the means used are rationally connected to the purpose. At this stage, the court is required to assess whether the means, if realised, would increase the likelihood of curbing black money. It is not necessary that the means chosen should be the only means capable of realising the purpose. It is sufficient if the means used constitute one of the many methods by which the purpose can be realised, even if it only partially gives effect to the purpose.¹³⁸

118. The respondents submit that before the introduction of the Electoral Bond Scheme, a major portion of the total contributions received by political parties was from "unknown sources". For example, immediately preceding the financial

year (2016-17) in which the Electoral Bond Scheme was introduced, eighty one percent of the contributions (Rupees 580.52 Crores) were received by political parties through voluntary contributions. Since the amount of voluntary contributions is not regulated, it allowed the circulation of black money.

However, after the introduction of the Electoral Bond Scheme, fortyseven percent of the contributions were received through electoral bonds which is regulated money. The Union of India submitted that providing anonymity to the contributors incentivizes them to contribute through the banking channel. Assuming, for the purpose of hypothesis that the Union of India is right on this prong, what it urges is that non-disclosure of information about political expenditure has a rational nexus with the goal, that is, curbing black money or unregulated money.

119. The next stage of the proportionality standard is the least restrictive means stage. At this stage, this Court is required to determine if the means adopted (that is, anonymity of the contributor) is the least restrictive means to give effect to the purpose based on the following standard:¹³⁹

a. Whether there are other possible means which could have been adopted by the State; b. Whether the alternative means identified realise the objective in a 'real and substantial manner';

c. Whether the alternative identified and the means used by the State impact fundamental rights differently; and

d. Whether on an overall comparison (and balancing) of the measure and the alternative, the alternative is better suited considering the degree of realizing the government objective and the impact on fundamental rights.

120. Before we proceed to determine if the Electoral Bond Scheme is the least restrictive means to curb black money in electoral funding, it is important that we recall the regime on electoral funding. After the amendments introduced by the Finance Act 2017, donations to political parties exceeding rupees two thousand can only be made by an account payee cheque drawn on a bank, an account payee bank draft, the use of electronic clearing system through a bank account or through an electoral bond.¹⁴⁰

All contributions to political parties through cash cannot be assumed to be black money. For example, individuals who contribute to political parties in small donations during party rallies usually contribute through cash. On the other hand, contributions through the banking channel are certainly a form of accounted transaction. Restricting the contributions to political parties in cash to less than rupees two thousand and prescribing that contributions above the threshold

amount must only be made through banking channels is itself intended to curb black money.

Thus, the legal regime itself provides other alternatives to curb black money: contributions through cheques, bank draft, or electronic clearing system. The Union of India submits that though there are other alternatives through which circulation of black money in electoral financing can be curbed, these alternatives do not realize the objective in a "substantial manner" because most contributors resort to cash donations as they "fear consequences from political opponents" to whom donations were not made.

121. In addition to the alternatives identified above, the existing legal regime provides another alternative in the form of Electoral Trusts through which the objective of curbing black money in electoral financing can be achieved. Section 2(22AA) of the IT Act defines an Electoral Trust as a trust approved by the Board in accordance with the scheme made in this regard by the Central Government.

Section 13B of the IT Act states that any voluntary contributions received by an electoral trust shall not be included in the total income of the previous year of such electoral trust if the it distributes ninety five percent of the aggregate donations received during the previous year. In terms of Rule 17CA of the IT Rules 1962, the features of an electoral trust are as follows:

- a. An Electoral Trust may receive voluntary contribution from (i) an individual who is a citizen of India; (ii) a company registered in India; (iii) a firm or Hindu undivided family or an Association of persons or a body of individuals residing in India;
- b. When a contribution is made to an electoral trust, a receipt recording the following information shall, inter alia, be provided: (i) Name and address of the contributor; (ii) Permanent account number of the contributor or the passport number if the contributor is not a resident of India; (iii) Amount contributed; (iv) The mode of contribution including the name and branch of the bank and the date of receipt of such contribution; and (v) PAN of the electoral trust;
- c. Contributions to the electoral trust can only be made through cheque, bank draft and electronic transfer. Contributions made in cash shall not be accepted by the Electoral Trust;
- d. The Electoral Trust shall spend five percent of the total contributions received in a year subject to a limit of Rupees five hundred thousand in the first year of incorporation and Rupees three hundred thousand in the second year.¹⁴¹ The remaining money (that is, ninety five percent of the total contributions received

in that financial year along with any surplus from the previous year) shall be distributed to political parties registered under Section 29A of the RP Act;¹⁴²

e. The political party to which the trust donated money shall provide a receipt indicating the name of the political party, the PAN and the amount of contribution received from the trust;¹⁴³

f. The trust shall also maintain a list of persons from whom contributions have been received and to whom they have been distributed;¹⁴⁴ and

g. The trust shall furnish a certified copy of the list of contributors and list of political parties to whom contributions have been made to the Commissioner of Income Tax along with the audit report.¹⁴⁵

122. In summary, an Electoral Trust is formed only for collecting political contributions from donors. An electoral trust can contribute to more than one party. To illustrate, if ten individuals and one company have contributed to an Electoral Trust and the donations are contributed to three political parties equally or unequally, the information about which of the individuals contributed to which of the political parties will not be disclosed. In this manner, the purpose of curbing black money in electoral financing will be met. At the same time, there would be no fear of consequences from political opponents because the information as to which political party were made is not disclosed.

123. On 6 June 2014, the ECI circulated Guidelines for submission of contribution reports of Electoral Trusts mandating in the interest of transparency that all Electoral Trusts shall submit an Annual Report containing details of contributions received and disbursed by them to political parties. Pursuant to the Guidelines, Electoral Trusts submit Annual Reports to the ECI every year. For example, according to the Annual Report of the Prudent Electoral Trust for the financial year 2021-22, the Trust received contributions of a total of Rupees 4,64,83,00,116 from seventy contributors including individuals and companies.

The contributions were unequally distributed to the Aam Aadmi Party, All India Congress Committee, Bharatiya Janata Party, Goa Congress Committee, Goa Forward Party, Indian National Congress, Punjab Lok Congress, Samajwadi Party, Shiromani Akali Dal, Telangana Rashtra Samiti, and YSR Congress. From the report, it cannot be discerned if contributor 'A' contributed to a particular political party. It can only be concluded that contributor 'A' could have contributed to the Party.

124. Thus, even if the argument of the Union of India that the other alternative means such as the other modes of electronic transfer do not realize the objective of curbing black money substantially because contributors would resort to cash

donations due to the fear of consequences is accepted, Electoral Trusts are an effective alternative. There will be a lesser degree of "political consequences" for contributions made to the Electoral Trust because the information about which of the contributors contributed to which of the parties will not be disclosed.

It is only where the Electoral Trust contributes to one political party, would there be a possibility of political consequences and witch-hunting (assuming that there is a link between anonymity and contributions). However, in that case, it is a choice expressly made by the contributors. Additionally, the law mandates disclosure only of contributions made above twenty thousand in a financial year. So, for contributions less than twenty-five thousand, cheques and other modes of electronic transfer are an effective alternative.

125. When these three methods of political contribution (electronic transfer other than electoral bonds, contribution to Electoral Trust, and Electoral Bonds) are placed on a continuum, transfer through electronic means (other than electoral bonds) would be placed on one end and Electoral Bonds would be placed on the other end. A voter would receive complete information about contributions made above twenty thousand to a political party in the case of electronic transfer made directly to a political party other than through electoral bonds.¹⁴⁶

126. With respect to contributions through electoral bonds, the voter would not receive any information about financial contributions in terms of Section 29C of RPA as amended by the Finance Act. This Court in the interim order dated 31 October 2023 in the specific context of contributions made by companies through electoral bonds prima facie observed the voter would be able to secure information about the funding by matching the information of the aggregate sum contributed by the Company (as required to be disclosed under Section 182(3) of the Companies Act as amended by the Finance Act) with the information disclosed by the political party.

However, on a detailed analysis of the Scheme and the amendments we are of the opinion that such an exercise would not reveal the particulars of the donations because the Company under the provisions of Section 182 and the political party are only required to disclose the consolidated amount contributed and received through Electoral Bonds respectively. The particulars about the political party to which the contributions were made which is crucial to the right to information of political funding cannot be identified through the matching exercise.

127. With respect to contributions to an Electoral Trust, a voter receives partial information. The voter would know the total amount contributed by the donor and that the donor contributed to one of the political parties (in case the Electoral

Trust has made contributions to multiple parties). But the donor would not be aware of the exact details of the contribution.

128. Assuming that anonymity incentivizes contributions through banking channels (which would lead to curbing black money in the electoral process), electoral bonds would be the most effective means in curbing black money, followed by Electoral Trust, and then other means of electronic transfer. This conclusion is premised on the belief that the Electoral Bond curbs black money. However, the Scheme is not fool-proof. The Electoral Bond Scheme does not provide any regulatory check to prevent the trading of bonds though Clause 14 of the Electoral Bond Scheme states that the bonds shall not be eligible for trading.

129. On an overall balance of the impact of the alternative means on the right to information and its ability to fulfill the purpose, for contributions below twenty thousand rupees, contributions through other means of electronic transfer is the least restrictive means. For contributions above twenty thousand rupees, contributions through Electoral Trust is the least restrictive means. Having concluded that the Electoral Bond Scheme is not the least restrictive means to achieve the purpose of curbing black money in electoral process, there is no necessity of applying the balancing prong of the proportionality standard.

130. Based on the above discussion, we conclude that Electoral Bond Scheme does not fulfill the least restrictive means test. The Electoral Bond Scheme is not the only means for curbing black money in Electoral Finance. There are other alternatives which substantially fulfill the purpose and impact the right to information minimally when compared to the impact of electoral bonds on the right to information.

b. Donor Privacy

131. The Union of India submitted that information about financial contributions to political parties is not disclosed to protect the contributor's informational privacy to political affiliation. There are two limbs to the argument of the Union of India with respect to the purpose of donor privacy. First, that the State interest in introducing the Electoral Bond Scheme which guarantees confidentiality (or anonymity) to financial contributions is that it furthers donor privacy; and second, this State interest facilitates a guaranteed fundamental right.

Thus, the submission of the State is that the right to information can be restricted even if donor privacy is not traceable to the grounds in Article 19(2) because privacy is a fundamental right in itself. This Court needs to decide the following issues to determine if the right to information of voters can be restricted on the ground of donor privacy:

a. Whether the fundamental right to informational privacy recognized by this Court in Justice KS Puttaswamy (9J) v. Union of India¹⁴⁷, includes information about a citizen's political affiliation; and

b. If (a) above is answered in the affirmative, whether financial contribution to a political party is a facet of political affiliation.

If the right to informational privacy extends to financial contributions to a political party, this Court needs to decide if the Electoral Bond Scheme adequately balances the right to information and right to informational privacy of political affiliation.

I. Informational privacy of financial contributions to political parties

132. In Justice KS Puttaswamy (9J) (supra), a nine-Judge Bench of this Court held that the Constitution guarantees the right to privacy. This Court traced the right to privacy to the constitutional ideals of dignity, liberty, and the thread of non-arbitrariness that runs through the provisions of Part III. The scope of the right to privacy discussed in Justice KS Puttaswamy (9J) (supra) is summarized below:

a. The right to privacy includes "repose", that is, the freedom from unwanted stimuli, "sanctuary", the protection against intrusive observation into intimate decisions and autonomy with respect to personal choices;

b. Privacy over intimate decisions includes decisions related to the mind and body. Privacy extends to both the decision and the process of arriving at the decision. A lack of privacy over thought (which leads to decision-making) would suppress voices and lead to homogeneity which is contrary to the values that the Constitution espouses¹⁴⁸;

c. Privacy over decisions and choices would enable the exercise of fundamental freedoms such as the freedom of thought, expression, and association freely without coercion;¹⁴⁹

d. Privacy is attached to a person and not a space. The scope of privacy cannot be restricted only to the "private" space; and e. Privacy includes informational privacy. Information which may seem inconsequential in silos can be used to influence decision making behavior when aggregated.¹⁵⁰

133. The content of privacy is not limited to "private" actions and decisions such as the choice of a life partner, procreation and sexuality. Neither is privacy merely defined from the point of direct State intrusion. Privacy is defined as essential protection for the exercise and development of other freedoms protected

by the Constitution, and from direct or indirect influence by both State and non-State actors. Viewed in this manner, privacy takes within its fold, decisions which also have a 'public component'.

134. The expression of political beliefs is guaranteed under Article 19(1)(a). Forming political beliefs and opinion is the first stage of political expression. The freedom of political expression cannot be exercised freely in the absence of privacy of political affiliation. Information about a person's political beliefs can be used by the State at a political level, to suppress dissent, and at a personal level, to discriminate by denying employment or subjecting them to trolls. The lack of privacy of political affiliation would also disproportionately affect those whose political views do not match the views of the mainstream.

135. In the specific context of exercising electoral franchise, the lack of privacy of political affiliation would be catastrophic. It is crucial to electoral democracy that the exercise of the freedom to vote is not subject to undue influence. It is precisely for this reason that the law recognizes certain 'corrupt practices' by candidates.

These 'corrupt practices' do not merely include 'financial' corrupt practices such as bribery. They also include undue influence of the voters by an attempt to interfere with the free exercise of electoral right¹⁵¹, publication of false information about the personal character of any candidate¹⁵², and providing vehicles for the free conveyance of electors¹⁵³. The law penalizes practices which have the effect of dis-franchising the voter through illegitimate means.

136. Information about a person's political affiliation can be used to disenfranchise voters through voter surveillance.¹⁵⁴ Voter databases which are developed through surveillance identify voting patterns of the electors and attempt to interfere with their opinions based on the information.

For example, the data of online purchase histories such as the books purchased (which would indicate the ideological leaning of the individual), clothing brands used (which would indicate the social class to which the individual belongs) or the news consumed or the newspapers subscribed (which would indicate the political leanings or ideologies) can be used to draw on the relative political affiliation of people. This information about the political affiliation of individuals can then be used to influence their votes. Voter surveillance gains particular significance when fewer people have attachments to political parties.¹⁵⁵

137. At a systemic level, information secured through voter surveillance could be used to invalidate the foundation of the electoral system. Information about

political affiliation could be used to engage in gerrymandering, the practice by which constituencies are delimited based on the electoral preference of the voters.

138. Informational privacy to political affiliation is necessary to protect the freedom of political affiliation and exercise of electoral franchise. Thus, it follows from the judgment of this Court in Justice KS Puttaswamy (9J) (supra) and the observations above that the Constitution guarantees the right to informational privacy of political affiliation.

139. Having concluded that the Constitution guarantees a right to informational privacy of political affiliation, it needs to be decided if the right can be extended to the contributions to political parties. The Electoral Bond Scheme has two manifestations of privacy: first, informational privacy by prescribing confidentiality vis-à-vis the political party; and second, informational privacy by prescribing non-disclosure of the information of political contributions to the public.

The Union of India submitted that contributions made to political parties must be protected both from the political party itself and the public because donor privacy is an extension of the principle of secret ballot and is a facet of free and fair elections. The petitioners argue that equating political contributions with expression of political preference through voting is flawed because it conflates money with speech. The petitioners also argue that informational privacy does not extend to political contributions because they are by their very nature public acts which influence public policy, and thus, must be subject to public scrutiny.

140. The issue before this Court is not whether public funding of political parties is permissible. Neither is the issue whether a restriction can be placed on the contribution which can be made by a citizen to a political party. If it was, then the question of whether financial contribution to a political party is in furtherance of the right to freedom of political speech and expression under Article 19(1)(a) or the right to freedom to form associations under Article 19(1)(c) would arise. However, that not being the case, this Court is not required to decide whether financial contribution to a political party is protected by Articles 19(1)(a) and 19(1)(c).

141. This Court in Justice KS Puttaswamy (9J) (supra) did not trace the right to privacy to a particular provision of the Constitution such as Article 21. Rather, this Court observed that privacy is crucial for the fulfilment of the constitutional values of self-determination, autonomy and liberty in addition to its essentiality for realizing the fundamental freedoms such as the freedom of speech and expression. This Court further held that the non-intrusion of the mind (the ability

to preserve beliefs, thoughts and ideologies) is as important as the nonintrusion of the body.

This Court (supra) did not hold that privacy is extendable to the action of speech or the action of expression, both of which are required to possess a communicative element to receive the protection under Article 19(1)(a).¹⁵⁶ Rather, the proposition in Justice KS Puttaswamy (9J) is that privacy (including informational privacy) is extendable to thoughts, beliefs, and opinions formed for the exercise of speech and action. Thus, informational privacy would extend to financial contributions to political parties even if contributions are not traceable to Article 19(1)(a) provided that the information on political contributions indicates the political affiliation of the contributor.

142. Financial contributions to political parties are usually made for two reasons. First, they may constitute an expression of support to the political party and second, the contribution may be based on a quid pro quo. The law as it currently stands permits contributions to political parties by both corporations and individuals. The huge political contributions made by corporations and companies should not be allowed to conceal the reason for financial contributions made by another section of the population: a student, a daily wage worker, an artist, or a teacher.

When the law permits political contributions and such contributions could be made as an expression of political support which would indicate the political affiliation of a person, it is the duty of the Constitution to protect them. Not all political contributions are made with the intent of attempting to alter public policy. Contributions are also made to political parties which are not substantially represented in the legislatures.

Contributions to such political parties are made purely with the intent of expressing support. At this juncture, the close association of money and politics which has been explained above needs to be recounted. Money is not only essential for electoral outcomes and for influencing policies. It is also necessary for true democratic participation. It is necessary for enhancing the number of political parties and candidates contesting the elections which would in-turn impact the demographics of representatives in the Assembly.

It is true that contributions made as quid pro quo transactions are not an expression of political support. However, to not grant the umbrella of informational privacy to political contributions only because a portion of the contributions is made for other reasons would be impermissible. The Constitution does not turn a blind eye merely because of the possibilities of misuse.

II. Privacy vis-à-vis political party

143. The second issue is whether the right to privacy of political contributions can be extended to include privacy vis-à-vis the political party to which contributions are made since according to the Union of India under the Electoral Bond Scheme, the political party to which the contribution is made would not know the particulars of the contributor. Hence, it is submitted that the scheme is akin to the secret ballot.

144. We are unable to see how the disclosure of information about contributors to the political party to which the contribution is made would infringe political expression. The disclosure of the particulars of the contributions may affect the freedom of individuals to the limited extent that the political party with the information could coerce those who have not contributed to them.

However, we have already held above that the scheme only grants de jure and not de facto confidentiality vis-à-vis the political party. Under the current Scheme, it is still open to the political party to coerce persons to contribute. Thus, the argument of the Union of India that the Electoral Bond Scheme protects the confidentiality of the contributor akin to the system of secret ballot is erroneous.

III. Balancing the right to information and the right to informational privacy

a) Judicial Approach towards balancing fundamental rights: establishing the double proportionality standard

145. At the core of governance is the conflict between different constitutional values or different conceptions of the same constitutional value. Countries with a written Constitution attempt to resolve these conflicts by creating a hierarchy of rights within the constitutional order where a few fundamental rights are subjected to others.

For example, Article 25 of the Indian Constitution which guarantees the freedom of conscience, and the profession, practice and propagation of religion is subject to public order, morality, health and other provisions of Part III. The first exercise that the Court must undertake while balancing two fundamental rights is to determine if the Constitution creates a hierarchy between the two rights in conflict. If the Constitution does not create a hierarchy between the conflicting rights, the Courts must use judicial tools to balance the conflict between the two rights.

146. The judicial approach towards balancing fundamental rights has evolved over the course of years. Courts have used the collective interest or the public

interest standard, the single proportionality standard, and the double proportionality standard to balance the competing interests of fundamental rights.

147. Before the proportionality standard was employed to test the validity of the justification for the infringement of fundamental rights, Courts balanced conflicting fundamental rights by according prominence to one fundamental right over the other based on public interest. This approach was undertaken through two modalities. In the first modality, the Court while identifying the fundamental rights in conflict circumscribed one of the fundamental rights in question such that there was no real conflict between the rights.

The Court while circumscribing the right undertook an exercise of weighing the relative constitutional values of the rights based on public interest. In *Re Noise Pollution*¹⁵⁷, writ petitions were filed seeking to curb noise pollution. A two-Judge Bench of this Court observed that those who make noise often justify their actions based on freedom of speech and expression guaranteed under Article 19(1)(a).

However, this Court observed that the right to freedom of speech and expression does not include the freedom to "engage in aural aggression". In this case, there was no necessity for this Court to "balance" two fundamental rights because the right in question (freedom of speech and expression) was circumscribed to not include the actions challenged (noise pollution). In *Subramanian Swamy v. Union of India*¹⁵⁸, Sections 499 and 500 of the Indian Penal Code 1860 which criminalized defamation were challenged.

A two-Judge Bench of this Court framed the issue as a conflict between the right to speech and expression under Article 19(1)(a) and the right to reputation traceable to Article 21. In this case, the two Judge Bench held that the right to speech and expression does not include the right to defame a person. Justice Dipak Misra (as the learned Chief Justice then was) observed that a contrary interpretation would completely abrogate the right to reputation.¹⁵⁹

148. In the second modality of the public interest approach, the Courts undertook a comparison of the values which the rights (and the conceptions of the rights) espouse and gave more weightage to the right which was in furtherance of a higher degree of public or collective interest. In *Asha Ranjan v. State of Bihar*¹⁶⁰, this Court held that when there is a conflict between two individuals with respect to their right under Article 21, the facts and circumstances must be weighed "on the scale of constitutional norms and sensibility and larger public interest."

In *PUCL (supra)*, one of the issues before this Court was whether the disclosure of the assets of the candidates contesting the elections in furtherance of the right

to information of the voters violates the right to privacy of candidates.¹⁶¹ Justice Reddi authoring the concurring opinion observed that the right to information of the assets of candidates contesting elections trumps the right to privacy because the former serves a larger public interest. In *Mazdoor Kisan Shakti Sangathan v. Union of India*¹⁶², proceedings under Article 32 were initiated challenging orders issued under Section 144 of the Code of Criminal Procedure prohibiting protests in certain areas in Delhi.

The issue before this Court was whether the total ban of protests at the Jantar Mantar Road would violate the right to protest which is traceable to Articles 19(1)(a) and 19(1)(b). One of the inter-related issues was whether the right to hold peaceful demonstrations violates the right of peaceful residence under Article 21, and if it does, how this Court should balance the conflicting fundamental rights. This Court observed that the Court must while balancing two fundamental rights examine where the larger public interest lies.¹⁶³

This Court framed the following issue in the specific context of the case: whether disturbances caused to residents by the protest is a larger public interest which outweighs the rights of protestors. The two-Judge Bench held that "demonstrations as it has been happening" are causing serious discomfort to the residents, and that the right to protest could be balanced with the right to peaceful residence if authorities had taken adequate safeguards such as earmarking specific areas for protest, placing restrictions on the use of loudspeakers and on parking of vehicles around residential places.

149. The judgment of this Court in *Mazdoor Kisan Shakti* (supra), represents the gradual shift from the pre-proportionality phase to the proportionality stage which signifies a shift in the degree of justification and the employment of a structured analysis for balancing fundamental rights. In *Mazdoor Kisan Shakti* (supra), this Court applied one of the prongs of the proportionality standard (the least restrictive means prong) while balancing the right to protest and the right to peaceful residence. The Court identified other means which would have infringed the right to a peaceful residence to a lesser extent.

150. In 2012, a five-Judge Bench of this Court in *Sahara India Real Estate Corporation Limited v. Securities and Exchange Board of India*¹⁶⁴, used a standard which resembled the structured proportionality standard used in *Justice KS Puttaswamy (5J) v. Union of India*¹⁶⁵ to balance the conflict between two fundamental rights. This judgment marked the first departure from the series of cases in which this Court balanced two fundamental rights based on doctrinal predominance.

In Sahara (supra), the petitioner submitted a proposal for the repayment of OFCDs (optionally fully convertible bonds) to the investors. The details of the proposals were published by a news channel. Interlocutory applications were filed in the Court praying for the issuance of guidelines for reporting matters which are sub-judice. This Court resolved the conflict between the freedom of press protected under Article 19(1)(a) and the right to free trial under Article 21 by evolving a neutralizing device.

This Court held that it has the power to evolve neutralizing devices such as the postponement of trial, retrial, change of venue, and in appropriate cases, grant acquittal in case of excessive media prejudicial publicity to neutralize the conflicting rights. This Court followed the Canadian approach in evolving a two prong standard to balance fundamental rights through neutralizing devices which partly resembled the structured proportionality standard. The two-pronged test was as follows:¹⁶⁶

- a. There is no other reasonable alternative measure available (necessity test); and
- b. The salutary effects of the measure must outweigh the deleterious effects on the fundamental rights (proportionality standard).

151. Finally, this Court in Justice KS Puttaswamy (5J) (supra) applied the structured proportionality standard to balance two fundamental rights. In this case, a Constitution Bench of this Court while testing the validity of the Aadhar Act 2016 had to resolve the conflict between the right to informational privacy and the right to food. Justice Sikri writing for the majority held that the Aadhar Act fulfills all the four prongs of the proportionality standard.

In the final prong of the proportionality stage, that is the balancing stage, this Court held that one of the considerations was to balance the right to privacy and the right to food. On balancing the fundamental rights, this Court held that the provisions furthering the right to food satisfy a larger public interest whereas the invasion of privacy rights was minimal.¹⁶⁷

152. However, the single proportionality standard which is used to test whether the fundamental right in question can be restricted for the State interest (that is, the legitimate purpose) and if it can, whether the measure used to restrict the right is proportional to the objective is insufficient for balancing the conflict between two fundamental rights. The proportionality standard is an effective standard to test whether the infringement of the fundamental right is justified. It would prove to be ineffective when the State interest in question is also a reflection of a fundamental right.

153. The proportionality standard is by nature curated to give prominence to the fundamental right and minimize the restriction on it. If this Court were to employ the single proportionality standard to the considerations in this case, at the suitability prong, this Court would determine if non-disclosure is a suitable means for furthering the right to privacy. At the necessity stage, the Court would determine if non-disclosure is the least restrictive means to give effect to the right to privacy.

At the balancing stage, the Court would determine if non-disclosure has a disproportionate effect on the right holder. In this analysis, the necessity and the suitability prongs will inevitably be satisfied because the purpose is substantial: it is a fundamental right. The balancing stage will only account for the disproportionate impact of the measure on the right to information (the right) and not the right to privacy (the purpose) since the Court is required to balance the impact on the right with the fulfillment of the purpose through the selected means.

Thus, the Court while applying the proportionality standard to resolve the conflict between two fundamental rights preferentially frames the standard to give prominence to the fundamental right which is alleged to be violated by the petitioners (in this case, the right to information).¹⁶⁸ This could well be critiqued for its limitations.

154. In *Campbell v. MGM Limited*¹⁹⁶, Baroness Hale adopted the double proportionality standard to adequately balance two conflicting fundamental rights. In this case, the claimant, a public figure, instituted proceedings against a newspaper for publishing details of her efforts to overcome drug addiction. Baroness Hale applied the following standard to balance the right to privacy of the claimant and the right to a free press:

"141. [...] This involved looking first at the comparative importance of the actual rights being claimed in the individual case; then at the justifications for interfering with or restricting each of those rights; and applying the proportionality test to each"

155. In *Central Public Information Officer, Supreme Court of India v. Subash Chandra Agarwal*¹⁷⁰, one of us (Justice D Y Chandrachud) while authoring the concurring opinion adopted the double proportionality standard as formulated in *Campbell* (supra). Referring to the double proportionality standard, the concurring opinion observes that the Court while balancing between two fundamental rights must identify the precise interests weighing in favour of both disclosure and privacy and not merely undertake a doctrinal analysis to determine if one of the fundamental rights takes precedence over the other:

"113. Take the example of where an information applicant sought the disclosure of how many leaves were taken by a public employee and the reasons for such leave. The need to ensure accountability of public employees is of clear public interest in favour of disclosure. The reasons for the leave may also include medical information with respect to the public employee, creating a clear privacy interest in favour of nondisclosure.

It is insufficient to state that the privacy interest in medical records is extremely high and therefore the outcome should be blanket non-disclosure. The principle of proportionality may necessitate that the number of and reasons for the leaves be disclosed and the medical reasons for the leave be omitted. This would ensure that the interest in accountability is only abridged to the extent necessary to protect the legitimate aim of the privacy of the public employee."

156. Baroness Hale in *Campbell* (supra) employed a three step approach to balance fundamental rights. The first step is to analyse the comparative importance of the actual rights claimed. The second step is to lay down the justifications for the infringement of the rights. The third is to apply the proportionality standard to both the rights. The approach adopted by Baroness Hale must be slightly tempered to suit our jurisprudence on proportionality. The Indian Courts adopt a four prong structured proportionality standard to test the infringement of the fundamental rights.

In the last stage of the analysis, the Court undertakes a balancing exercise to analyse if the cost of the interference with the right is proportional to the extent of fulfilment of the purpose. It is in this step that the Court undertakes an analysis of the comparative importance of the considerations involved in the case, the justifications for the infringement of the rights, and if the effect of infringement of one right is proportional to achieve the goal. Thus, the first two steps laid down by Baroness Hale are subsumed within the balancing prong of the proportionality analysis.

157. Based on the above discussion, the standard which must be followed by Courts to balance the conflict between two fundamental rights is as follows:

- a. Does the Constitution create a hierarchy between the rights in conflict? If yes, then the right which has been granted a higher status will prevail over the other right involved. If not, the following standard must be employed from the perspective of both the rights where rights A and B are in conflict:
- b. Whether the measure is a suitable means for furthering right A and right B;
- c. Whether the measure is least restrictive and equally effective to realise right A and right B; and

d. Whether the measure has a disproportionate impact on right A and right B.

b) Validity of the Electoral Bond Scheme, Section 11 of the Finance Act and Section 137 of the Finance Act

158. To recall, Section 13A of the IT Act before the amendment mandated that the political party must maintain a record of contributions in excess of rupees twenty thousand. Section 11 of the Finance Act 2017 amended Section 13A creating an exception for contributions made through Electoral Bonds. Upon the amendment, political parties are not required to maintain a record of any contribution received through electoral bonds. Section 29C of the RPA mandated the political party to prepare a report with respect to contributions received in excess of twenty thousand rupees from a person or company in a financial year.

Section 137 of the Finance Act amended Section 29C of the RPA by which a political party is now not required to include contributions received by electoral bonds in its report. As explained earlier, the feature of anonymity of the contributor vis-à-vis the public is intrinsic to the Electoral Bond Scheme. Amendments had to be made to Section 13A of the IT Act and Section 29C of the RPA to implement the Electoral Bond Scheme because the EBS mandates anonymity of the contributor. In this Section, we will answer the question of whether the EBS adequately balances the right to informational privacy of the contributor and the right to information of the voter.

159. In Justice KS Puttaswamy (9J) (supra), this Court did not trace the right to privacy only to Article 21. This Court considered privacy as an essential component for the effective fulfillment of the all entrenched rights. Article 25 of the Constitution is the only provision in Part III which subjects the right to other fundamental rights. Article 25 guarantees the freedom of conscience which means the freedom to judge the moral qualities of one's conduct.¹⁷¹

Financial contributions to a political party (as a form of expression of political support and belief) can be traced to the exercise of the freedom of conscience under Article 25.¹⁷² It can very well be argued that the right to information of the voter prevails over the right to anonymity of political contributions which may be traceable to the freedom of conscience recognized under Article 25 since it is subject to all other fundamental rights, including Article 19(1)(a).

However, the right to privacy of financial contributions to political parties can also be traced to Article 19(1) because the informational privacy of a person's political affiliation is necessary to enjoy the right to political speech under Article 19(1)(a), the right to political protests under Article 19(1)(b), the right to form a political association under Article 19(1)(c), and the right to life and liberty under

Article 21. The Constitution does not create a hierarchy amongst these rights. Thus, there is no constitutional hierarchy between the right to information and the right to informational privacy of political affiliation.

160. This Court must now apply the double proportionality standard, that is, the proportionality standard to both the rights (as purposes) to determine if the means used are suitable, necessary and proportionate to the fundamental rights. The Union of India submitted that Clause 7(4) of the Electoral Bond Scheme balances the right to information of the voter and the right to informational privacy of the contributor.

Clause 7(4) stipulates that the information furnished by the buyer shall be treated as confidential by the authorized bank. The bank has to disclose the information when it is demanded by a competent court or upon the registration of a criminal case by a law enforcement agency. It needs to be analyzed if the measure employed (Clause 7(4)) balances the rights or tilts the balance towards one of the fundamental rights.

161. The first prong of the analysis is whether the means has a rational connection with both the purposes, that is, informational privacy of the political contributions and disclosure of information to the voter. It is not necessary that the means chosen should be the only means capable of realising the purpose of the state action. This stage of the analysis does not prescribe an efficiency standard. It is sufficient if the means constitute one of the many methods by which the purpose can be realised, even if it only partially gives effect to the purpose.¹⁷³

162. This Court while applying the suitability prong to the purpose of privacy of political contribution must consider whether the non-disclosure of information to the voter and its disclosure only when demanded by a competent court and upon the registration of criminal case has a rational nexus with the purpose of achieving privacy of political contribution. Undoubtedly, the measure by prescribing non-disclosure of information about political funding shares a nexus with the purpose. The non-disclosure of information grants anonymity to the contributor, thereby protecting information privacy. It is certainly one of the ways capable of realizing the purpose of informational privacy of political affiliation.

163. The suitability prong must next be applied to the purpose of disclosure of information about political contributions to voters. There is no nexus between the balancing measure adopted with the purpose of disclosure of information to the voter. According to Clause 7(4) of the Electoral Bond Scheme and the

amendments, the information about contributions made through the Electoral Bond Scheme is exempted from disclosure requirements.

This information is never disclosed to the voter. The purpose of securing information about political funding can never be fulfilled by absolute non-disclosure. The measure adopted does not satisfy the suitability prong vis-à-vis the purpose of information of political funding. However, let us proceed to apply the subsequent prongs of the double proportionality analysis assuming that the means adopted has a rational nexus with the purpose of securing information about political funding to voters.

164. The next stage of the analysis is the necessity prong. At this stage, the Court determines if the measure identified is the least restrictive and equally effective measure. To recall, the Court must determine if there are other possible means which could have been adopted to fulfill the purpose, and whether such alternative means (a) realize the purpose in a real and substantial manner; (b) impact fundamental rights differently; and (c) are better suited on an overall comparison of the degree of realizing the purpose and the impact on fundamental rights.

165. The provisions of the RPA provide an alternative measure. Section 29C states that contributions in excess of rupees twenty thousand received from a person or company for that financial year must be disclosed by the political party through a report. The report must be filled in the format prescribed in Form 24A of the Conduct of Election Rules 1961. The form is annexed as Annexure II to this judgment.

A crucial component of this provision when juxtaposed with Section 13A of the IT Act must be noted. Section 13A of the IT Act requires the political party to maintain a record of the contributions made in excess of rupees twenty thousand. Section 29C of the RPA requires the political party to disclose information about contributions in excess of rupees twenty thousand made by a person or company in a financial year. Section 13A mandates record keeping of every contribution. On the other hand, Section 29C mandates disclosure of information of contributions beyond rupees twenty thousand per person or per company in one financial year.

166. Section 29C(1) is one of the means to achieve the purpose of protecting the informational privacy of political affiliation of individuals. Parliament in its wisdom has prescribed rupees twenty thousand as the threshold where the considerations of disclosure of information of political contribution outweigh the considerations of informational privacy. It could very well be debated whether

rupees twenty thousand is on the lower or higher range of the spectrum. However, that is not a question for this Court to answer in this batch of petitions.

The petitioners have not challenged the threshold of rupees twenty thousand prescribed for the disclosure of information prescribed by Section 29C. They have only raised a challenge to the disclosure exception granted to contributions by Electoral Bonds. Thus, this Court need not determine if the threshold tilts the balance in favour of one of the interests. We are only required to determine if the disclosure of information on financial contributions in a year beyond rupees twenty thousand is an alternative means to achieve the purposes of securing the information on financial contributions and informational privacy regarding political affiliation.

167. It must be recalled that we have held above that the right to information of the voter includes the right to information of financial contributions to a political party because of the influence of money in electoral politics (through electoral outcomes) and governmental decisions (through a seat at the table and quid pro quo arrangements between the contributor and the political party).

The underlying rationale of Section 29C(1) is that contributions below the threshold do not have the ability to influence decisions, and the right to information of financial contributions does not extend to contributions which do not have the ability to influence decisions. Similarly, the right to privacy of political affiliations does not extend to contributions which may be made to influence policies. It only extends to contributions made as a genuine form of political support that the disclosure of such information would indicate their political affiliation and curb various forms of political expression and association.

168. It is quite possible that contributions which are made beyond the threshold could also be a form of political support and not necessarily a quid pro quo arrangement, and contributions below the threshold could influence electoral outcomes. However, the restriction on the right to information and informational privacy of such contributions is minimal when compared to a blanket non-disclosure of information on contributions to political parties. Thus, this alternative realizes the objective of securing disclosure for an informed voter and informational privacy to political affiliation in a 'real and substantial manner'.

The measure in the Electoral Bond Scheme completely tilts the balance in favor of the purpose of informational privacy and abrogates informational interests. On an overall comparison of the measure and the alternative, the alternative is better suited because it realizes the purposes to a considerable extent and imposes a lesser restriction on the fundamental rights. Having concluded that Clause 7(4) of the Scheme is not the least restrictive means to balance the fundamental rights,

there is no necessity of applying the balancing prong of the proportionality standard.

169. The Union of India has been unable to establish that the measure employed in Clause 7(4) of the Electoral Bond Scheme is the least restrictive means to balance the rights of informational privacy to political contributions and the right to information of political contributions. Thus, the amendment to Section 13A(b) of the IT Act introduced by the Finance Act 2017, and the amendment to Section 29C(1) of the RPA are unconstitutional. The question is whether this Court should only strike down the non-disclosure provision in the Electoral Bond Scheme, that is Clause 7(4).

However, as explained above, the anonymity of the contributor is intrinsic to the Electoral Bond Scheme. The Electoral Bond is not distinguishable from other modes of contributions through the banking channels such as cheque transfer, transfer through the Electronic Clearing System or direct debit if the anonymity component of the Scheme is struck down. Thus, the Electoral Bond Scheme 2018 will also consequentially have to be struck down as unconstitutional.

c. Validity of Section 154 of the Finance Act amending Section 182(3) to the Companies Act

170. Before the 2017 amendment, Section 182(3) of the Companies Act, mandated companies to disclose the details of the amount contributed to a political party along with the name of the political party to which the amount was contributed in its profit and loss account. After the amendment, Section 182(3) only requires the disclosure of the total amount contributed to political parties in a financial year. For example, under Section 182(3) as it existed before the amendment, if a Company contributed rupees twenty thousand to a political party, the company was required to disclose in its profit and loss account, the details of the specific contributions made to that political party.

However, after the 2017 amendment, the Company is only required to disclose that it contributed rupees twenty thousand to a political party under the provision without disclosing the details of the contribution, that is, the political party to which the contribution was made. The profit and loss account of a company is included in the financial statement which companies are mandated to prepare.¹⁷³ A copy of the financial statement adopted at the annual general meeting of the company must be filed with the Registrar of Companies.¹⁷⁵

171. As discussed in the earlier segment of this judgment, the Companies Act 1956 was amended in 1960 to include Section 293A by which contributions by companies to political parties and for political purposes were regulated.

Companies were permitted to contribute within the cap prescribed. All such contributions were required to be disclosed by the Company in its profit and loss account with details.

Companies which contravened the disclosure requirement were subject to fine. It is crucial to note here that contributions to political parties by companies were regulated long before the IT Act was amended in 1978 to exempt the income of political parties through voluntary contributions for tax purposes (ostensibly to curb black money). It is clear as day light that the purpose of mandating the disclosure of contributions made by companies was not merely to curb black money in electoral financing but crucially to make the financial transactions between companies and political parties transparent.

Contributions for "political purposes" was widely defined in the 1985 amendment (which was later incorporated in Section 182 of the Companies Act 2013) to include expenditure (either directly or indirectly) for advertisement on behalf of political parties and payment to a person "who is carrying activity which can be regarded as likely to affect public support to a political party".

This indicates that the legislative intent of the provision mandating disclosure was to bring transparency to political contributions by companies. Companies have always been subject to a higher disclosure requirement because of their huge financial presence and the higher possibility of quid pro quo transactions between companies and political parties. The disclosure requirements in Section 182(3) were included to ensure that corporate interests do not have an undue influence in electoral democracy, and if they do, the electorate must be made aware of it.

172. Section 182(3) as amended by the Finance Act 2017 mandates the disclosure of total contributions made by political parties. This requirement would ensure that the money which is contributed to political parties is accounted for. However, the deletion of the mandate of disclosing the particulars of contributions violates the right to information of the voter since they would not possess information about the political party to which the contribution was made which, as we have held above, is necessary to identify corruption and quid pro quo transactions in governance. Such information is also necessary for exercising an informed vote.

173. Section 182(3) of the Companies Act and Section 29C of the RPA as amended by the Finance Act must be read together. Section 29C exempts political parties from disclosing information of contributions received through Electoral Bonds. However, Section 182(3) not only applies to contributions made through electoral bonds but through all modes of transfer. In terms of the

provisions of the RPA, if a company made contributions to political parties through cheque or ECS, the political party had to disclose the details in its report.

Thus, the information about contributions by the company would be in the public domain. The only purpose of amending Section 182(3) was to bring the provision in tune with the amendment under the RPA exempting disclosure requirements for contributions through electoral bonds. The amendment to Section 182(3) of the Companies Act becomes otiose in terms of our holding in the preceding section that the Electoral Bond Scheme and relevant amendments to the RPA and the IT Act mandating non-disclosure of particulars on political contributions through electoral bonds is unconstitutional.

174. In terms of Section 136 of the Companies Act, every shareholder in a company has a right to a copy of the financial statement which also contains the profit and loss account. The petitioners submitted that the non-disclosure of the details of the political contributions made by companies in the financial statement would infringe upon the right of the shareholders to decide to sell the shares of a company if a shareholder does not support the political ideology of the party to which contributions were made.

This it was contended, violates Articles 19(1)(a), 19(1)(g), 21 and 25. We do not see the necessity of viewing the non-disclosure requirement in Section 182(3) of the Companies Act from the lens of a shareholder in this case when we have identified the impact of non-disclosure of information on political funding from the larger compass of a citizen and a voter. In view of the above discussion, Section 182(3) as amended by the Finance Act 2017 is unconstitutional.

G. Challenge to unlimited corporate funding

175. The Companies Act 1956,¹⁷⁶ as originally enacted, did not contain any provision relating to political contributions by companies. Regardless of the same, many companies sought to make contributions to political parties by amending their memorandum. In *Jayantilal Ranchhoddas Koticha v. Tata Iron and Steel Co. Ltd.*,¹⁷⁷ the decision of the company to amend its memorandum enabling it to make contributions to political parties was challenged before the High Court of Judicature at Bombay.

The High Court upheld the decision of the company to amend its memorandum on the ground that there was no law prohibiting companies from contributing to the funds of a party. Chief Justice M C Chagla, cautioned against the influential role of "big business and money bags" in throttling democracy. The learned Judge emphasized that it is the duty of Courts to "prevent any influence being exercised upon the voter which is an improper influence or which may be looked

at from any point of view as a corrupt influence." Chief Justice Chagla highlighted the grave danger inherent in permitting companies to donate to political parties and hoped Parliament would "consider under what circumstances and under what limitations companies should be permitted to make these contributions".

176. Subsequently, Parliament enacted the Companies (Amendment) Act 1960 to incorporate Section 293A in the 1956 Act. The new provision allowed a company to contribute to: (a) any political party; or (b) for any political purpose to any individual or body. However, the amount of contribution was restricted to either twenty-five thousand rupees in a financial year or five percent of the average net profits during the preceding three financial years, whichever was greater.

The provision also mandated every company to disclose in its profit and loss account any amount contributed by it to any political party or for any political purpose to any individual or body during the financial year to which that account relates by giving particulars of the total amount contributed and the name of the party, individual, or body to which or to whom such amount has been contributed.

177. In 1963, the Report of the Santhanam Committee on Prevention of Corruption highlighted the prevalence of corruption at high political levels due to unregulated collection of funds and electioneering by political parties.¹⁷⁸ The Committee suggested "a total ban on all donations by incorporated bodies to political parties." Subsequently, Section 293A of the 1956 Act was amended through the Companies (Amendment) Act 1969 to prohibit companies from contributing funds to any political party or to any individual or body for any political purpose.

178. In 1985, Parliament again amended Section 293A, in the process reversing its previous ban on political contributions by companies. It allowed a company, other than a government company and any other company with less than three years of existence, to contribute any amount or amounts to any political party or to any person for any political purpose. It further provided that the aggregate of amounts which may be contributed by a company in any financial year shall not exceed five percent of its average net profits during the three immediately preceding financial years.

This provision was retained under Section 182 of the Companies Act 2013. The only change was that the aggregate amount donated by a company was increased to seven and a half percent of its average net profits during the three immediately preceding financial years. Section 154 of the Finance Act 2017 amended Section

182 of the 2013 Act to delete this limit contained in the first proviso of the provision.

179. At the outset, it is important to be mindful of the fact that the petitioners are not challenging the vires of Section 182 of the 2013 Act. Neither are the petitioners challenging the legality of contributions made by companies to political parties. The challenge is restricted to Section 154 of the Finance Act 2017 which amended Section 182 of the 2013 Act.

i. The application of the principle of non-arbitrariness

180. The petitioners argue that Section 154 of the Finance Act 2017 violates Article 14 of the Constitution. The primary ground of challenge is that the amendment to Section 182 of the 2013 Act is manifestly arbitrary as it allows companies, including loss-making companies, to contribute unlimited amounts to political parties. It has also been argued that the law now facilitates the creation of shell companies solely for the purposes of contributing funds to political parties. On the other hand, the respondent has questioned the applicability of the doctrine of manifest arbitrariness for invalidating legislation.

a. Arbitrariness as a facet of Article 14

181. At the outset, the relevant question that this Court has to answer is whether a legislative enactment can be challenged on the sole ground of manifest arbitrariness. Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India.

Article 14 is an injunction to both the legislative as well the executive organs of the State to secure to all persons within the territory of India equality before law and equal protection of the laws.¹⁷⁹ Traditionally, Article 14 was understood to only guarantee non-discrimination. In this context, Courts held that Article 14 does not forbid all classifications but only that which is discriminatory.

In *State of West Bengal v. Anwar Ali Sarkar*,¹⁸⁰ Justice S R Das (as the learned Chief Justice then was) laid down the following two conditions which a legislation must satisfy to get over the inhibition of Article 14: first, the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others; and second, the differentia must have a rational relation to the object sought to be achieved by the legislation. In the ensuing years, this Court followed this "traditional approach" to test the constitutionality of a legislation on the touchstone of Article 14.¹⁸¹

182. In *E P Royappa v. State of Tamil Nadu*,¹⁸² this Court expanded the ambit of Article 14 by laying down non-arbitrariness as a limiting principle in the context of executive actions. Justice P N Bhagwati (as the learned Chief Justice then was), speaking for the Bench, observed that equality is a dynamic concept with many aspects and dimensions which cannot be confined within traditional and doctrinaire limits.

The opinion declared that equality is antithetic to arbitrariness, further finding that equality belongs to the rule of law in a republic, while arbitrariness belongs to the whim and caprice of an absolute monarch. In *Ajay Hasia v. Khalid Mujib Seheravardi*,¹⁸³ a Constitution Bench of this Court considered it to be well settled that any action that is arbitrary necessarily involves negation of equality. Justice Bhagwati observed that the doctrine of non-arbitrariness can also be extended to a legislative action. He observed that:

"[w]herever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action."

183. Immediately after the judgment in *Ajay Hasia* (supra), Justice E S Venkataramaiah (as the learned Chief Justice then was) in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*,¹⁸⁴ laid down the test of manifest arbitrariness with respect to subordinate legislation. It was held that a subordinate legislation does not carry the same degree of immunity enjoyed by a statute passed by a competent legislature.

Therefore, this Court held that a subordinate legislation "may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary." In *Sharma Transport v. Government of Andhra Pradesh*,¹⁸⁵ this Court reiterated *Indian Express Newspapers* (supra) by observing that the test of arbitrariness as applied to an executive action cannot be applied to delegated legislation.

It was held that to declare a delegated legislation as arbitrary, "it must be shown that it was not reasonable and manifestly arbitrary." This Court further went on to define "arbitrarily" to mean "in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone."

184. While this Court accepted it as a settled proposition of law that a subordinate legislation can be challenged on the ground of manifest arbitrariness, there was still some divergence as to the doctrine's application with respect to

plenary legislation. In *State of Tamil Nadu v. Ananthi Ammal*,¹⁸⁶ a three- Judge Bench of this Court held that a statute can be declared invalid under Article 14 if it is found to be arbitrary or unreasonable. Similarly, in *Dr. K R Lakshmanan v. State of Tamil Nadu*,¹⁸⁷ a three-Judge Bench of this Court invalidated a legislation on the ground that it was arbitrary and in violation of Article 14.

However, in *State of Andhra Pradesh v. McDowell & Co.*,¹⁸⁸ another three-Judge Bench of this Court held that a plenary legislation cannot be struck down on the ground that it is arbitrary or unreasonable. In *McDowell (supra)*, this Court held that a legislation can be invalidated on only two grounds: first, the lack of legislative competence; and second, on the violation of any fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision.

185. This divergence became more apparent when a three-Judge Bench of this Court in *Malpe Vishwanath Acharya v. State of Maharashtra*,¹⁸⁹ invalidated certain provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act 1947 relating to the determination and fixation of the standard rent. This Court declared the provisions in question unreasonable, arbitrary, and violative of Article 14.

However, the Court did not strike down the provisions on the ground that the extended period of the statute was to come to an end very soon, requiring the government to reconsider the statutory provisions. Similarly, in *Mardia Chemicals Ltd. v. Union of India*,¹⁹⁰ another three-Judge Bench of this Court invalidated Section 17(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for being unreasonable and arbitrary.

186. In *Natural Resources Allocation, In Re Special Reference No. 1 of 2012*,¹⁹¹ a Constitution Bench of this Court referred to *McDowell (supra)* to observe that a law may not be struck down as arbitrary without a constitutional infirmity. Thus, it was held that a mere finding of arbitrariness was not sufficient to invalidate a legislation. The Court has to enquire whether the legislation contravened any other constitutional provision or principle.

b. Beyond *Shayara Bano*: entrenching manifest arbitrariness in Indian jurisprudence

187. In *Shayara Bano v. Union of India*,¹⁹² a Constitution Bench of this Court set aside the practice of *Talaq-e-Bidaat* (Triple Talaq). Section 2 of the Muslim Personal Law (Shariat) Act 1937 was also impugned before this Court. The provision provides that the personal law of the Muslims, that is Shariat, will be applicable in matters relating to marriage, dissolution of marriage and talaq.

Justice R F Nariman, speaking for the majority, held that Triple Talaq is manifestly arbitrary because it allows a Muslim man to capriciously and whimsically break a marital tie without any attempt at reconciliation to save it. Thus, Justice Nariman applied the principle of manifest arbitrariness for the purpose of testing the constitutional validity of the legislation on the touchstone of Article 14.

188. Justice Nariman traced the evolution of non-arbitrariness jurisprudence in India to observe that McDowells (supra) failed to consider two binding precedents, namely, Ajay Hasia (supra) and K R Lakshmanan (supra). This Court further observed that McDowells (supra) did not notice Maneka Gandhi v. Union of India,¹⁹³ where this Court held that substantive due process is a part of Article 21 which has to be read along with Articles 14 and 19 of the Constitution. Therefore, Justice Nariman held that arbitrariness of a legislation is a facet of unreasonableness in Articles 19(2) to (6) and therefore arbitrariness can also be used as a standard to strike down legislation under Article 14. It held McDowells (supra) to be per incuriam and bad in law.

189. Shayara Bano (supra) clarified In Re Special Reference No. 1 of 2012 (supra) by holding that a finding of manifest arbitrariness is in itself a constitutional infirmity and, therefore, a ground for invalidating legislation for the violation of Article 14. Moreover, it was held that there is no rational distinction between subordinate legislation and plenary legislation for the purposes of Article 14. Accordingly, the test of manifest arbitrariness laid down by this Court in Indian Express Newspapers (supra) in the context of subordinate legislation was also held to be applicable to plenary legislation.

In conclusion, this Court held that manifest arbitrariness "must be something done by the legislature capriciously, irrationally and/or without adequate determining principle." It was further held that a legislation which is excessive and disproportionate would also be manifestly arbitrary. The doctrine of manifest arbitrariness has been subsequently reiterated by this Court in numerous other judgments.

190. The standard of manifest arbitrariness was further cemented by the Constitution Bench of this Court in Navtej Singh Johar v. Union of India.¹⁹⁴ In Navtej Singh Johar (supra), Section 377 of the Indian Penal Code 1860 was challenged, inter alia, on the ground it is manifestly arbitrary. Section 377 criminalized any person who has had "voluntary carnal intercourse against the order of nature".

Chief Justice Dipak Misra (writing for himself and Justice AM Khanwilkar) held that Section 377 is manifestly arbitrary for failing to make a distinction between

consensual and non-consensual sexual acts between consenting adults.¹⁹⁵ Justice Nariman, in the concurring opinion, observed that Section 377 is manifestly arbitrary for penalizing "consensual gay sex".

Justice Nariman faulted the provision for (a) not distinguishing between consensual and non-consensual sex for the purpose of criminalization; and (b) criminalizing sexual activity between two persons of the same gender.¹⁹⁶ Justice DY Chandrachud noted that Section 377 to the extent that it penalizes physical manifestation of love by a section of the population (the LGBTQ+ community) is manifestly arbitrary.¹⁹⁷ Similarly, Justice Indu Malhotra observed that the provision is manifestly arbitrary because the basis of criminalization is the sexual orientation of a person which is not a "rationale principle"¹⁹⁸.

191. In *Joseph Shine v. Union of India*,¹⁹⁹ a Constitution Bench of this Court expressly concurred with the doctrine of manifest arbitrariness as evolved in *Shayara Bano* (supra). In *Joseph Shine* (supra), one of us (Justice D Y Chandrachud) observed that the doctrine of manifest arbitrariness serves as a check against state action or legislation "which has elements of caprice, irrationality or lacks an adequate determining principle." In *Joseph Shine* (supra), the validity of Section 497 of the Indian Penal Code was challenged.

Section 497 penalized a man who has sexual intercourse with a woman who is and whom he knows or has a reason to believe to be the wife of another man, without the "consent and connivance of that man" for the offence of adultery. Justice Nariman observed that the provision has paternalistic undertones because the provision does not penalize a married man for having sexual intercourse with a married woman if he obtains her husband's consent. The learned Judge observed that the provision treats a woman like a chattel:

"23. [...] This can only be on the paternalistic notion of a woman being likened to chattel, for if one is to use the chattel or is licensed to use the chattel by the - licensor?, namely, the husband, no offence is committed. Consequently, the wife who has committed adultery is not the subject matter of the offence, and cannot, for the reason that she is regarded only as chattel, even be punished as an abettor. This is also for the chauvinistic reason that the third-party male has seduced her, she being his victim.

What is clear, therefore, is that this archaic law has long outlived its purpose and does not square with today's constitutional morality, in that the very object with which it was made has since become manifestly arbitrary, having lost its rationale long ago and having become in today's day and age, utterly irrational. On this basis alone, the law deserves to be struck down, for with the passage of time,

Article 14 springs into action and interdicts such law as being manifestly arbitrary."

192. The learned Judge further observed that the "ostensible object of Section 497" as pleaded by the State which is to preserve the sanctity of marriage is not in fact the object of the provision because: (a) the sanctity of marriage can be destroyed even if a married man has sexual intercourse with an unmarried woman or a widow; and (b) the offence is not committed if the consent of the husband of the woman is sought.

193. Justice DY Chandrachud in his opinion observed that a provision is manifestly arbitrary if the determining principle of it is not in consonance with constitutional values. The opinion noted that Section 497 makes an "ostensible" effort to protect the sanctity of marriage but in essence is based on the notion of marital subordination of women which is inconsistent with constitutional values.²⁰⁰ Chief Justice Misra (writing for himself and Justice AM Khanwilkar) held that the provision is manifestly arbitrary for lacking "logical consistency" since it does not treat the wife of the adulterer as an aggrieved person and confers a 'license' to the husband of the woman.

194. It is now a settled position of law that a statute can be challenged on the ground it is manifestly arbitrary. The standard laid down by Justice Nariman in Shayara Bano (supra), has been cited with approval by the Constitution Benches in Navtej Singh Johar (supra) and Joseph Shine (supra). Courts while testing the validity of a law on the ground of manifest arbitrariness have to determine if the statute is capricious, irrational and without adequate determining principle, or something which is excessive and disproportionate. This Court has applied the standard of "manifest arbitrariness" in the following manner:

- a. A provision lacks an "adequate determining principle" if the purpose is not in consonance with constitutional values. In applying this standard, Courts must make a distinction between the "ostensible purpose", that is, the purpose which is claimed by the State and the "real purpose", the purpose identified by Courts based on the available material such as a reading of the provision²⁰¹; and
- b. A provision is manifestly arbitrary even if the provision does not make a classification.²⁰²

195. This Court in previous judgments has discussed the first of the above applications of the doctrine by distinguishing between the "ostensible purpose" and the "real purpose" of a provision with sufficient clarity. The application of the doctrine of manifest arbitrariness by Chief Justice Misra and Justice Nariman in Navtej Singh Johar (supra) to strike down a provision for not classifying

between consensual and non-consensual sex must be understood in the background of two jurisprudential developments on the interpretation of Part III of the Constitution.

The first, is the shift from reading the provisions of Part III of the Constitution as isolated silos to understanding the thread of reasonableness which runs through all the provisions and elevating unreasonable (and arbitrary) action to the realm of fundamental rights. The second is the reading of Article 14 to include the facets of formal equality and substantive equality. Article 14 consists of two components. "Equality before the law" which means that the law must treat everybody equally in the formal sense. "Equal protection of the laws" signifies a guarantee to secure factual equality. The legislature and the executive makes classifications to achieve factual equality.

The underlying premise of substantive equality is the recognition that not everybody is equally placed and that the degree of harm suffered by a group of persons (or an individual) varies because of unequal situations. This Court has in numerous judgments recognized that the legislature is free to recognize the degrees of harm and confine its benefits or restrictions to those cases where the need is the clearest.²⁰³ The corollary of the proposition that it is reasonable to identify the degrees of harm, is that it is unreasonable, unjust, and arbitrary if the Legislature does not identify the degrees of harm for the purpose of law.

196. It is undoubtedly true that it is not the constitutional role of this Court to second guess the intention of the legislature in enacting a particular statute. The legislature represents the democratic will of the people, and therefore, the courts will always presume that the legislature is supposed to know and will be aware of the needs of the people. Moreover, this Court must be mindful of falling into an error of equating a plenary legislation with a subordinate legislation. In *Re Delhi Laws Act 1912*,²⁰⁴ Justice Fazl Ali summed up the extent and scope of plenary legislation and delegated legislation, in the following terms:

"32. The conclusions at which I have arrived so far may now be summed up:

(1) The legislature must normally discharge its primary legislative function itself and not through others.

(2) Once it is established that it has sovereign powers within a certain sphere, it must follow as a corollary that it is free to legislate within that sphere in any way which appears to it to be the best way to give effect to its intention and policy in making a particular law, and that it may utilise any outside agency to any extent it finds necessary for doing things which it is unable to do itself or finds it

inconvenient to do. In other words, it can do everything which is ancillary to and necessary for the full and effective exercise of its power of legislation.

(3) It cannot abdicate its legislative functions, and therefore while entrusting power to an outside agency, it must see that such agency acts as a subordinate authority and does not become a parallel legislature.

(4) The doctrine of separation of powers and the judicial interpretation it has received in America ever since the American Constitution was framed, enables the American courts to check undue and excessive delegation but the courts of this country are not committed to that doctrine and cannot apply it in the same way as it has been applied in America. Therefore, there are only two main checks in this country on the power of the legislature to delegate, these being its good sense and the principle that it should not cross the line beyond which delegation amounts to "abdication and self-effacement".

197. In *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. Assistant Commissioner of Sales Tax and others*,²⁰⁵ a Constitution Bench of this Court held that a subordinate legislation is ancillary to the statute. Therefore, the delegate must enact the subordinate legislation "consistent with the law under which it is made and cannot go beyond the limits of the policy and standard laid down in the law."

Since the power delegated by a statute is limited by its terms, the delegate is expected to "act in good faith, reasonably, intra vires the power granted and on relevant consideration of material facts."²⁰⁶ This Court has to be cognizant of this distinction. In fact, the doctrine of manifest arbitrariness, as developed by this Court in *Indian Express Newspapers (supra)* in the context of subordinate legislation, was applicable to the extent that "it is so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution."²⁰⁷

198. The above discussion shows that manifest arbitrariness of a subordinate legislation has to be primarily tested vis-a-vis its conformity with the parent statute. Therefore, in situations where a subordinate legislation is challenged on the ground of manifest arbitrariness, this Court will proceed to determine whether the delegate has failed "to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or, say, the Constitution."²⁰⁸

In contrast, application of manifest arbitrariness to a plenary legislation passed by a competent legislature requires the Court to adopt a different standard because it carries greater immunity than a subordinate legislation. We concur with *Shayara Bano (supra)* that a legislative action can also be tested for being manifestly

arbitrary. However, we wish to clarify that there is, and ought to be, a distinction between plenary legislation and subordinate legislation when they are challenged for being manifestly arbitrary.

ii. Validity of Section 154 of the Finance Act 2017 omitting the first proviso to Section 182 of the Companies Act

199. We now turn to examine the vires of Section 154 of the Finance Act 2017. The result of the amendment is that: (a) a company, other than a government company and a company which has been in existence for less than three financial years, can contribute unlimited amounts to any political party; and (b) companies, regardless of the fact whether they are profit making or otherwise, can contribute funds to political parties. The issue that arises for consideration is whether the removal of contribution restrictions is manifestly arbitrary and violates Article 14 of the Constitution.

200. As discussed in the earlier section, this Court has consistently pointed out the pernicious effect of money on the integrity of the electoral process in India. The Law Commission of India in its 170th Report also observed that "most business houses already know where their interest lies and they make their contributions accordingly to that political party which is likely to advance their interest more."²⁰⁹

This issue becomes particularly problematic when we look at the avenues through which political parties accumulate their capital. Section 182 of the 2013 Act is one such legal provision allowing companies to contribute to political parties. The question before us is not how political parties expend their financial resources, but how they acquire their financial resources in the first instance.

201. The Preamble to the Constitution describes India as a "democratic republic": a democracy in which citizens are guaranteed political equality irrespective of caste and class and where the value of every vote is equal. Democracy does not begin and end with elections. Democracy sustains because the elected are responsive to the electors who hold them accountable for their actions and inactions. Would we remain a democracy if the elected do not heed to the hue and cry of the needy? We have established the close relationship between money and politics above where we explained the importance of money for entry to politics, for winning elections, and for remaining in power.

That being the case, the question that we ask ourselves is whether the elected would truly be responsive to the electorate if companies which bring with them huge finances and engage in quid pro quo arrangements with parties are permitted to contribute unlimited amounts. The reason for political contributions

by companies is as open as day light. Even the learned Solicitor General did not deny during the course of the hearings that corporate donations are made to receive favors through quid pro quo arrangements.

202. In *Kesavananda Bharati v. State of Kerala*,²¹⁰ the majority of this Court held that "republican and democratic form of government" form the basic elements of the constitutional structure. Subsequently, in *Indira Nehru Gandhi v. Raj Narain*,²¹¹ Justice H R Khanna reiterated that the democratic set up of government is a part of the basic features of the Constitution. Elections matter in democracy because they are the most profound expression of the will of the people. Our parliamentary democracy enables citizens to express their will through their elected representatives. The integrity of the electoral process is a necessary concomitant to the maintenance of the democratic form of government.²¹²

203. This Court has also consistently held that free and fair elections form an important concomitant of democracy.²¹³ In *Kuldip Nayar v. Union of India*,²¹⁴ a Constitution Bench of this Court held that a democratic form of government depends on a free and fair election system. In *People's Union for Civil Liberties v. Union of India*,²¹⁵ this Court held that free and fair elections denote equal opportunity to all people. It was further observed that a free and fair election is one which is not "rigged and manipulated and the candidates and their agents are not able to resort to unfair means and malpractices."

204. The integrity of the election process is pivotal for sustaining the democratic form of government. The Constitution also places the conduct of free and fair elections in India on a high pedestal. To this purpose, Article 324 puts the Election Commission in charge of the entire electoral process commencing with the issue of the notification by the President to the final declaration of the result.²¹⁶ However, it is not the sole duty of the Election Commission to secure the purity and integrity of the electoral process. There is also a positive constitutional duty on the other organs of the government, including the legislature, executive and the judiciary, to secure the integrity of the electoral process.

205. During the course of the arguments, the learned Solicitor General submitted that the limit of seven and a half percent of the average net profits in the preceding three financial years was perceived as a restriction on companies who would want to donate in excess of the statutory cap. The learned Solicitor General further submitted that companies who wanted to donate in excess of the statutory cap would create shell companies and route their contributions through them. Therefore, it was suggested that the statutory cap was removed to discourage the creation of shell companies.

206. The limit on restrictions to political parties was incorporated in Section 293A of the 1956 Act through the Companies (Amendment) Bill 1985. The original restriction on contribution was five per cent of a company's average net profits during the three immediately preceding financial years. The Lok Sabha debates pertaining to the Companies Bill furnish an insight into why contribution restrictions were imposed in the first place. The then Minister of Chemicals and Fertilizers and Industry and Company Affairs justified the contribution restrictions, stating that:

"Since companies not having profits should not be encouraged to make political contributions, monetary ceiling as an alternative to a certain percentage of profits for arriving at the permissible amount of political donation has been done away with."²¹⁷

207. Thus, the object behind limiting contributions was to discourage loss-making companies from contributing to political parties. In 1985, Parliament prescribed the condition that only companies which have been in existence for more than three years can contribute. This condition was also included to prevent loss-making companies and shell companies from making financial contributions to political parties.

If the ostensible object of the amendment, as contended by the learned Solicitor General, was to discourage the creation of shell companies, there is no justification for removing the cap on contributions which was included for the very same purpose: to deter shell companies from making political contributions. In fact, when the proposal to amend Section 182 of the 2013 Act was mooted by the Government in 2017, the Election Commission of India opposed the amendment and suggested that the Government reconsider its decision on the ground that it would open up the possibility of creating shell companies. The relevant portion of the opinion of the ECI is reproduced below:

"Certain amendments have been proposed in Section 182 of the Companies Act, where the first proviso has been omitted and consequently the limit of seven and a half percent (7.5 %) of the average net profits in the preceding three financial years on contributions by companies has been removed from the statute. This opens up the possibility of shell companies being set up for the sole purpose of making donations to political parties with no other business of consequence having disburseable profits."²¹⁸

208. After the amendment, companies similar to individuals, can make unlimited contributions and contributions can be made by both profit-making and loss-making companies to political parties. Thus, in essence, it could be argued that the amendment is merely removing classification for the purpose of political

contribution between companies and individuals on the one hand and loss-making and profit-making companies on the other.

209. The proposition on the principle of manifest arbitrariness culled out above needs to be recalled. The doctrine of manifest arbitrariness can be used to strike down a provision where: (a) the legislature fails to make a classification by recognizing the degrees of harm; and (b) the purpose is not in consonance with constitutional values.

210. One of the reasons for which companies may contribute to political parties could be to secure income tax benefit.²¹⁹ However, companies have been contributing to political parties much before the Indian legal regime in 2003 exempted contributions to political parties. Contributions are made for reasons other than saving on the Income Tax. The chief reason for corporate funding of political parties is to influence the political process which may in turn improve the company's business performance.²²⁰ A company, whatever may be its form or character, is principally incorporated to carry out the objects contained in the memorandum.

However, the amendment now allows a company, through its Board of Directors, to contribute unlimited amounts to political parties without any accountability and scrutiny. Unlimited contribution by companies to political parties is antithetical to free and fair elections because it allows certain persons/companies to wield their clout and resources to influence policy making. The purpose of Section 182 is to curb corruption in electoral financing.

For instance, the purpose of banning a Government company from contributing is to prevent such companies from entering into the political fray by making contributions to political parties. The amendment to Section 182 by permitting unlimited corporate contributions (including by shell companies) authorizes unrestrained influence of companies on the electoral process. This is violative of the principle of free and fair elections and political equality captured in the value of "one person one vote".

211. The amendment to Section 182 of the Companies Act must be read along with other provisions on financial contributions to political parties under the RPA and the IT Act. Neither the RPA nor the IT Act place a cap on the contributions which can be made by an individual. The amendment to the Companies Act when viewed along with other provisions on electoral funding, seek to equalize an individual and a company for the purposes of electoral funding.

212. The ability of a company to influence the electoral process through political contributions is much higher when compared to that of an individual. A company

has a much graver influence on the political process, both in terms of the quantum of money contributed to political parties and the purpose of making such contributions. Contributions made by individuals have a degree of support or affiliation to a political association. However, contributions made by companies are purely business transactions, made with the intent of securing benefits in return.

In *Citizens United v. Federal Election Commission*,²²¹ the issue before the Supreme Court of the United States was whether a corporation can use the general treasury funds to pay for electioneering communication. The majority held that limitations on corporate funding bans political speech (through contributions) based on the corporate identity of the contributor. Justice Steven writing for the minority on the issue of corporate funding observed that companies and natural persons cannot be treated alike for the purposes of political funding:

"In the context of election to public office, the distinction between corporate and human speakers is significant. Although they make enormous contributions to our society, corporations are not actually members of it. They cannot vote or run for office. Because they may be managed and controlled by non-residents, their interests may conflict in fundamental respects with the interests of eligible voters. The financial resources, legal structure, and instrumental orientation of corporations raise legitimate concerns about their role in the electoral process."

213. In view of the above discussion, we are of the opinion that companies and individuals cannot be equated for the purpose of political contributions.

214. Further, Companies before the amendment to Section 182 could only contribute a certain percentage of the net aggregate profits. The provision classified between loss-making companies and profit-making companies for the purpose of political contributions and for good reason. The underlying principle of this distinction was that it is more plausible that loss-making companies will contribute to political parties with a quid pro quo and not for the purpose of income tax benefits.

The provision (as amended by the Finance Act 2017) does not recognize that the harm of contributions by lossmaking companies in the form of quid pro quo is much higher. Thus, the amendment to Section 182 is also manifestly arbitrary for not making a distinction between profit-making and loss-making companies for the purposes of political contributions.

215. Thus, the amendment to Section 182 is manifestly arbitrary for (a) treating political contributions by companies and individuals alike; (b) permitting the

unregulated influence of companies in the governance and political process violating the principle of free and fair elections; and (c) treating contributions made by profit-making and loss-making companies to political parties alike. The observations made above must not be construed to mean that the Legislature cannot place a cap on the contributions made by individuals. The exposition is that the law must not treat companies and individual contributors alike because of the variance in the degree of harm on free and fair elections. H. Conclusion and Directions

216. In view of the discussion above, the following are our conclusions:

- a. The Electoral Bond Scheme, the proviso to Section 29C(1) of the Representation of the People Act 1951 (as amended by Section 137 of Finance Act 2017), Section 182(3) of the Companies Act (as amended by Section 154 of the Finance Act 2017), and Section 13A(b) (as amended by Section 11 of Finance Act 2017) are violative of Article 19(1)(a) and unconstitutional; and
- b. The deletion of the proviso to Section 182(1) of the Companies Act permitting unlimited corporate contributions to political parties is arbitrary and violative of Article 14.

217. We direct the disclosure of information on contributions received by political parties under the Electoral Bond Scheme to give logical and complete effect to our ruling. On 12 April 2019, this Court issued an interim order directing that the information of donations received and donations which will be received must be submitted by political parties to the ECI in a sealed cover.

This Court directed that political parties submit detailed particulars of the donors as against each Bond, the amount of each bond and the full particulars of the credit received against each bond, namely, the particulars of the bank account to which the amount has been credited and the date on which each such credit was made. During the course of the hearing, Mr Amit Sharma, Counsel for the ECI, stated that the ECI had only collected information on contributions made in 2019 because a reading of Paragraph 14 of the interim order indicates that the direction was only limited to contributions made in that year. Paragraphs 13 and 14 of the interim order are extracted below:

"13. In the above perspective, according to us, the just and proper interim direction would be to require all the political parties who have received donations through Electoral Bonds to submit to the Election Commission of India in sealed cover, detailed particulars of the donors as against each bond; the amount of each such bond and the full particulars of the credit received against each bond,

namely, the particulars of the bank account to which the amount has been credited and the date of each such credit.

14. The above details will be furnished forthwith in respect of Electoral Bonds received by a political party till date. The details of such other bonds that may be received by such a political party upto the date fixed for issuing such bonds as per the Note of the Ministry of Finance dated 28.2.2019, i.e 15.5.2019 will be submitted on or before 30th May, 2019. The sealed covers will remain in the custody of the Election Commission of India and will abide by such orders as may be passed by the Court."

218. Paragraph 14 of the interim order does not limit the operation of Paragraph 13. Paragraph 13 contains a direction in unequivocal terms to political parties to submit particulars of contributions received through Electoral Bonds to the ECI. Paragraph 14 only prescribes a timeline for the submission of particulars on contributions when the window for Electoral Bond contributions was open in 2019. In view of the interim direction of this Court, the ECI must have collected particulars of contributions made to political parties through Electoral Bonds.

219. In view of our discussion above, the following directions are issued:

- a. The issuing bank shall herewith stop the issuance of Electoral Bonds;
- b. SBI shall submit details of the Electoral Bonds purchased since the interim order of this Court dated 12 April 2019 till date to the ECI. The details shall include the date of purchase of each Electoral Bond, the name of the purchaser of the bond and the denomination of the Electoral Bond purchased;
- c. SBI shall submit the details of political parties which have received contributions through Electoral Bonds since the interim order of this Court dated 12 April 2019 till date to the ECI. SBI must disclose details of each Electoral Bond encashed by political parties which shall include the date of encashment and the denomination of the Electoral Bond;
- d. SBI shall submit the above information to the ECI within three weeks from the date of this judgment, that is, by 6 March 2024;
- e. The ECI shall publish the information shared by the SBI on its official website within one week of the receipt of the information, that is, by 13 March 2024; and
- f. Electoral Bonds which are within the validity period of fifteen days but that which have not been encashed by the political party yet shall be returned by the political party or the purchaser depending on who is in possession of the bond to

the issuing bank. The issuing bank, upon the return of the valid bond, shall refund the amount to the purchaser's account.

220. Writ petitions are disposed of in terms of the above judgment.

221. Pending applications(s), if any, stand disposed of.

.....CJI. [Dr. Dhananjaya Y. Chandrachud]

.....J. [B.R. Gavai]

.....J. [J.B. Pardiwala]

.....J. [Manoj Misra]

New Delhi;

February 15, 2024

ANNEXURE I

Section 29C, Representation of the People Act 1951	
Prior to Amendment by the Finance Act 2017	Upon Amendment by Section 137 of the Finance Act, 2017
29C. Declaration of donation received by the political parties. - (1) The treasurer of a political party or any other person authorized by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely; (a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year; (b) the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.	Section 29C. Declaration of donation received by the political parties. - (1) The treasurer of a political party or any other person authorized by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely: (a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year; (b) the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.

<p>(2) The report under sub-section (1) shall be in such form as may be prescribed.</p> <p>(3) The report for a financial year under subsection (1) shall be submitted by the treasurer of a political party or any other person authorized by the political party in this behalf before the due date for furnishing a return of income of that financial year under section 139 of the Income-tax Act, 1961 (43 of 1961), to the Election Commission.</p> <p>(4) Where the treasurer of any political party or any other person authorized by the political party in this behalf fails to submit a report under sub-section (3) then, notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such political party shall not be entitled to any tax relief under that Act.</p>	<p>Provided that nothing contained in this subsection shall apply to the contributions received by way of an electoral bond.</p> <p>Explanation - For the purposes of this subsection, "electoral bond" means a bond referred to in the Explanation to subsection (3) of section 31 of the Reserve Bank of India Act, 1934.</p> <p>(2) The report under sub-section (1) shall be in such form as may be prescribed.</p> <p>(3) The report for a financial year under subsection (1) shall be submitted by the treasurer of a political party or any other person authorized by the political party in this behalf before the due date for furnishing a return of income of that financial year under section 139 of the Income-tax Act, 1961 (43 of 1961), to the Election Commission.</p> <p>(4) Where the treasurer of any political party or any other person authorized by the political party in this behalf fails to submit a report under sub-section (3) then, notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such political party shall not be entitled to any tax relief under that Act.</p>
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Section 182, Companies Act 2013	
Prior to Amendment by the Finance Act, 2017	Upon Amendment by Section 154 of the Finance Act, 2017
<p>182. Prohibitions and restrictions regarding political contributions.</p> <p>1) Notwithstanding anything contained in any other provision of this Act, a company, other than a Government</p>	<p>182. Prohibitions and restrictions regarding political contributions.</p> <p>1) Notwithstanding anything contained in any other provision of this Act, a company, other than a Government</p>

company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party:

Provided that the amount referred to in subsection (1) or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent of its average net profits during the three immediately preceding financial years:

Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

Section 182 (3) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed.

company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party:

(First proviso omitted)

Provided that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making of the contribution authorised by it.

Section 182 (3) Every company shall disclose in its profit and loss account the total amount contributed by it under this section during the financial year to which the account relates.
(3A) Notwithstanding anything contained in subsection (1), the contribution under this section shall not be made except by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account:

Provided that a company may make contribution through any instruments, issued pursuant to any scheme notified

	under any law for the time being in force, for contribution to the political parties.
Section 13A, Income Tax Act 1995	
Prior to Amendment by the Finance Act, 2017	Upon Amendment by Section 11 of the Finance Act, 2017
13A. Special provision relating to incomes of political parties	13A. Special provision relating to incomes of political parties
<p>Any income of a political party which is chargeable under the head "Income from house property" or "Income from other sources" or any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party:</p> <p>Provided that-</p> <p>(a) such political party keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom;</p> <p>(b) in respect of each such voluntary contribution in excess of ten thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and</p> <p>(c) the accounts of such political party are audited by an accountant as defined in the Explanation below sub- section (2) of section 288.</p> <p>Explanation.- For the purposes of this section, "political party" means an association or body of individual citizens of India registered with the Election Commission of India as a political party under paragraph 3 of the Election Symbols (Reservation and</p>	<p>Any income of a political party which is chargeable under the head "Income from house property" or "Income from other sources" or any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party:</p> <p>Provided that-</p> <p>(a) such political party keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom;</p> <p>(b) in respect of each such voluntary contribution other than contribution by way of electoral bond in excess of ten thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and</p> <p>(c) the accounts of such political party are audited by an accountant as defined in the Explanation below sub- section (2) of section 288; and</p> <p>(d) no donation exceeding two thousand rupees is received by such political party otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use</p>

<p>Allotment) Order, 1968, and includes a political party deemed to be registered with that Commission under the proviso to subparagraph (2) of that paragraph.</p>	<p>of electronic clearing system through a bank account or through electoral bond.</p> <p>Explanation.- For the purposes of this proviso, "electoral bond" means a bond referred to in the Explanation to sub-section (3) of section 31 of the Reserve Bank of India Act, 1934;</p> <p>Provided also that such political party furnishes a return of income for the previous year in accordance with the provisions of sub-section (4B) of section 139 on or before the due date under that section.</p>
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Section 31, Reserve Bank of India Act 1931	
<p>Prior to Amendment by the Finance Act, 2017</p>	<p>Upon Amendment by Section 11 of the Finance Act, 2017</p>
<p>31. Issue of demand bills and notes.</p> <p>1) No person in India other than the Bank or, as expressly authorized by this Act, the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person:</p> <p>Provided that cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent.</p> <p>(2) Notwithstanding anything contained in the Negotiable Instruments Act, 1881, no person in India other than the Bank or, as expressly authorised by this Act, the Central Government shall</p>	<p>31. Issue of demand bills and notes.</p> <p>1) No person in India other than the Bank or, as expressly authorized by this Act, the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person:</p> <p>Provided that cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent.</p> <p>2) Notwithstanding anything contained in the Negotiable Instruments Act, 1881, no person in India other than the Bank or, as expressly authorised by this Act, the Central Government shall</p>

<p>make or issue any promissory note expressed to be payable to the bearer of the instrument.</p>	<p>make or issue any promissory note expressed to be payable to the bearer of the instrument.</p> <p>3) Notwithstanding anything contained in this section, the Central Government may authorise any scheduled bank to issue electoral bond</p> <p>Explanation.-For the purposes of this subsection, 'electoral bond' means a bond issued by any scheduled bank under the scheme as may be notified by the Central Government.</p>
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ANNEXURE II

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

²²²[FORM 24A
(See rule 85B)]

[This form should be filed with the Election Commission before the due date for furnishing a return of the Political Party's income of the concerned financial year under section 139 of the Income-tax Act, 1961 (43 of 1961) and a certificate to this effect should be attached with the Income-tax return to claim exemption under the Income-tax Act, 1961 (43 of 1961).]

1. Name of Political Party:
2. Status of the Political Party: (recognised/unrecognised)
3. Address of the headquarters of the Political Party:
4. Date of registration of Political Party with Election Commission:
5. Permanent Account Number (PAN) and Income-tax Ward/Circle where return of the political party is filed:_____
6. Details of the contributions received, in excess of rupees twenty thousand, during the Financial Year:20 - . -20.

Serial	Name	and	PAN	(if	Amount	of	Mode	of	Remarks
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number	complete address of the contributing person /company	any_ and Income-Tax Ward / Circle	contribution (Rs.)	contribution *(cheque / demand draft/cash)	

*In case of payment by cheque/demand draft, indicate name of the bank and branch of the bank on which the cheque/demand draft has been drawn.

7. In case the contributor is a company, whether the conditions laid down under section 293A of the Companies Act, 1956 (1 of 1956) have been complied with (A copy of the certificate to this obtained from the company should be attached).

Verification

I, _____ (full name in Block letters), son/daughter of _____ solemnly declare that to the best of my knowledge and belief, the information given in this Form is correct, complete and truly stated. I further declare that I am verifying this form in my capacity as _____ on behalf of the Political Party above named and I am also competent to do so.

(Signature and name of the Treasurer/Authorised person)]

Date: _____

Place: _____

1 "Electoral Bond Scheme" or "Scheme"

2 "Finance Act"

3 Section 135 of the Finance Act 2017; "RBI Act"

4 Section 137 of the Finance Act 2017; "RPA"

5 Section 11 of the Finance Act 2017; "IT Act"

6 Section 154 of the Finance Act 2017; "Companies Act"

7 "293A. (1) Notwithstanding anything contained in section 293, neither a company in general meeting nor its Board of directors shall, after the commencement of the Companies (Amendment) Act, 1960, contribute-

(a) To any political party, or

(b) For any political purpose to any individual or body, any amount or amounts which or the aggregate of which will, in any financial year, exceed twenty-five thousand rupees or five per cent of its average net profits as determined in accordance with the provisions of sections 349 and 350 during the three financial years immediately preceding, whichever is greater.

Explanation- Where a portion of a financial year of the company falls before the commencement of the Companies (Amendment) Act, 1960, and a portion falls after such commencement, the latter portion shall be deemed to be a financial year within the meaning, and for the purposes, of this sub-section.

(2) Every company shall disclose in its profit and loss account any amount or amounts contributed by it under sub-section (1) to any political party or for any political purpose to any individual or body during the financial year to which the account relates, giving particulars of the total amount contributed and the name of the party, individual or body to which or to whom such amount has been contributed.

(3) If a company makes a default in complying with the provisions of sub-section (2), the company, and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees."

8 "Section 293A. (1) Notwithstanding anything contained in any other provision of this Act, neither a company in general meeting nor its Board of directors shall, after the commencement of the Companies (Amendment) Act 1960 contribute any amount or amounts-

(a) To any political party or

(b) For any political purpose to an individual or body.

(2) If a company contravenes the provisions of sub-section (1) then-

(i) the company shall be punishable with fine which may extend to five thousand rupees; and

(ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine"

9 "293A. (1) Notwithstanding anything contained in any other provision of this Act-

(a) No Government company; and

(b) No other company which has been in existence for less than three financial years, shall contribute any amount or amounts, directly or indirectly, -

(i) To any political party; or

(ii) For any political purpose to any person.

(2) A company, not being a company referred to in clause (a) or clause (b) of sub-section (1), may contribute any amount or amounts directly or indirectly-

(a) to any political party,-

(b) for any political purpose to any person:

Provided that the amount or, as the case may be, the aggregate of the amounts which may be so contributed by a company in any financial year shall not exceed five percent of its average net profits determined in accordance with the provisions of sections 349 and 350 during the three preceding financial years.

Explanation.- Where a portion of a financial year of the company falls before the commencement of the Companies (Amendment) Act, 1985, and a portion falls after such commencement, the latter portion shall be deemed to be a financial year within the meaning, and for the purposes of this sub-section:

Provided further that no such contribution shall be made by a company unless a resolution authorizing the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorized by it.

(3) Without prejudice to the generality of the provisions of sub-sections (1) and (2)-

(a) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to effect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;

(b) the amount of expenditure incurred, directly or indirectly, by a company on advertisement in any publication (being a publication in the nature of a souvenir

brochure, tract, pamphlet or the like) by or on behalf of a political party or for its advantage, shall also be deemed,-

(i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and

(ii) where such publication is not by or on behalf of but for the advantage of a political party, to be a contribution for a political purpose to the publishing it.

(4) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party or for any political purpose to any person during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party or person to which or to whom such amount has been contributed.

(5) If a company makes any contribution in contravention of the provisions of this section-

(a) the company shall be punishable with fine which may extend to three times the amount so contributed; and

(b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

10 Companies Act, First proviso to Section 182(1).

11 Companies Act, second proviso to Section 182(1)

12 IT Act, Proviso (a) to Section 13A

13 It was ten thousand rupees when Section 13A was introduced. It was increased to twenty thousand rupees by the Election and Other Related Laws (Amendment) Act 2003

14 IT Act, Proviso (b) to Section 13A

15 IT Act, Proviso (c) to Section 13A

16

80 GGB. "Deduction in respect of contributions made by companies to political parties-In computing the total income of an assessee, being an Indian company, there shall be deducted any sum contributed by it, in the previous year to any political party or an electoral trust:

Provided that no deduction shall be allowed under this section in respect of any sum contributed by way of cash."

17

80 GGC. "Deduction in respect of contributions made by any person to political parties- In computing the total income of an assessee, being any person, except local authority and every artificial juridical person wholly or partly funded by the Government, there shall be deducted any amount of contribution made by him, in the previous year, to a political party [or an electoral trust]:

[Provided that no deduction shall be allowed under this section in respect of any sum contributed by way of cash.]

Explanation.- For the purposes of sections 80GGB and 80GGC, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951)."

18 IT Act, amendment to Proviso (b) to Section 13A

19 IT Act, Proviso (d) to Section 13A

20 RPA, Section 29C (3)

21 RPA, Section 29C (4)

22 "KYC"

23 "ECI"

24 Electoral Bond Scheme, Clause 2(a)

25 Electoral Bond Scheme, Clause 3(1)

26 Electoral Bond Scheme, clause 3(3)

27 Electoral Bond Scheme, Clause 12

28 Electoral Bond Scheme, Clause 3(3)

29 Electoral Bond Scheme, Clause 3(4)

30 Electoral Bond Scheme, Clause 2(b)

31 Electoral Bond Scheme, Clause 4(2)

32 Electoral Bond Scheme, Clause 11

33 Electoral Bond Scheme, Clause 5

34 Electoral Bond Scheme, Clause 6

35 Electoral Bond Scheme, Clause 12(2)

36 Electoral Bond Scheme, Clause 7(1)

37 Electoral Bond Scheme, Clause 7(3)

38 Electoral Bond Scheme, Clause 7(4)

39 Electoral Bond Scheme, Clause 7(6)

40 Electoral Bond Scheme, Clause 7(4)

41 Electoral Bond Scheme, Clause 8(1)

42 Electoral Bond Scheme, Clause 8(2)

43 Electoral Bond Scheme, Clause 9

44 Electoral Bond Scheme, Clause 10

45 Electoral Bond Scheme, Clause 13

46 Electoral Bond Scheme, Clause 14

47 Roger Mathew v. South Bank of India, CA No. 8588/2019

48 Relied on PUCL v. Union of India, (2003) 4 SCC 399; ADR v. Union of India, (2002) 5 SCC 294; Anjali Bhardwaj v. Union of India, (2019) 18 SCC 246

49 Relied on Kanwar Lal Gupta v. Amar Nath Chawla, 1975 SCC (3) 646

50 Relied on Subash Chandra v. Delhi Subordinate Services Selection Board, (2009) 15 SCC 458

51 (2020) 10 SCC 459

52 2023 SCC OnLine SC 162

53 Relied on Shayara Bano v. Union of India, (2017) 9 SCC 1

54 Rustom Cavasjee Cooper v. Union of India, (1970) 1 SCC 248; R.K Garg v. Union of India, (1981) 4 SCC 675; Premium Granites v. State of Tamil Nadu, (1994) 2 SCC 691; Peerless General Finance and Investment Co v. RBI, (1992) 2 SCC 343, BALCO Employees Union v. Union of India, (2002) 2 SCC 333.

55 RK Garg v. Union of India, (1981) 4 SCC 675 [8]; See Balco Employees Union v. Union of India, (2002) 2 SCC 333; DG of Foreign Trade v. Kanak Exports, (2016) 2 SCC 226

56 (2019) 4 SCC 17

57 (2019) 8 SCC 416

58 For this purpose, the petitioners referred to the representation-reinforcement model of judicial review propounded by John Hart Ely in his book Democracy and Distrust: A Theory of Judicial Review (Harvard University Press, 2002) and the judgment of this Court in Subash Chandra v. Delhi Subordinate Service Selection Board, (2009) 15 SCC 458

59 See State of Bombay v. FN Balsara, 1951 SCR 682

60 AIR 2004 SC 1295; Also see Ramlila Maidan Incident, In re, (2012) 5 SCC 1; State of Bombay v. FN Balsara, 1951 SCR 682; Ameerunissa Begum v. Mahboob Begum, 1952 2 SCC 697

61 Section 77 of the RPA read with Section 169 provides the Central Government in consultation with the Election Commission, the power to prescribe the amount over which the total expenditure incurred by the candidate or their agent in connection with Parliamentary election and Assembly election shall not be exceeded. The total expenditure cap is prescribed in Rule 90 of the Conduct of Election Rules 1961 which is amended from time to time.

62 The expenditure limit is capped at seventy-five Lakhs for the states of Arunachal Pradesh, Goa, and Sikkim, and the Union Territories of Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli and Daman and Diu, Lakshadweep, Puducherry, and Ladakh. For the remaining States and Union Territories, the expenditure limit is capped at ninety-five Lakhs.

63 For State Assembly elections, the expenditure is capped at twenty-eight lakhs for the States of Arunachal Pradesh, Goa, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, and Tripura. Amongst the Union Territories, the expenditure is capped at twenty-eight Lakhs for Puducherry and forty Lakhs for Delhi and Jammu and Kashmir.

64 See Conrad Foreman, Money in Politics: Campaign Finance and its Influence over the Political Process and Public Policy, 52 UIC J. Marshall L. Rev. 185 (2018)

65 See D Sunshine Hillygus, Campaign Effects on Vote Choice in "The Oxford Handbook of American Elections and Political Behavior" (Ed. Jan E. Leighley 2010)

66 See David P. Baron, Electoral Competition with informed and uninformed voters, American Political Science Review, Vol. 88, No. 1 March 1994

67 Michael A. Collins, Navigating Fiscal Constraints in "Costs of Democracy: Political Finance in India" (edited by Devesh Kapur and Milan Vaishnav) OUP 2018

68 See Neelanjan Sircar, Money in Elections: the Role of Personal Wealth in Election Outcomes in Costs of Democracy: Political Finance in India (ed. By Devesh Kapur and Milan Vaishnav) OUP 2018

69 Michael A. Collins, Navigating Fiscal Constraints in "Costs of Democracy: Political Finance in India" (edited by Devesh Kapur and Milan Vaishnav) OUP 2018

70 (1975) 3 SCC 646

71 (1975) 4 SCC 127

72 1985 Supp SCC 189

73 (1996) 2 SCC 752

74 Electoral Bond Scheme, Clause 2(a)

75 Electoral Bond Scheme, Clause 7(4)

76 Indian Evidence Act 1872, Section 124

77 See State of Punjab v. Sodhi Sukhdev Singh, (1961) 2 SCR 371 [13]

78 See State of Punjab v. Sodhi Sukhdev Singh, (1961) 2 SCR 371 [Subba Rao J]

79 (1975) 4 SCC 428

80 1981 Supp SCC 87

81 Also see *Dinesh Trivedi v. Union of India*, (1997) 4 SCC 306 where this Court observed that sunlight is the best disinfectant.

82 *Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal*, (1995) 2 SCC 161; *Indian Express Newspapers v. Union of India*, AIR 1986 SC 515 ; *Romesh Thappar v. State of Madras*, AIR 1950 SC 124

83 *DC Saxena v. Hon'ble The Chief Justice of India*, (1996) 5 SCC 216 [29]

84 See *Supriyo v. Union of India*, 2023 INSC 920 [213, 214]

85 (2002) 5 SCC 294.

86 Paragraph 64(4): "To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election.

In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted."

87 Section 33-A of the RPA required the candidate to furnish the following information:

(a) He is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction; and

(b) He has been convicted of an offence other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of Section 8 and sentenced to imprisonment for one year or more.

88 (2003) 4 SCC 399

89 (2003) 4 SCC 399 [18, 27]

90 (2003) 4 SCC 399 [96]

91 The right to vote is classified as a statutory vote because only citizens who fulfill certain conditions (such as the age) laid down in a statute can vote.

92 ADR required disclosure related to information of whether the candidate has been convicted/ acquitted or discharged of any criminal offence in the past, and whether six months prior to the filing of the nomination paper, whether the candidate has been accused in any pending case for an offence punishable with imprisonment for more than two years and in which charge has been framed or cognizance is taken by the Court. With respect to the first direction, law created a distinction between serious and non-serious offences and mandates disclosure only if a candidate has been convicted of a serious offence.

With respect to the second direction, the provision only mandated the disclosure of cases in which charge has been framed and excluded the disclosure of cases in which cognizance has been taken. The learned Judge held that while the non-disclosure of conviction in a serious offence is a reasonable balance which does not infringe the right to information, the non-disclosure of cases in which cognizance has been taken would seriously violate the right to information of the voter particularly because framing of charges gets delayed in a lot of cases.

93 (2003) 4 SCC 399 [122]

94 In ADR (supra), this Court notes that such information would enable voters to determine if the candidate is corrupt and would further openness in democracy. [Paragraph 41].

95 "Symbols Order 1968"

96 Rule 5 provides the ECI the power to specify by notification, the symbols which may be chosen by candidates at elections in parliamentary or assembly constituencies.

97 Rule 10 deals with the preparation of list of contesting candidates. Rule 10(5) states that the allotment of the returning officer of any symbol to a candidate shall be final except where it is inconsistent with the directions issued by the ECI, in which case the ECI may revise the allotment. Rule 10(6) states that every candidate shall be informed of the symbol allotted to the candidate.

98 Symbols Order 1968, Rule 6B

99 Symbols Order 1968, Rule 6A

100 Symbols Order 1968, Rule 5

101 Symbols Order 1968, Rule 8(1)

102 Ibid.

103 Symbols Order 1968, Rule 10B. The party is required to set up candidates in at least five percent of the assembly constituencies.

104 A recognised National or a State Party shall continue to be treated as a recognised party even if the political party does not fulfil the conditions at the next election to the General Assembly stipulated for recognition as a recognised political party. However, it shall continue to be treated as a recognised political party at the subsequent general election only if the party fulfils the conditions laid down.

105 Gayatri Devi and Santha Rama Rau, A Princess remembers: The Memoirs of the Maharani of Jaipur, (Rupa Publications 1995) [301].

106 See Dominik Hangartner, Nelson A Ruiz, Janne Tukiainen, Open or Closed? How List Type Affects Electoral Performance, Candidate Selection, and Campaign Effort, VAT Institute for Economic Research Working Papers 120 (2019)

107 Election Commission of India, Instructions to political parties on manifestos dated 24.04.2015, <https://www.eci.gov.in/election-manifestos/>

108 Constitution of India 1950, Article 75. See, Aradhya Sethia, "Where's the party?: towards a constitutional biography of political parties, Indian Law Review, 3:1, 1-32 (2019)

109 Ibid.

110 (2006) 2 SCC 1

111

65. "Para 4.11.04 of the Sarkaria Commission Report specifically deals with the situation where no single party obtains absolute majority and provides the order of preference the Governor should follow in selecting a Chief Minister. The order of preference suggested is:

a. An alliance of parties that was formed prior to the elections.;

b. The largest single party staking a claim to form the Government with the support of others, including "independents";

c. A post-electoral coalition of parties, with all the partners in the coalition joining the Government;

d. A post-electoral alliance of parties, with some of the parties in the alliance forming a Government and the remaining parties, including "Independents" supporting the Government from outside."

112 (1992) Supp (2) SCC 651 [4]

113 AIR 1994 SC 1558

114 WP (C) No. 493 of 2022

115 Subash Desai [113]

116 Constitution of India 1950, Article 81 (2)(b). Also see Constitution of India, Article 170(2) where the Constitution prescribes the same principle with respect to the composition of seats in Legislative Assemblies of State

117 Constitution of India 1950, Article 81(2)(b)

118 Constitution of India 1950, Article 330 guarantees "as nearly as may be" proportional representation for Scheduled Castes and Scheduled Tribes in Parliament.

119 Constitution of India 1950, Article 332 guarantees "as nearly as may be" proportional representation for Scheduled Castes and Scheduled Tribes in Legislative Assemblies of the States.

120 See Ben Ansell and Jean Gingrich J (2021). Political Inequality. The IFS Deaton Review of Inequalities, London: Institute for Fiscal Studies

121 See Joshua L. Kalla and David E. Broockman, "Campaign Contributions Facilitate Access to Congressional Officials: A Randomized Field Experiment" (2016 60(3)) American Journal of Political Science. A political organization conducted an experiment to determine if there is a link between political contributions and access to the policy makers. The Organization scheduled meetings between 191 Congressional offices and the organization's members who were campaign donors. When the Congressional offices were informed that prospective attendees were political donor, policymakers made themselves available for the meeting three to four times more often.

122 Electoral Bond Scheme; Clause 2(a)

123 Electoral Bond Scheme; Clause 7(4)

124 Modern Dental College & Research Centre v. State of Madhya Pradesh, (2016) 4 SCC 346

125 See Media One v. Union of India, Civil Appeal No. 8129 of 2022 [77-79]

126 Constitution of India 1950; Article 19(6)

127 AIR 1962 SC 305

128 Ibid; Paragraph 36: "If a law directly affecting it is challenged, it is no answer that the restriction enacted by it are justifiable under clauses (3) to (6). For the scheme of Article 19 is to enumerate different freedoms separately and then to specify the extent of restrictions to which they may be subjected and the objects for securing which this could be done."

129 AIR 1958 SC 578

130 Also see, Indian Express Newspapers (Bombay) Pvt Limited v. Union of India, AIR 1986 SC 515; Sodhi Shamsher v. State of Pepsu, AIR 1954 SC 276; Romesh Thappar v. State of Madras, (1950) SCR 594

131 Writ Petition (Criminal) No. 113 of 2016

132 PUCL (supra), [111]

133 1995 AIR 1236

134 Ibid; [45].

135 436 US 775 (1978)

136 Cricket Association of Bengal [201 (1)(a) and 201(1)(b)]

137 Superintendent, Central Prison, Fatehgarh v. Dr Ram Manohar Lohia, AIR 1960 SC 633 [18]

138 Media One (supra) [100]

139 See Justice KS Puttaswamy (5J) (supra) and Media One Broadcasting (supra) [103];

140 IT Act, Section 13A(d)

141 IT Rules 1962, Rule 17CA(8)(i)

142 IT Rules 1962, Rule 17CA(7) and Rules 17CA(8)(ii)

143 IT Rules 1962, Rule 17CA(9)

144 IT Rules 1962, Rule 17CA(11)(ii)

145 IT Rules 1962, Rule 17CA(14)

146 RPA; Section 29A

147 (2017) 10 SCC 1

148 Justice Chandrachud (Paragraph 168), Justice Kaul (Paragraph 19)

149 Justice Chandrachud, Justice Chellameshwar, Justice Bobde (paragraph 25 and 29)

150 Justice Chandrachud (paragraph 170):

"[...] Individually, these information silos may seem inconsequential. In aggregation, they disclose the nature of the personality: food habits, language, health, hobbies, sexual preferences, friendships, ways of dress and political affiliation. Justice Chelameshwar (Paragraph 38), Justice Kaul (Paragraph 19)

151 RPA, Section 123(2). The provision includes the threatening with injury including social ostracism and excommunication from any caste or community.

152 RPA; Section 123(4)

153 RPA; Section 123(5)

154 See Philip N Howard and Daniel Kreiss, Political Parties and Voter privacy: Australia, Canada, the United Kingdom, and United States in Comparative Perspective, First Monday 15(12) 2010

155 Colin Bennet, The politics of privacy and privacy of politics: Parties, elections, and voter surveillance in Western Democracies. First Monday, 18(8) 2013

156 See Romesh Thappar v. State of Madras, (1950) SCR 594 (602)

157 (2005) 5 SCC 733

158 (2016) 7 SCC 221; Paragraph 11 "While one has a right to speech, others have a right to listen or decline to listen. [...] Nobody can indulge in aural

aggression. If anyone increases his volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels, then the person speaking is violating the right of others to a peaceful, comfortable and pollution-free life guaranteed by Article 21. Article 19(1)(a) cannot be pressed into service for defeating the fundamental right guaranteed by Article 21."

159

144: "[...] Reputation being an inherent component of Article 21, we do not think it should be allowed to be sullied solely because another individual can have its freedom. It is not a restriction that has an inevitable consequence which impairs circulation of thought and ideas. In fact, it is control regard being had to another person's right to go to court and state that he has been wronged and abused. He can take recourse to a procedure recognised and accepted in law to retrieve and redeem his reputation. Therefore, the balance between the two rights needs to be struck. "Reputation" of one cannot be allowed to be crucified at the altar of the other's right of free speech. The legislature in its wisdom has not thought it appropriate to abolish criminality of defamation in the obtaining social climate."

160 (2017) 4 SCC 397

161 Ibid, [121]

162 (2018) 17 SCC 324

163 (2018) 17 SCC 324 [58]

164 (2012) 10 SCC 603

165 (2019) 1 SCC 1

166 (2012) 10 SCC 603 [42, 22]

167 (2019) 1 SCC 1 [308]

168 Hon'ble Mr Justice Andrew Cheung PJ, Conflict of fundamental rights and the double proportionality test, A lecture in the Common Law Lecture Series 2019 delivered at the University of Hong Kong (17 September 2019)

169 [2004] UKHL 22

170 Civil Appeal No. 10044 of 2010

171 See Supriyo (supra) [238 , 239]; Aishat Shifa v. State of Karnataka, (2023) 2 SCC 1;

172 See Justice KS Puttaswamy v. Union of India, (2017) 10 SCC 1 [372] (opinion of Justice Chelameswar);

173 Media One Broadcasting (supra), [101]

174 The Companies Act 2013; Section 2(40)

175 The Companies At 2013; Section 137

176 "1956 Act"

177 AIR 1958 Bom 155

178 Report of the Committee on Prevention of Corruption, 1964 [11.5].

179 Bashesar Nath v. CIT, (1959) Supp 1 SCR 528

180 (1951) 1 SCC 1; Also see State of Bombay v. FN Balsara, 1951 SCR 682

181 Kathi Raning Rawat v. State of Saurashtra, (1952) 1 SCC 215; Budhan Chowdhury v. State of Bihar, (1955) 1 SCR 1045; Ram Krishna Dalmia v. S R Tendolkar, 1959 SCR 279.

182 (1974) 4 SCC 3

183 (1981) 1 SCC 722

184 (1985) 1 SCC 641

185 (2002) 2 SCC 188

186 (1995) 1 SCC 519

187 (1996) 2 SCC 226

188 (1996) 3 SCC 709

189 (1998) 2 SCC 1

190 (2004) 4 SCC 311

191 (2012) 10 SCC 1

192 (2017) 9 SCC 1

193 (1978) 1 SCC 248

194 (2018) 10 SCC 1

195 WP (Criminal) 76 of 2016 [Chief Justice Misra, 239]

196 Ibid,[Justice Nariman, 82]

197 Ibid, [Justice DY Chandrachud, 29]

198 Ibid, [Justice Malhotra, paragraph 14.9]

199 (2019) 3 SCC 39

200 (2019) 3 SCC 39 [Paragraph 35]

201 Justice Chandrachud, Justice Malhotra, and Justice Nariman in Navtej Singh Johar (supra); Justices Chandrachud and Nariman in Joseph Shine (supra).

202 Chief Justice Misra in Navtej Singh Johar (supra)

203 Mohd. Hanif Quareshi v. State of Bihar, AIR 1958 SC 731; Binoy Viswam v. Union of India, (2017) 7 SCC 59; Charanjit Lal Chowdhuri v. Union of India, 1950 SCC 833

204 1951 SCC 568

205 (1974) 4 SCC 98

206 Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223

207 In Khoday Distilleries Ltd. V. State of Karnataka, (1996) 10 SCC 304, this Court reiterated Indian Express Newspapers (supra) by holding that a delegated legislation is manifestly arbitrary if it "could not be reasonably expected to emanate from an authority delegated with the law-making power." Similarly, in State of Tamil Nadu v. P Krishnamurthy, (2006) 4 SCC 517 this Court held that subordinate legislation can be challenged on the ground of manifest arbitrariness to an extent "where the court might well say that the legislature never intended to give authority to make such rules."

208 Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641

209 Law Commission of India, 170th Report on the Reform of the Electoral Laws (1999)

210 (1973) 4 SCC 225

211 1975 Supp SCC 1

212 In *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1, Justice Khanna observed that periodical elections are a necessary postulate of a democratic setup as it allows citizens to elect their representatives. He further observed that democracy can function "only upon the faith that elections are free and fair and not rigged and manipulated, that they are effective instruments of ascertaining popular will both in reality and form and are not mere rituals calculated to generate illusion of defence to mass opinion."

213 *Digvijay Mote v. Union of India*, (1993) 4 SCC 175; *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294.

214 (2006) 7 SCC 1

215 (2013) 10 SCC 1

216 *Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405

217 Lok Sabha Debates, Companies Bill (16 May 1985).

218 Election Commission of India, Letter dated 26 May 2017, No. 56/PPEMS/Transparency/2017

219 IT Act, Section 80 GGB

220 *Jayantilal Ranchhodas Koticha v. Tata Iron & Steel Co. Ltd* (supra)

221 558 U.S 310

222 Ins. By Notifin. No. S.O. 1283(E), dated the 10th November, 2003.

IN THE SUPREME COURT OF INDIA

Association for Democratic

Vs.

Union of India and Ors.

[Writ Petition (Civil) No. 880 of 2017]

[Writ Petition (Civil) No. 59 of 2018]

[Writ Petition (Civil) No. 975 of 2022]

[Writ Petition (Civil) No. 1132 of 2022]

JUDGMENT

Sanjiv Khanna, J.

1. I have had the benefit of perusing the judgment authored by Dr. D.Y. Chandrachud, the Hon'ble Chief Justice. I respectfully agree with the findings and conclusions recorded therein. However, since my reasoning is different to arrive at the same conclusion, including application of the doctrine of proportionality, I am penning down my separate opinion.

2. To avoid prolixity, the contentions of the parties are not referred to separately and the facts are narrated in brief.

3. Corporate funding of political parties has been a contentious issue with the legislature's approach varying from time to time. The amendments to the Companies Act, 1956 reveal the spectrum of views of the legislature. It began with regulations and restrictions in 1960¹ to a complete ban on contributions to political parties in 1969². The ban was partially lifted in 1985 with restrictions and stipulations.³ The aggregate amount contributed to a political party in a financial year could not exceed 5% of the average net profit during the three immediately preceding financial years.⁴ A new condition stipulated that the board of directors⁵ in their meeting would pass a resolution giving legitimacy and authorisation to contributions to a political party.⁶

4. The Companies Act of 2013 replaced the Companies Act of 1956. Section 182(1) of the Companies Act, 2013⁷ permitted contributions by companies of any amount to any political party, if the said company had been in existence for more

than three immediately preceding financial years and is not a government company.

The requirement of authorisation vide Board resolution is retained.⁸ The cap of 5% is enhanced to 7.5% of the average net profits during the three immediately preceding financial years.⁹ It is also mandated that the company must disclose the amount contributed by it to political parties in the profit and loss account, including particulars of name of political party and the amount contributed.¹⁰ In case of violation of the terms, penalties stand prescribed.

5. The Finance Act, 2017 made several amendments to the Companies Act, 2013, Income Tax Act, 1961, Reserve Bank of India¹¹ Act, 1934, the Representation of the People Act, 1951, and the Foreign Contribution Regulation Act, 2010. These changes were brought in to allow contributions/donations through Electoral Bonds¹². The changes made by the Finance Act, 2017 to these legislations were provided in a tabular format by the petitioners. For clarity, I have reproduced the table below. The specific changes are highlighted in bold and italics for ease of reference:

Section 182 of the Companies Act, 2013	
Prior to Amendment by the Finance Act, 2017	Post Amendment by Section 154 of the Finance Act, 2017
<p>182. Prohibitions and restrictions regarding political contributions-</p> <p>(1) Notwithstanding anything contained in any other provision of this Act, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party:</p> <p>Provided that the amount referred to in sub-section (1) or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent of its average net profits during the three immediately preceding financial years:</p>	<p>182. Prohibitions and restrictions regarding political contributions-</p> <p>(1) Notwithstanding anything contained in any other provision of this Act, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party:</p> <p>[First proviso omitted]</p> <p>Provided that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to</p>

<p>Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.</p>	<p>be justification in law for the making of the contribution authorised by it.</p>
<p>182 (3) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed.</p>	<p>182 (3) Every company shall disclose in its profit and loss account the total amount contributed by it under this section during the financial year to which the account relates.</p> <p>(3A) Notwithstanding anything contained in sub-section (1), the contribution under this section shall not be made except by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account:</p> <p>Provided that a company may make contribution through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.</p>

Section 13-A of the Income Tax Act, 1961

Prior to Amendment by the Finance Act, 2017	Post Amendment by Section 11 of the Finance Act, 2017
<p>13-A. Special provision relating to incomes of political parties.-</p> <p>Any income of a political party which is chargeable under the head "Income from house property" or "Income from</p>	<p>13-A. Special provision relating to incomes of political parties.-</p> <p>Any income of a political party which is chargeable under the head "Income from house property" or "Income from</p>

other sources" or "capital gains or" any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party:

Provided that-

(a) such political party keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom;

(b) in respect of each such voluntary contribution in excess of twenty thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and

(c) the accounts of such political party are audited by an accountant as defined in the Explanation below sub-section (2) of Section 288:

Provided further that if the Treasurer of such political party or any other person authorised by that political party in this behalf fails to submit a report under subsection (3) of Section 29-C of the Representation of the People Act, 1951 (43 of 1951) for a financial year, no exemption under this section shall be available for that political party for such financial year.

Explanation.- For the purposes of this section, "political party" means a political party registered under Section 29-A of the Representation of the People Act, 1951 (43 of 1951).

other sources" or "capital gains or" any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party:

Provided that-

(a) such political party keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom;

(b) in respect of each such voluntary contribution other than contribution by way of electoral bond in excess of twenty thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution;

(c) the accounts of such political party are audited by an accountant as defined in the Explanation below sub-section (2) of Section 288 and:

(d) no donation exceeding two thousand rupees is received by such political party otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bond.

Explanation.- For the purposes of this proviso, "electoral bond" means a bond referred to in the Explanation to subsection (3) of Section 31 of the Reserve Bank of India Act, 1934 (2 of 1934).

Provided further that if the Treasurer of such political party or any other person authorised by that political party in this

	<p>behalf fails to submit a report under subsection (3) of Section 29-C of the Representation of the People Act, 1951 (43 of 1951) for a financial year, no exemption under this section shall be available for that political party for such financial year.</p> <p>Provided also that such political party furnishes a return of income for the previous year in accordance with the provisions of sub-section (4B) of Section 139 on or before the due date under that section.</p> <p>Explanation.-For the purposes of this section, "political party" means a political party registered under Section 29-A of the Representation of the People Act, 1951 (43 of 1951).</p>
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Section 31 of the Reserve Bank of India Act, 1934

Prior to Amendment by the Finance Act 2017	Post Amendment by Section 135 of the Finance Act 2017
<p>Section 31. Issue of demand bills and notes.-</p> <p>(1) No person in India other than the Bank, or, as expressly authorized by this Act the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person:</p> <p>Provided that cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on</p>	<p>Section 31. Issue of demand bills and notes.-</p> <p>(1) No person in India other than the Bank, or, as expressly authorized by this Act the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person:</p> <p>Provided that cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on</p>

<p>a person's account with a banker, shroff or agent.</p> <p>(2) Notwithstanding anything contained in the Negotiable Instruments Act, 1881 (26 of 1881), no person in India other than the Bank or, as expressly authorised by this Act, the Central Government shall make or issue any promissory note expressed to be payable to the bearer of the instrument.</p>	<p>a person's account with a banker, shroff or agent.</p> <p>(2) Notwithstanding anything contained in the Negotiable Instruments Act, 1881 (26 of 1881), no person in India other than the Bank or, as expressly authorised by this Act, the Central Government shall make or issue any promissory note expressed to be payable to the bearer of the instrument.</p> <p>(3) Notwithstanding anything contained in this section, the Central Government may authorise any scheduled bank to issue electoral bond.</p> <p>Explanation.- For the purposes of this sub-section, "electroal bond" means a bond issued by any scheduled bank under the scheme as may be notified by the Central Government.</p>
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Section 29-C of the Representation of the People Act 1951

Prior to Amendment by the Finance Act 2017	Post Amendment by Section 137 of the Finance Act 2017
<p>29-C. Declaration of donation received by the political parties.-</p> <p>(1) The treasurer of the political party or any other person authorised by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely:-</p> <p>(a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year;</p> <p>(b) the contribution in excess of twenty thousand rupees received by such political party from companies other</p>	<p>29-C. Declaration of donation received by the political parties.-</p> <p>(1) The treasurer of the political party or any other person authorised by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely:-</p> <p>(a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year;</p> <p>(b) the contribution in excess of twenty thousand rupees received by such political party from companies other</p>

<p>than Government companies in that financial year.</p> <p>(2) The report under sub-section (1) shall be in such form as may be prescribed.</p> <p>(3) The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorised by the political party in this behalf before the due date for furnishing a return of its income of that financial year under Section 139 of the Income Tax, 1961 (43 of 1961) to the Election Commission.</p> <p>(4) Where the treasurer of any political party or any other person authorised by the political party in this behalf fails to submit a report under sub-section (3), then, notwithstanding anything contained in the Income Tax Act, 1961 (43 of 1961), such political party shall not be entitled to any tax relief under that Act.</p>	<p>than Government companies in that financial year.</p> <p>Provided that nothing contained in this sub-section shall apply to the contributions received by way of an electoral bond.</p> <p>Explanation.- For the purposes of this sub-section, "electoral bond" means a bond referred to in the Explanation to sub-section (3) of Section 31 of the Reserve Bank of India Act, 1934 (2 of 1934).</p> <p>(2) The report under sub-section (1) shall be in such form as may be prescribed.</p> <p>(3) The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorised by the political party in this behalf before the due date for furnishing a return of its income of that financial year under Section 139 of the Income Tax, 1961 (43 of 1961) to the Election Commission.</p> <p>(4) Where the treasurer of any political party or any other person authorised by the political party in this behalf fails to submit a report under sub-section (3), then, notwithstanding anything contained in the Income Tax Act, 1961 (43 of 1961), such political party shall not be entitled to any tax relief under that Act.</p>
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Section 2 of the Foreign Contribution Regulation Act, 2010	
Prior to Amendment by the Finance Act 2017	Post Amendment by Section 236 the Finance Act 2017

Section 2 (1) (j) (j) "foreign source" includes,-

- (i) the Government of any foreign country or territory and any agency of such Government;
- (ii) any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf;
- (iii) a foreign company;
- (iv) a corporation, not being a foreign company, incorporated in a foreign country or territory;
- (v) a multi-national corporation referred to in sub-clause (iv) of clause (g);
- (vi) a company within the meaning of the Companies Act, 1956 (1 of 1956), and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely-

- (A) the Government of a foreign country or territory;
- (B) the citizens of a foreign country or territory;
- (C) corporations incorporated in a foreign country or territory;
- (D) trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;
- (E) foreign company;

Section 2 (1) (j) (j) "foreign source" includes,-

- (i) the Government of any foreign country or territory and any agency of such Government;
- (ii) any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf;
- (iii) a foreign company;
- (iv) a corporation, not being a foreign company, incorporated in a foreign country or territory;
- (v) a multi-national corporation referred to in sub-clause (iv) of clause (g);
- (vi) a company within the meaning of the Companies Act, 1956 (1 of 1956), and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely-

- (A) the Government of a foreign country or territory;
- (B) the citizens of a foreign country or territory;
- (C) corporations incorporated in a foreign country or territory;
- (D) trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;
- (E) foreign company;

Provided that where the nominal value of share capital is within the limits specified for foreign investment under the Foreign Exchange Management Act, 1999 (42 of 1999), or the rules or regulations made thereunder, then, notwithstanding the

	nominal value of share capital of a company being more than one-half of such value at the time of making the contribution, such company shall not be a foreign source.
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6. The amended Companies Act, 2013 removes the cap on corporate funding.¹³ The requirement that the contribution will require a resolution passed at the meeting of the Board is retained. In the profit and loss account, a company is now only required to disclose the total amount contributed to political parties in a financial year.¹⁴

The requirement to disclose the specific amounts contributed and the names of the political parties is omitted. Section 182(3A), as introduced, stipulates that the company could contribute to a political party only by way of a cheque, Electronic Clearing System¹⁵, or demand draft.¹⁶ The proviso to Section 182(3A) permits a company to contribute through any instrument issued pursuant to any scheme notified under the law, for the time being in force, for contribution to political parties.

7. Section 13A of the Income Tax Act, 1961,¹⁷ exempts income of political parties, including financial contributions and investments, from income tax. The object of providing a tax exemption is to increase the funds of political parties from legitimate sources. However, conditions imposed require political parties to maintain books of accounts and other documents to enable the assessing officer to properly deduce their income.¹⁸ Political parties are required to maintain records of the name and addresses of persons who make voluntary contributions in excess of Rs.20,000/-.¹⁹ Accounts of the political parties are required to be audited.²⁰

8. In 2003, Section 80GGB and 80GGC were inserted in the Income Tax Act, 1961, permitting contributions to political parties. These contributions are tax deductible, though they are not expenditure for purposes of business, to incentivise contributions through banking channels.²¹

9. By the Finance Act, 2017, Section 13A of the Income Tax Act, 1961, was amended. Section 13A now stipulates that a political party is not required to maintain a record of the contributions received by Bonds.²² Further, donations over Rs.2,000/- are only permitted through cheques, bank drafts, ECS or Bonds.²³

10. Section 29C of the Representation of the People Act, 1951 was introduced in 2003.²⁴ The section requires each political party to file a report for all contributions over Rs.20,000/- to the Election Commission of India.²⁵ The report

is required to be filed before the due date of filing income tax returns of the financial year under the Income Tax Act, 1961. Failure to submit a report disentitles a political party from any tax relief, as provided under the Income Tax Act, 1961. Section 29C of the Finance Act, 2017, as amended, stipulates that political parties are not required to disclose the details of contributions received by Bonds.²⁶

11. Section 31(3) of the RBI Act, 1934 was added by the Finance Act, 2017 to effectuate the issuance of the Bonds which, as envisaged, are not to mention the name of the political party to whom they are payable, and hence are in the nature of bearer demand bill or note.

12. On 02.01.2018, the Department of Economic Affairs, Ministry of Finance, notified the Electoral Bonds Scheme, 2018²⁷ in terms of Section 31(3) of the RBI Act, 1934.²⁸ The salient features of this Scheme are: Bonds are in the nature of a promissory note and bearer instrument.²⁹ They do not carry the name of the buyer or payee.³⁰

- Bonds can be purchased by any 'person'³¹ who is a citizen of India or who is a body corporate incorporated or established in India.³² Any 'person' who is an individual can purchase Bonds either singly or jointly with other individuals.³³
- Bonds are to be issued in denominations of Rs.1,000/-, Rs.10,000/-, Rs.1,00,000/-, Rs.10,00,000/- and Rs.1,00,00,000/-.³⁴ They are valid for a period of 15 days from the date of issue.³⁵ The amount of Bonds not encashed within the validity period of 15 days, would be deposited by the authorised bank to the Prime Minister Relief Fund.³⁶
- The Bond is non-refundable.³⁷
- A 'person' who wishes to purchase a Bond is required to apply in the specified format.³⁸ Non-compliant applications are to be rejected.
- To purchase Bonds, a buyer is required to apply to the authorised bank.³⁹ RBI's Know Your Customer⁴⁰ requirements apply and the authorised bank could ask for additional KYC documents, if necessary.⁴¹
- The payments for the issuance of Bonds are required to be made in Indian rupees through demand draft, cheque, ECS or direct debit to the buyer's account.⁴²
- The identity and information furnished by the buyer for the issuance of Bonds is to be treated as confidential by the authorised issuing bank.⁴³ The details, including identity, can be disclosed only when demanded by a competent court or on registration of any criminal case by any law enforcement agency.⁴⁴
- Only eligible political parties, meaning a party that is registered under Section 29A of the Representation of the People Act, 1951, and has

secured not less than 1% of the votes polled in the last general election to the House of People or the Legislative Assembly, can receive a Bond.⁴⁵

- The eligible political party can encash the Bond through their bank account in the authorised bank.⁴⁶
- The Bonds are made available for purchase for a period of 10 days every quarter, in the months of January, April, July and October, as may be specified by the Central Government.⁴⁷ They are also made available for an additional period of 30 days, as specified by the central government in a year where general elections to the House of People are held.⁴⁸
- The Bonds are not eligible for trading,⁴⁹ and commission, brokerage or other charges are not chargeable/payable for issuance of a Bond.⁵⁰
- The value of the Bond is considered as income by way of voluntary contributions to eligible political parties for the purposes of tax exemption under Section 13A of the Income Tax Act, 1961.⁵¹

13. In the afore-mentioned writ petitions filed under Article 32 of the Constitution of India,⁵² the petitioners are seeking a declaration that the Scheme and the relevant amendments made by the Finance Act, 2017, are unconstitutional.

14. The question of the constitutional validity of the Scheme and the amendments introduced by the Finance Act, 2017 are being examined by us. The question of introducing these amendments through a money bill under Article 110 of the Constitution is not being examined by us.⁵³ The scope of Article 110 of the Constitution has been referred to a seven-judge Bench and is sub-judice.⁵⁴ Further, a batch of petitions challenging the amendments to the Foreign Contribution Regulation Act, 2010 by the Finance Acts of 2016 and 2018 are pending. The challenge to the said amendments is not being decided by us.

15. I fully agree with the Hon'ble Chief Justice, that the Scheme cannot be tested on the parameters applicable to economic policy. Matters of economic policy normally pertain to trade, business and commerce, whereas contributions to political parties relate to the democratic polity, citizens' right to know and accountability in our democracy. The primary objective of the Scheme, and relevant amendments introduced by the Finance Act, 2017, is electoral reform and not economic reform.

Thus, the dictum and the principles enunciated by this Court in *Swiss Ribbons (P.) Ltd. and Another v. Union of India and Others*,⁵⁵ and *Pioneer Urban Land and Infrastructure and Another v. Union of India and Others*,⁵⁶ relating to judicial review on economic policy matters have no application to the present case. To give the legislation the latitude of economic policy, we will be diluting the principle of free and fair elections. Clearly, the importance of the issue and the

nexus between money and electoral democracy requires us to undertake an in-depth review, albeit under the settled powers of judicial review.

16. Even otherwise, it is wrong to state as a principle that judicial review cannot be exercised over every matter pertaining to economic policy.⁵⁷ The law is that the legislature has to be given latitude in matters of economic policy as they involve complex financial issues.⁵⁸ The degree of deference to be shown by the court while exercising the power of judicial review cannot be put in a straitjacket.

17. On the question of burden of proof, I respectfully agree with the observations made by the Hon'ble Chief Justice, that once the petitioners are able to prima facie establish a breach of a fundamental right, then the onus is on the State to show that the right limiting measure pursues a proper purpose, has rational nexus with that purpose, the means adopted were necessary for achieving that purpose, and lastly proper balance has been incorporated.

18. The doctrine of presumption of constitutionality has its limitations when we apply the test of proportionality. In a way the structured proportionality places an obligation on the State at a higher level, as it is a polycentric examination, both empirical and normative. While the courts do not pass a value judgment on contested questions of policy, and give weight and deference to the government decision by acknowledging the legislature's expertise to determine complex factual issues, the proportionality test is not based on preconceived notion or presumption.

The standard of proof is a civil standard or a balance of probabilities;⁵⁹ where scientific or social science evidence is available, it is examined; and Writ Petition (C) No. 880 of 2017 & Ors. Page 18 of 74 where such evidence is inconclusive or does not exist and cannot be developed, reason and logic may suffice.⁶⁰

19. The right to vote is a constitutional and statutory right,⁶¹ grounded in Article 19(1)(a) of the Constitution, as the casting of a vote amounts to expression of an opinion by the voter.⁶² The citizens' right to know stems from this very right, as meaningfully exercising choice by voting requires information. Representatives elected as a result of the votes cast in their favour, enact new, and amend existing laws, and when in power, take policy decisions. Access to information which can materially shape the citizens' choice is necessary for them to have a say in how their lives are affected. Thus, the right to know is paramount for free and fair elections and democracy.

20. The decisions in Association for Democratic Reforms (supra) and People's Union of Civil Liberties (PUCL) (supra) should not be read as restricting the right to know the antecedents of a candidate contesting the elections.⁶³ The

political parties select candidates who contest elections on the symbol allotted to the respective political parties⁶⁴. Upon nomination, the candidates enjoy the patronage of the political parties, and are financed by them. The voters elect a candidate with the objective that the candidate's political party will come to power and fulfil the promises.

21. The Hon'ble Chief Justice has referred to the Tenth Schedule of the Constitution. The Schedule incorporates a provision for the disqualification of candidates on the ground of defection, which reflects the importance of political parties in our democracy. Section 77 of the Representation of the People Act, 1951, requires monetary limits to be prescribed for expenditures incurred by candidates.⁶⁵

As political parties are at the helm of the electoral process, including its finances, the argument that the right of the voter does not extend to knowing the funding of political parties and is restricted to antecedents of candidates, will lead to an incongruity. I, respectfully, agree with Hon'ble the Chief Justice, that denying voters the right to know the details of funding of political parties would lead to a dichotomous situation. The funding of political parties cannot be treated differently from that of the candidates who contest elections.⁶⁶

22. Democratic legitimacy is drawn not only from representative democracy but also through the maintenance of an efficient participatory democracy. In the absence of fair and effective participation of all stakeholders, the notion of representation in a democracy would be rendered hollow. In a democratic set-up, public participation is meant to fulfil three functions; the epistemic function of ensuring reasonably sound decisions,⁶⁷ the ethical function of advancing mutual respect among citizens, and the democratic function of promoting "an inclusive process of collective choice".⁶⁸ James Fishkin lists five criteria which define the quality of a deliberative process.⁶⁹ These are:

- Information (the extent to which participants are given access to accurate and reliable information);
- Substantive balance (the extent to which arguments offered by one side are answered by considerations offered by those who hold other perspectives);
- Diversity (the extent to which major positions in the public are represented by participants);
- Conscientiousness, (the degree to which participants sincerely weigh the merits of the arguments); and
- Equal consideration (the extent to which arguments offered by all participants are considered on its merits regardless of who offered them).⁷⁰

23. The State has contested the writ petitions primarily on three grounds:

(i) Donors of a political party often apprehend retribution from other political parties or actors and thus their identities should remain anonymous. The Bonds uphold the right to privacy of donors by providing confidentiality. Further, donating money to one's preferred political party is a matter of self-expression by the donor. Therefore, revealing the identity invades the informational privacy of donors protected by the Constitution.⁷¹ The identity of the donor can be revealed in exceptional cases, for instance on directions of a competent court, or registration of a criminal case by any law enforcement agency.⁷²

(ii) The Scheme, by incentivising banking channels and providing confidentiality, checks the use of black or unaccounted money in political contributions.⁷³

(iii) The Scheme is an improvement to the prior legal framework. It has inbuilt safeguards such as compliance of donors with KYC norms, bearer bonds having a limited validity of fifteen days and recipients belonging to a recognised political party that has secured more than 1% votes in the last general elections.

24. Hon'ble the Chief Justice has rejected the Union of India's submissions by applying the doctrine of proportionality. This is a principle applied by courts when they exercise their power of judicial review in cases involving a restriction on fundamental rights. It is applied to strike an appropriate balance between the fundamental right and the pursued purpose and objective of the restriction.

25. The test of proportionality comprises four steps:⁷⁴

(i) The first step is to examine whether the act/measure restricting the fundamental right has a legitimate aim (legitimate aim/purpose).

(ii) The second step is to examine whether the restriction has rational connection with the aim (rational connection).

(iii) The third step is to examine whether there should have been a less restrictive alternate measure that is equally effective (minimal impairment/necessity test).

(iv) The last stage is to strike an appropriate balance between the fundamental right and the pursued public purpose (balancing act).

26. In *Modern Dental College & Research Centre and Others v. State of Madhya Pradesh and Others*,⁷⁵ this Court had applied proportionality in its four-part doctrinal form⁷⁶ as a standard for reviewing right limitations in India. This test was modified in *K.S. Puttaswamy (Retired) and Anr. (Aadhar) v. Union of India and Anr. (5J)*,⁷⁷ where this Court adopted a more tempered and nuanced

approach.⁷⁸ The Court, inter alia, imposed a stricter test for the third and fourth prongs, namely necessity and balancing stages of the test of proportionality, as reproduced below.

"155. In order to preserve a meaningful but not unduly strict role for the necessity stage, Bilchitz proposes the following inquiry. First, a range of possible alternatives to the measure employed by the Government must be identified. Secondly, the effectiveness of these measures must be determined individually; the test here is not whether each respective measure realises the governmental objective to the same extent, but rather whether it realises it in a "real and substantial manner".

Thirdly, the impact of the respective measures on the right at stake must be determined. Finally, an overall judgment must be made as to whether in light of the findings of the previous steps, there exists an alternative which is preferable; and this judgment will go beyond the strict means-ends assessment favoured by Grimm and the German version of the proportionality test; it will also require a form of balancing to be carried out at the necessity stage.

156. Insofar as second problem in German test is concerned, it can be taken care of by avoiding "ad hoc balancing" and instead proceeding on some "bright-line rules" i.e. by doing the act of balancing on the basis of some established rule or by creating a sound rule.

158. This Court, in its earlier judgments, applied German approach while applying proportionality test to the case at hand. We would like to proceed on that very basis which, however, is tempered with more nuanced approach as suggested by Bilchitz. This, in fact, is the amalgam of German and Canadian approach. We feel that the stages, as mentioned in Modern Dental College & Research Centre and recapitulated above, would be the safe method in undertaking this exercise, with focus on the parameters as suggested by Bilchitz, as this projects an ideal approach that need to be adopted."

27. The said test was also referred to in *Anuradha Bhasin v. Union of India and Others*,⁷⁹ with the observation that the principle of proportionality is inherently embedded in the Constitution under the doctrine of reasonable restriction. This means that limitations imposed on a right should not be arbitrary or of excessive nature beyond what is required in the interest of public. This judgment thereupon references works of scholars/jurists who have argued that if the necessity prong of the proportionality test is applied strictly, legislations and policies, no matter how well intended, would fail the proportionality test even if any other slightly less drastic measure exists.⁸⁰

Thereupon, the Court accepted the suggestion in favour of a moderate interpretation of the necessity test. Necessity involves a process of reasoning designed to ensure that only measures with a strong relationship to the objective they seek to achieve can justify an invasion of fundamental rights. The process thus requires a court to reason through the various stages of moderate interpretation of necessity in the following manner:

"(MN1) All feasible alternatives need to be identified, with courts being explicit as to criteria of feasibility;

(MN2) The relationship between the government measure under consideration, the alternatives identified in MN1 and the objective sought to be achieved must be determined. An attempt must be made to retain only those alternatives to the measure that realise the objective in a real and substantial manner;

(MN3) The differing impact of the measure and the alternatives (identified in MN2) upon fundamental rights must be determined, with it being recognised that this requires a recognition of approximate impact; and

(MN4) Given the findings in MN2 and MN3, an overall comparison (and balancing exercise) must be undertaken between the measure and the alternatives. A judgment must be made whether the government measure is the best of all feasible alternatives, considering both the degree to which it realises the government objective and the degree of impact upon fundamental rights ("the comparative component").

28. Dr. Justice D.Y. Chandrachud, as his Lordship then was, in *K.S. Puttaswamy (5J)(Aadhar)(supra)*, had observed that the objective of the second prong of rational connection test is essential to the test of proportionality.⁸¹ Sanjay Kishan Kaul, J. in his concurring opinion in *K.S. Puttaswamy (9J) (Privacy) (supra)* had held that actions not only should be sanctioned by law, but the proposed actions must be necessary in a democratic society for a legitimate aim. The extent of interference must be proportionate to the need for such interference and there must be procedural guarantees against abuse of such interference.

29. The test of proportionality is now widely recognised and employed by courts in various jurisdictions like Germany, Canada, South Africa, Australia and the United Kingdom.⁸² However, there isn't uniformity in how the test is applied or the method of using the last two prongs in these jurisdictions.

30. The first two prongs of proportionality resemble a means-ends review of the traditional reasonableness analysis, and they are applied relatively consistently across jurisdictions. Courts first determine if the ends of the restriction serve a legitimate purpose, and then assess whether the proposed restriction is a suitable

means for furthering the same ends, meaning it has a rational connection with the purpose.

31. In the third prong, courts examine whether the restriction is necessary to achieve the desired end. When assessing the necessity of the measure, the courts consider whether a less intrusive alternative is available to achieve the same ends, aiming for minimal impairment. As elaborated above, this Court *Anuradha Bhasin* (supra), relying on suggestions given by some jurists,⁸³ emphasised the need to employ a moderate interpretation of the necessity prong. To conclude its findings on the necessity prong, this Court is *inter alia* required to undertake an overall comparison between the measure and its feasible alternatives.⁸⁴

32. We will now delve into the fourth prong, the balancing stage, in some detail. This stage has been a matter of debate amongst jurists and courts. Some jurists believe that balancing is ambiguous and value-based.⁸⁵ This stems from the premise of rule-based legal adjudication, where courts determine entitlements rather than balancing interests. However, proportionality is a standard-based review rather than a rule-based one.

Given the diversity of factual scenarios, the balancing stage enables judges to consider various factors by analysing them against the standards proposed by the four prongs of proportionality. This ensures that all aspects of a case are carefully weighed in decision-making. This perspective finds support in the work of jurists who believe that constitutional rights and restrictions/measures are both principles, and thus they should be optimised/balanced to their fullest extent.⁸⁶

33. While balancing is integral to the standard of proportionality, such an exercise should be rooted in empirical data and evidence. In most countries that adopt the proportionality test, the State places on record empirical data as evidence supporting the enactment and justification for the encroachment of rights.⁸⁷ This is essential because the proportionality enquiry necessitates objective evaluation of conflicting values rather than relying on perceptions and biases.

Empirical deference is given to the legislature owing to their institutional competence and expertise to determine complex factual legislation and policies. However, factors like lack of parliamentary deliberation and a failure to make relevant enquiries weigh in on the court's decision. In the absence of data and figures, there is a lack of standards by which proportionality *stricto sensu* can be determined.

Nevertheless, many of the constitutional courts have employed the balancing stage 'normatively'⁸⁸ by examining the weight of the seriousness of the right

infringement against the urgency of the factors that justify it. Examination under the first three stages requires the court to first examine scientific evidence, and where such evidence is inconclusive or does not exist and cannot be developed, reason and logic apply. We shall subsequently be referring to the balancing prong during our application of the test of proportionality.

34. In Germany, the courts enjoy a high judicial discretion. The parliament and the judiciary in Germany have the same goal, that is, to realise the values of the German Constitution.⁸⁹ Canadian courts, some believe, in practice give wider discretion to the legislature when a restriction is backed by sufficient data and evidence.⁹⁰

The constitutional court in South Africa, as per some jurists, collectively applies the four prongs of proportionality instead of a structured application.⁹¹ While proportionality is the predominant doctrine in Australia, an alternate calibrated scrutiny test is applied by a few judges.⁹² It is based on the premise that a contextual, instead of broad standard of review, is required to be adopted for constitutional adjudication.

35. Findings of empirical legal studies provide a more solid foundation for normative reasoning⁹³ and enhance understanding of the relationship between means and ends.⁹⁴ In our view, proportionality analyses would be more accurate when empirical inquiries on causal relations between a legislative measure under review and the ends of such a measure are considered. It also leads to better and more democratic governance.

While one cannot jump from "is" to "ought", to reach an "ought" conclusion, one has to rely on accurate knowledge of "is", for "is" and "ought" to be united.⁹⁵ While we emphasise the need of addressing the quantitative/empirical deficit for a contextual and holistic balancing analysis, the pitfalls of selective data sharing must be kept in mind. After all, if a measure becomes a target, it ceases to be a good measure.⁹⁶

36. To avoid this judgment from becoming complex, I have enclosed as an annexure a chart giving different viewpoints on the doctrine of proportionality as a test for judicial review exercised by the courts to test the validity of the legislation. The same is enclosed as Annexure-A to this judgment.⁹⁷

37. When we turn to the reply or the defence of the Union of India in the present case, which we have referred to above,⁹⁸ the matter of concern is the first submission made regarding the purpose and rationale of the Scheme and amendments to the Finance Act of 2017. Lest remains any doubt, I would like to

specifically quote from the transcript of hearing dated 01.11.2023, where on behalf of the Union of India it was submitted:

"the bottom line is this. What was really found? That what is the reason, why a person who contributes to a political party chooses the mode of unclean money as a payment mode and Your Lordships would immediately agree with me if we go by the practicalities of life. What happens is, suppose one state is going for an election. There are two parties, there are multiple parties, but by and large there are two parties which go neck to neck. Suppose I am a contractor. I'm not a company or anything.

I am a contractor and I'm supposed to give my political contribution to Party A and Party B or Party A or Party B, as the case may be. But the fear was if I give by way of accounted money or by clean money, by way of cheque, it would be easily identifiable. If I give to party A and Party B forms the Government, I would be facing victimization and retribution and vice versa. If I give money to Party B and Party A continues to be in Government, then I would be facing retribution or victimization.

Therefore, the safest course was to pay by cash, so that none of the parties know what I paid to which party, and both parties are happy that I have paid something. So, that, the payment by cash ensured confidentiality. Both parties would say that one party would be given 100 crores, one party would be given 40 crores, depending upon my assessment of their winnability. But both would not know who is paid what.

My Lord, sometimes what used to happen is in my business, I get only clean money or substantial part of the clean money, but practicalities require that I contribute to the political parties, and practicality again requires that I contribute with a degree of confidentiality so that I am not victimized in the future. And therefore clean money used to be converted into unclean money. White money is being converted into black money so that it can be paid, according to them anonymously, and according to me with confidentiality. And this is disastrous for the economy when white money is converted into black money."

While introducing the Finance Act of 2017, the then Finance Minister had elucidated that the main purpose of the Scheme was to curb the flow of black money in electoral finance.⁹⁹ This, it is stated, could be achieved only if information about political donations and the donor were kept confidential.¹⁰⁰ It was believed that this would incentivise donations to political parties through banking channels.

38. I am of the opinion that retribution, victimisation or retaliation cannot by any stretch be treated as a legitimate aim. This will not satisfy the legitimate purpose prong of the proportionality test. Neither is the Scheme nor the amendments to the Finance Act, 2017, rationally connected to the fulfilment of that purpose, namely, to counter retribution, victimisation or retaliation in political donations. In our opinion, it will also not satisfy the necessity stage of the proportionality even if we have to ignore the balancing stage.

39. Retribution, victimisation or retaliation against any donor exercising their choice to donate to a political party is an abuse of law and power. This has to be checked and corrected. As it is a wrong, the wrong itself cannot be a justification or a purpose. The argument, therefore, suffers on the grounds of inconsistency and coherence as it seeks to perpetuate and accept the wrong rather than deal with the malady and correct it. The inconsistency is also apparent as the change in law, by giving a cloak of secrecy, leads to severe restriction and curtailment of the collective's right to information and the right to know, which is a check and counters cases of retribution, victimisation and retaliation. Transparency and not secrecy is the cure and antidote.

40. Similarly, the second argument that the donor may like to keep his identity anonymous is a mere ipse dixit assumption. The plea of infringement of the right to privacy has no application at all if the donor makes the contribution, that too through a banking channel, to a political party. It is the transaction between the donor and the third person. The fact that donation has been made to a political party has to be specified and is not left hidden and concealed.¹⁰¹

What is not revealed is the quantum of the contribution and the political party to whom the contribution is made. Further, when a donor goes to purchase a Bond, he has to provide full particulars and fulfil the KYC norms of the bank.¹⁰² His identity is then asymmetrically known to the person and the officers of the bank from where the Bond is purchased.¹⁰³ Similarly, the officers in the branch of the authorised bank¹⁰⁴ where the political party has an account and encashes the Bond are known to the officers in the said bank.¹⁰⁵

41. The argument raised by the Union of India that details can be revealed when an order is passed by a court or when it is required for investigation pursuant to registration of a criminal case¹⁰⁶ overlooks the fact that it is their stand that the identities of the contributors/donors should be concealed because of fear of retaliation, victimisation and reprisal.

That fear would still exist as the identity of the purchaser of the Bond can always be revealed upon registration of a criminal case or by an order/direction of the court. Thus, the fear of reprisal and vindictiveness does not evaporate. The so-

called protection exists only on paper but in practical terms is not a good safeguard even if we accept that the purpose is legitimate. It fails the rational nexus prong.

42. The fear of the identities of donors being revealed exists in another manner. Under the Scheme, political parties in power may have asymmetric access to information with the authorised bank. They also retain the ability to use their power and authority of investigation to compel the revelation of Bond related information.¹⁰⁷ Thus, the entire objective of the Scheme is contradictory and inconsistent.

43. Further, it is the case of the Union of India that parties in power at the Centre and State are the recipients of the highest amounts of donations through Bonds. If that is the case, the argument of retribution, victimisation and retaliation is tempered and loses much of its force.¹⁰⁸

44. The rational connection test fails since the purpose of curtailing black or unaccounted-for money in the electoral process has no connection or relationship with the concealment of the identity of the donor. Payment through banking channels is easy and an existing antidote. On the other hand, obfuscation of the details may lead to unaccounted and laundered money getting legitimised.

45. The RBI had objected to the Scheme since the Bonds could change hands after they have been issued. There is no check for the same as the purchaser who has completed the KYC, whose identity is thereupon completely concealed, may not be the actual contributor/ donor. In fact, the Scheme may enable the actual contributor/donor to not leave any traceability or money trail.

46. Money laundering can be undertaken in diverse ways. Political contributions for a quid pro quo may amount to money laundering, as defined under the Prevention of Money Laundering Act, 2002¹⁰⁹. The Financial Action Task Force¹¹⁰ has observed that the signatory States are required to check money laundering on account of contributions made to political parties.¹¹¹

Article 7(3) of the United Nations Convention against Corruption, 2003 mandates the state parties to enhance transparency in political funding of the candidates and parties.¹¹² The said convention is signed and ratified by India. By ensuring anonymity, the policy ensures that the money laundered on account of quid pro quo or illegal connection escapes eyeballs of the public.

47. The economic policies of the government have an impact on business and commerce. Political pressure groups promote different agendas, including perspectives on economic policies. As long as these pressure groups put forward

their perspective with evidence and data, there should not be any objection even if they interact with elected representatives.

The position would be different if monetary contributions to political parties were made as a quid pro quo to secure a favourable economic policy. This would be an offence under the Prevention of Corruption Act, 1988 and also under the PMLA. Such offences when committed by political parties in power can never see the light of the day if secrecy and anonymity of the donor is maintained.

48. In view of the aforesaid observations, the argument raised by the petitioners that there is no rational connection between the measure and the purpose, which is also illegitimate, has merit and should be accepted.

49. On the question of alternative measures, that is the necessity prong of the proportionality test, it is accepted that post the amendments brought about by the Finance Act, 2017, political parties cannot receive donations in cash for amounts above Rs.2,000/-. However, political parties do not have to record the details and particulars of donations received for amounts less than Rs.20,000/-.¹¹³ Therefore, the reduction of the upper limit of cash donations from Rs.20,000/- to Rs.2,000/- serves no purpose. It is open to the political parties to bifurcate the law and camouflage larger donations in smaller stacks. There is no way or method to verify the donor if the amount shown in the books of the political party is less than Rs.2,000/-.

50. It is an accepted position that the Electoral Trust Scheme¹¹⁴ was introduced in 2013 to ensure the secrecy of contributors. As per the Trust Scheme, contributions could be made by a person or body corporate to the trust. The trust would thereafter transfer the amount to the political party. The trust is, therefore, treated as the contributor to the political party.

Interestingly, it is the ECI that had issued guidelines dated 06.06.2014 whereby the trusts were required to specify and give full particulars to the ECI of the depositors with the trust and amounts which were subsequently transferred as a contribution to the political party. The guidelines were issued by the ECI to ensure transparency and openness in the electoral process.¹¹⁵

51. The trust can have multiple donors. Similarly, contributions are made by the trust to multiple political parties. The disclosure requirements provided in ECI's guidelines dated 06.06.2014 only impose disclosure requirements at the inflow and outflow points of the trust's donations, that is, the trust is required to provide particulars of its depositors and the amounts donated to political parties, including the names of the political parties. Thus, the Trust Scheme protects the anonymity of the donors vis-à-vis their contributions to the political party.

When we apply the necessity test propounded in *Anuradha Bhasin (supra)*¹¹⁶, the Trust Scheme achieves the objective of the Union of India in a real and substantial manner and is also a less restrictive alternate measure in view of the disclosure requirements, viz. the right to know of voters. The Trust Scheme is in force and is a result of the legislative process. In a comparison of limited alternatives, it is a measure that best realises the objective of the Union of India in a real and substantial manner without significantly impacting the fundamental right of the voter to know. The ECI, if required, can suitably modify the guidelines dated 06.06.2014.

52. I would now come to the fourth prong. I would begin by first referring to the judgment cited by Hon'ble the Chief Justice in the case of *Campbell v. MGM Limited*¹¹⁷. This judgment adopts double proportionality standard to adequately balance two conflicting fundamental rights. Double proportionality has been distinguished from the single proportionality standard in paragraph 152 of the judgment authored by Hon'ble the Chief Justice.

Campbell (supra) states that the single proportionality test and the principle of reasonableness are applied to determine whether a private right claim offers sufficient justification for the interference with the fundamental rights. However, this test may not apply when two fundamental rights are at conflict and one has to balance the application of one right and restriction of the other.

53. In *Campbell (supra)*, Baroness Hale has suggested a three-step approach to balance conflicting fundamental rights, when two rights are in play. The first step is to analyse the comparative importance of the fundamental rights being claimed in the particular case. In the second step, the court should consider the justification for interfering with or restricting each of these rights. The third step requires the application of a proportionality standard to both these rights.

54. In a subsequent decision, the House of Lords (Lord Steyn) in *In re.S*¹¹⁸, distilled four principles to resolve the question of conflict of rights as under:

"17. (...) First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test. This is how I will approach the present case."

55. The fourth principle, that is, the ultimate balancing test, was elaborated upon by Sir Mark Potter in *In Re. W*¹¹⁹ in the following terms:

"53. (...) each Article propounds a fundamental right which there is a pressing social need to protect. Equally, each Article qualifies the right it propounds so far as it may be lawful, necessary and proportionate to do so in order to accommodate the other. The exercise to be performed is one of parallel analysis in which the starting point is presumptive parity, in that neither Article has precedence over or "trumps" the other.

The exercise of parallel analysis requires the court to examine the justification for interfering with each right and the issue of proportionality is to be considered in respect of each. It is not a mechanical exercise to be decided upon the basis of rival generalities. An intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary before the ultimate balancing test in terms of proportionality is carried out."

56. Fundamental rights are not absolute, legislations/policies restricting the rights may be enacted in accordance with the scheme of the Constitution. However, it is now well settled that the provisions of fundamental rights in Part III of the Constitution are not independent silos and have to be read together as complementary rights.¹²⁰ Therefore, the thread of reasonableness applies to all such restrictions.¹²¹ Secondly, Article 14, as observed by the Hon'ble Chief Justice in his judgment¹²² includes the facet of formal equality and substantive equality.

Thus, the principle 'equal protection of law' requires the legislature and the executive to achieve factual equality. This principle can be extended to any restriction on fundamental rights which must be reasonable to the identified degree of harm. If the restriction is unreasonable, unjust or arbitrary, then the law should be struck down. Further, it is for the legislature to identify the degree of harm.

I have referred to the said observation in the context that there appears to be a divergent opinion in *K.S. Puttaswamy (9-J) (Privacy)* (supra) as to whether right of privacy is an essential component for effective fulfilment of all fundamental rights or can be held to be a part or a component of Article 21 and Article 19(1)(a) of the Constitution.

57. When we apply the fourth prong, that is the balancing prong of proportionality, I have no hesitation or doubt, given the findings recorded above, that the Scheme falls foul and negates and overwhelmingly disavows and annuls the voters right in an electoral process as neither the right of privacy nor the purpose of incentivising donations to political parties through banking channels, justify the infringement of the right to voters.

The voters right to know and access to information is far too important in a democratic set-up so as to curtail and deny 'essential' information on the pretext of privacy and the desire to check the flow of unaccounted for money to the political parties. While secret ballots are integral to fostering free and fair elections, transparency-not secrecy-in funding of political parties is a prerequisite for free and fair elections. The confidentiality of the voting booth does not extend to the anonymity in contributions to political parties.

58. In *K.S. Puttasamy (9-J) (Privacy)* (supra), all opinions accept that the right to privacy has to be tested and is not absolute. The right to privacy must yield in given circumstances when dissemination of information is legitimate and required in state or public interest. Therefore, the right to privacy is to be applied on balancing the said right with social or public interest. The reasonableness of the restriction should not outweigh the particular aspect of privacy claimed.¹²³ Sanjay Kishan Kaul, J., in his opinion in *K.S. Puttasamy (9-J) (Privacy)* (supra), has said that restriction on right to privacy may be justifiable and is subject to the principle of proportionality when considering the right to privacy in relation to its function in society.

59. As observed above, the right to privacy operates in the personal realm, but as the person moves into communal relations and activities such as business and social interaction, the scope of personal space shrinks contextually.¹²⁴ In this context, the High Court of South Africa in *My Vote Counts NPC v. President of the Republic of South Africa and Ors.*¹²⁵ observes that:

"(...) given the public nature of political parties and the fact that the private funds they receive have a distinctly public purpose, their rights to privacy can justifiably be attenuated. The same principles must, as a necessary corollary, apply to their donors. (...)"

(emphasis supplied)

60. The great underlying principle of the Constitution is that rights of individuals in a democratic set-up is sufficiently secured by ensuring each a share in political power.¹²⁶ This right gets affected when a few make large political donations to secure selective access to those in power. We have already commented on pressure groups that exert such persuasion, within the boundaries of law. However, when money is exchanged as quid pro quo then the line between persuasion and corruption gets blurred.

61. It is in this context that the High Court of Australia in *Jeffery Raymond McCloy and Others v. State of New South Wales and Another*¹²⁷, observes that corruption can be of different kinds. When a wealthy donor makes contribution to

a political party in return of a benefit, it is described as quid pro quo corruption. More subtle corruption arises when those in power decide issues not on merits or the desires of their constituencies, but according to the wishes and desires of those who make large contributions.

This kind of corruption is described as 'clientelism'. This can arise from the dependence¹²⁸ on the financial support of a wealthy patron to a degree that it compromises the expectation, fundamental to representative democracy, that public power will be exercised in public interest. This affects the vitality as well as integrity of the political branches of government. While quid pro quo and clientelistic corruption erodes quality and integrity of government decision making, the power of money may also pose threat to the electoral process itself. This phenomenon is referred to as 'warchest' corruption.¹²⁹

62. In Jefferey Raymond (supra), the High Court of Australia had referred to the decision of the Supreme Court of Canada in Harper v. Canada (Attorney General)¹³⁰, which upheld the legislative restriction on electoral advertising. In Harper (supra), the Supreme Court of Canada has held that the State can provide a voice to those who otherwise might not be heard and the State can also restrict voices that dominate political discourse so that others can be heard as well.

63. The Supreme Court of the United States in Buckley v. R Valeo¹³¹ has commented on the concern of quid pro quo arrangements and its dangers to a fair and effective government. Improper influence erodes and harms the confidence in the system of representative government. Contrastingly, disclosure provides the electorate with information as to where the political campaign money comes from and how it is spent. This helps and aides the voter in evaluating those contesting elections.

It allows the voter to identify interests which candidates are most likely to be responsive to, thereby facilitating prediction of future performance in office. Secondly, it checks actual corruption and helps avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. Relying upon Grosjean v. American Press Co.¹³², it holds that informed public opinion is the most potent of all restraints upon misgovernment. Thirdly, record keeping, reporting and disclosure are essential means of gathering data necessary to detect violations of contribution limitations.

64. In Nixon, Attorney General of Missouri, et al v. Shrink Missouri Government PAC et al,¹³³ the Supreme Court of the United States observes that large contributions given to secure a political quid pro quo undermines the system of representative democracy. It stems public awareness of the opportunities for abuse inherent in a regime of large contributions. This effects the integrity of the

electoral process not only in the form of corruption or quid pro quo arrangements, but also extending to the broader threat of the beneficiary being too compliant with the wishes of large contributors.

65. Recently, a five judge Constitution Bench of this Court in *Anoop Baranwal v. Union of India*¹³⁴ has highlighted the importance of purity of electoral process in the following words:

"215. Without attaining power, men organised as political parties cannot achieve their goals. Power becomes, therefore, a means to an end. The goal can only be to govern so that the lofty aims enshrined in the directive principles are achieved while observing the fundamental rights as also the mandate of all the laws. What is contemplated is a lawful Government. So far so good. What, however, is disturbing and forms as we understand the substratum of the complaints of the petitioner is the pollution of the stream or the sullyng of the electoral process which precedes the gaining of power. Can ends justify the means?

216. There can be no doubt that the strength of a democracy and its credibility, and therefore, its enduring nature must depend upon the means employed to gain power being as fair as the conduct of the Government after the assumption of power by it. The assumption of power itself through the electoral process in the democracy cannot and should not be perceived as an end. The end at any rate cannot justify the means.

The means to gain power in a democracy must remain wholly pure and abide by the Constitution and the laws. An unrelenting abuse of the electoral process over a period of time is the surest way to the grave of the democracy. Democracy can succeed only insofar as all stakeholders uncompromisingly work at it and the most important aspect of democracy is the very process, the electoral process, the purity of which alone will truly reflect the will of the people so that the fruits of democracy are truly reaped.

217. The essential hallmark of a genuine democracy is the transformation of the "Ruled" into a citizenry clothed with rights which in the case of the Indian Constitution also consist of fundamental rights, which are also being freely exercised and the concomitant and radical change of the ruler from an "Emperor" to a public servant. With the accumulation of wealth and emergence of near monopolies or duopolies and the rise of certain sections in the Media, the propensity for the electoral process to be afflicted with the vice of wholly unfair means being overlooked by those who are the guardians of the rights of the citizenry as declared by this Court would spell disastrous consequences."

66. The Law Commission of India in its 255th Report noted the concern of financial superiority translating into electoral advantage.¹³⁵ It was observed that lobbying and capture give undue importance to big donors and certain interest groups, at the expense of the ordinary citizen, violating "the right of equal participation of each citizen in the polity."¹³⁶ While noting the candidate-party dichotomy in the regulations under Section 77 of the Representation of the People Act, 1951, the Law Commission of India recommends to require candidates to maintain an account of contributions received from their political party (not in cash) or any other permissible donor.

67. At this stage, we would like to refer to the data as available on the website of the ECI and the data submitted by the petitioners for a limited purpose and objective to support our reasoning while applying balancing. We have not stricto sensu applied proportionality as the data is not sufficient for us. I also clarify that we have not opened the sealed envelope given by the ECI pursuant to the directions of this Court dated 02.11.2023.

68. An analysis of the annual audit reports of political parties from 2017- 18 to 2022-23 showcases party-wise donations received through the Bonds as reproduced below:

PARTY-WISE DONATION THROUGH BONDS (IN RS. CR)

Party	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
BJP	210.00	1,450.890	2,555.000	22.385	1,033.7000	1294.1499
INC	5.00	383.260	317.861	10.075	236.0995	171.0200
AITC	0.00	97.280	100.4646	42.000	528.1430	325.1000
NCP	0.00	29.250	20.500	0.000	14.0000	--
TRS	0.00	141.500	89.153	0.000	153.0000	--
TDP	0.00	27.500	81.600	0.000	3.5000	34.0000
YSR-C	0.00	99.840	74.350	96.250	60.0000	52.0000
BJD	0.00	213.500	50.500	67.000	291.0000	152.0000
DMK	0.00	0.000	45.500	80.000	306.0000	185.0000
SHS	0.00	60.400	40.980	0.000	--	--
AAP*	0.00	--	17.765	5.950	25.1200	45.4500
JDU	0.00	0.000	13.000	1.400	10.0000	--
SP	0.00	0.000	10.840	0.000	3.2100	0.0000
JDS	6.03	35.250	7.500	0.000	0.0000	--
SAD	0.00	0.000	6.760	0.000	0.5000	0.0000
AIADMK	0.00	0.000	6.050	0.000	0.0000	0.0000
RJD	0.00	0.000	2.500	0.000	0.0000	--
JMM	0.00	0.000	1.000	0.000	0.0000	--
SDF	0.00	0.500	0.000	0.000	0.0000	0.0000

MGP	0.00	0.000	0.000	0.000	0.5500	--
TOTAL	221.03	2,539.170	3,441.324	325.060	2,664.8225	--

Asterisk (*) means that the AAP had declared their donations through Bonds/Electoral Trust, but the party had not declared a separate amount for Bonds.

69. It is clear from the available data that majority of contribution through Bonds has gone to political parties which are ruling parties in the Centre and the States. There has also been a substantial increase in contribution/donation through Bonds.

70. Petitioner no. 1 - Association for Democratic Reforms has submitted the following table which showcases party-wise donation by corporate houses to national parties:

PARTY-WISE CORPORATE DONATION (NATIONAL PARTIES) (IN RS. Cr)

Party	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	Total
BJP	515.50 0	400.20 0	698.14 0	720.40 7	416.79 4	548.80 8	3,299.850 0
INC	36.060	19.298	127.60 2	133.04 0	35.890	54.567	406.4570
NCP	6.100	1.637	11.345	57.086	18.150	15.280	109.5980
CPI(M)	3.560	0.872	1.187	6.917	9.815	6.811	29.1615
AITC	2.030	0.000	42.986	4.500	0.000	0.250	49.7660
CPI	0.003	0.003	0.000	0.000	0.000	0.000	0.0055
BSP	0.000	0.000	0.000	0.000	0.000	0.000	0.0000
TOTAL	563.25	422.01	881.26	921.95	480.64	625.71	3,894.838
L	3	0	0	0	9	6	0

As per the said table, the data shows that the party-wise donation by the corporate houses has been more or less stagnant from the years 2016-17 to 2021-22. We do not have the comments or official details in this regard from the Union of India or the ECI. The figures support our conclusion, but I would not, without certainty, base my analysis on these figures. However, we do have data of denomination/sale of Bonds, as submitted by the petitioners, during the 27 phases from March 2018 to July 2023, which is as under:

DENOMINATION WISE SALE OF EB DURING 27 PHASES (MARCH, 2018-JULY, 2023)

Denomination	No. of Electoral Bonds Sold	Amount (In Rupees)
1 Crore	12,999 (54.13%)	12,999 Crore (94.25%)
10 Lakhs	7,618 (31.72%)	761.80 Crore (5.52%)
1 Lakh	3,088 (12.86%)	30.88 Crore (0.22%)
10 Thousand	208 (0.86%)	20.80 Lakh (0.001%)
1 Thousand	99 (0.41%)	99,000
Total	24,012	13791.8979 Cr.

Analysis of this data shows that more than 50% of the Bonds in number, and 94% of the Bonds in value terms were for Rs.1 crore. This supports our reasoning and conclusion on the application of the doctrine of proportionality. This is indicative of the quantum of corporate funding through the anonymous Bonds.

71. The share of income from unknown sources for national parties rose from 66% during the years 2014-15 to 2016-17 to 72% during the years 2018-19 to 2021-22. Between the years 2019-20 to 2021- 22 the Bond income has been 81% of the total unknown income of national parties. The total unknown income, that is donations made under Rs.20,000/-, sale of coupons etc. has not shown ebbing and has substantially increased from Rs.2,550 crores during the years 2014-15 to 2016-17 to Rs.8,489 crores during the years 2018-19 to 2021-22.

To this we can add total income of the national political parties without other known sources, which has increased from Rs.3,864 crores during the years 2014-15 to 2016-17 to Rs.11,829 crores during the years 2018-19 to 2021-22. The Bonds income between the years 2018-19 to 2021-22 constitutes 58% of the total income of the national political parties.¹³⁷

72. Based on the analysis of the data currently available to us, along with our previous observation asserting that voters' right to know supersedes anonymity in political party funding, I arrive at the conclusion that the Scheme fails to meet the balancing prong of the proportionality test. However, I would like to reiterate that I have not applied proportionality *stricto sensu* due to the limited availability of data and evidence.

73. I respectfully agree with the reasoning and the finding recorded by Hon'ble the Chief Justice, holding that the amendment to Section 182 of the Companies Act, deleting the first proviso thereunder should be struck down. While doing so, I would rather apply the principle of proportionality which, in my opinion, would subsume the test of manifest arbitrariness.¹³⁸

In addition, the claim of privacy by a corporate or a company, especially a public limited company would be on very limited grounds, restricted possibly to protect the privacy of the individuals and persons responsible for conducting the business

and commerce of the company. It will be rather difficult for a public (or even a private) limited company to claim a violation of privacy as its affairs have to be open to the shareholders and the public who are interacting with the body corporate/company. This principle would be equally, with some deference, apply to private limited companies, partnerships and sole proprietorships.

74. In consonance with the above reasoning and on application of the doctrine of proportionality, proviso to Section 29C(1) of the Representation of the People Act 1951, Section 182(3) of the Companies Act 2013 (as amended by the Finance Act 2017), Section 13A(b) of the Income Tax Act 1961 (as amended by the Finance Act 2017), are held to be unconstitutional. Similarly, Section 31(3) of the RBI Act 1934, along with the Explanation enacted by the Finance Act 2017, has to be struck down as unconstitutional, as it permits issuance of Bonds payable to a bearer on demand by such person.

75. The petitioners have not argued that corporate donations should be prohibited. However, it was argued by some of the petitioners that coercive threats are used to extract money from businesses as contributions virtually as protection money. Major opposition parties, which may come to power, are given smaller amounts to keep them happy.

It was also submitted that there should be a cap on the quantum of donations and the law should stipulate funds to be utilised for political purposes given that the income of the political parties is exempt from income tax. Lastly, suggestions were made that corporate funds should be accumulated and the corpus equitably distributed amongst national and regional parties. I have not in-depth examined these aspects to make a pronouncement. However, the issues raised do require examination and study.

76. By an interim order dated 26.03.2021, this Court in the context of contributions made by companies through Bonds had prima facie observed that the voter would be able to secure information about the funding by matching the information of aggregate sum contributed by the company as required to be disclosed under Section 182(3) of the Companies Act, as amended by the Finance Act 2017, with the information disclosed by the political party. Dr. D.Y. Chandrachud, Hon'ble the Chief Justice, rightly observes in his judgment that this exercise would not reveal the particulars of donations, including the name of the donor.

77. By the order dated 02.11.2023, this Court had asked for ECI's compliance with the interim order of this Court dated 12.04.2019. Relevant portion whereof is reproduced below:

"In the above perspective, according to us, the just and proper interim direction would be to require all the political parties who have received donations through Electoral Bonds to submit to the Election Commission of India in sealed cover, detailed particulars of the donors as against the each Bond; the amount of each such bond and the full particulars of the credit received against each bond, namely, the particulars of the bank account to which the amount has been credited and the date of each such credit."

The intent of the order dated 12.04.2019 is that the ECI will continue to maintain full particulars of the donors against each Bond; the amount of each such Bond and the full particulars of the credit received against each Bond, that is, the particulars of the bank account to which the amount has been credited and the date of each such credit. This is clear from paragraph 14 of the order dated 12.04.2019 which had directed that the details mentioned in paragraph 13 of the order dated 12.04.2019 will be furnished forthwith in respect of the Bonds received by a political party till the date of passing of the order.

78. In view of the findings recorded above, I would direct the ECI to disclose the full particular details of the donor and the amount donated to the particular political party through Bonds. I would restrict this direction to any donations made on or after the interim order dated 12.04.2019. The donors/purchasers being unknown and not parties, albeit the principle of lis pendens applies, and it is too obvious that the donors/purchasers would be aware of the present litigation. Hence, they cannot claim surprise.

79. I, therefore, respectfully agree and also conclude that:

(i) the Scheme is unconstitutional and is accordingly struck down;

(ii) proviso to Section 29C(1) of the Representation of the People Act, Section 182(3) of the Companies Act, 2013, and Section 13A(b) of the Income Tax Act, 1961, as amended by the Finance Act, 2017, are unconstitutional, and are struck down;

(iii) deletion of proviso to Section 182(1) to the Companies Act of 2013, thereby permitting unlimited contributions to political parties is unconstitutional, and is struck down;

(iv) sub-section (3) to Section 31 of the RBI Act, 1934 and the Explanation thereto introduced by the Finance Act, 2017 are unconstitutional, and are struck down;

(v) the ECI will ascertain the details from the political parties and the State Bank of India, which has issued the Bonds, and the bankers of the political parties and

thereupon disclose the details and names of the donor/purchaser of the Bonds and the amounts donated to the political party. The said exercise would be completed as per the timelines fixed by the Hon'ble the Chief Justice;

(vi) Henceforth, as the Scheme has been declared unconstitutional, the issuance of fresh Bonds is prohibited;

(vii) In case the Bonds issued (within the validity period) are with the donor/purchaser, the donor/purchaser may return them to the authorised bank for refund of the amount.

In case the Bonds (within the validity period) are with the donee/political party, the donee/political party will return the Bonds to the issuing bank, which will then refund the amount to the donor/purchaser. On failure, the amount will be credited to the Prime Ministers Relief Fund.

80. The writ petitions are allowed and disposed of in the above terms.

.....J. (Sanjiv Khanna)

New Delhi;

February 15, 2024.

Annexure - A

Standards of Review - Proportionality & Alternatives

Proportionality is a standard-based model. It allows factual and contextual flexibility to judges who encounter diverse factual scenarios to analyse and decide the outcome of factual clashes against the standards. Proportionality, particularly its balancing prong, has been criticized by jurists who contend that legal adjudication should be rule-based rather than principle-based.¹³⁹

They argue that this provides legal certainty by virtue of rules being definitive in nature. In response, jurists in favour of balancing contend that neither rules nor principles are definitive but rather prima facie.¹⁴⁰ Therefore, both rights and legislations/policies are required to be balanced and realized to the optimum possible extent.

This jurisprudential clash is visible in the various forms and structures of adoptions of proportionality. Generally, two models can be differentiated from works of jurists.

1) **Model I** - Firstly, the traditional two stages of the means-end comparison is applied. After having ascertained the legitimate purpose of the law, the judge asks whether the imposed restriction is a suitable means of furthering this purpose (rational connection). Additionally in this model, the judge ascertains whether the restriction was necessary to achieve the desired end. The reasoning focuses on whether a less intrusive means existed to achieve the same ends (minimal impairment/necessity).

2) **Model II** - This model adds a fourth step to the first model, namely the balancing stage, which weighs the seriousness of the infringement against the importance and urgency of the factors that justify it.

In the table provided below, we have summarised the different models of proportionality and its alternatives, as propounded by jurists and adopted by courts internationally. We have also summarized other traditional standards of review like the means-ends test and Wednesbury unreasonableness for contextual clarity. In the last column we have captured the relevant criticisms, as propounded by jurists, to each such model.

Test/Model	Scope of Test/Model	Jurisdictions Applied	Criticism
Four-stage Proportionality	<p>In this model, all the four prongs of proportionality test are employed, including the final balancing stage.</p> <p>According to Robert Alexy, values and interests (rights of citizens and objects of legislations/policies) are both principles and principles are optimization requirements.¹⁴¹</p> <p>They are norms and hence their threshold of satisfaction is not</p>	<p>Germany</p> <p>Balancing was adopted by the German Constitutional Court in the 1950s as a new methodology for intensive judicial review of rights-restricting legislation. It stems from the belief that the German Constitution posits an original idea of values, and the government</p>	<p>The main premise of the criticisms of balancing is the wide discretion available to judges.</p> <p>To capture three contemporary criticisms in brief: (i) it leads to a comparison of incommensurable values;¹⁴³ (ii) it fails to create predictability in the legal system and is potentially dangerous for human rights;¹⁴⁴ and (iii) conversely, it is equally intrusive from the perspective</p>

	<p>strict, and can happen in varying degrees. They must be satisfied to the greatest extent possible in the legal and factual scenarios, as they exist. All stages of the proportionality test therefore seek to optimize relative to what is legally and factually possible.</p> <ul style="list-style-type: none"> • The rational connection and necessity prongs of the proportionality test are applicable to factual possibilities. • The balancing stage optimizes each principle within what is legally possible, by weighing the relevant competing principles. <p>Alexy proposes the 'weight formula', which quantifies competing values</p>	<p>and courts, both have a duty to realise these values.¹⁴²</p>	<p>of separation of powers.¹⁴⁵</p>
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	<p>(rights of individuals) and interests (objective of legislation/policy) by reducing them to numbers. It is a method of thinking about conflicting values/interests.</p> <p>W1.2 = $(I1 \cdot W1 \cdot R1) / (I2 \cdot W2 \cdot R2)$</p> <ul style="list-style-type: none"> • W1.2 represents the concrete weight of principle P1 relative to the colliding principle P2. • I1 stand for intensity of interference with P1. I2 stands for importance of satisfying the colliding principle P2. • W1 and W2 stand for abstract weights of colliding principles (P1 and P2). • When abstract weights are equal, as in 		
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	<p>case of collision of constitutional rights (W1 and W2) - they cancel each other out.</p> <ul style="list-style-type: none"> • R1 and R2 stands for reliability of empirical and normative assumptions with regard to the question of how intensive the interpretation is. <p>The weight formula is thereupon reduced to numbers on an exponential scale of 2.</p> <p>(i) The scale assigns following values to intensity of interference (I) and abstract weights (W)- light (l), moderate (m), and serious (s) - in numbers these are - 20, 21, 22 - i.e., 1, 2 and 4 respectively.</p> <p>(ii) To reliability (R), i.e., the</p>		
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	epistemic side, the values assigned are - reliable (r), plausible (p) and not evidently false (e) - in numbers these are - 20, 2-1, 2-2 - i.e., 1, 0.5 and 0.25		
Three-stage Proportionality	<p>This model proposes limiting the proportionality enquiry to its first three prongs, i.e., minus the balancing stage. Von Bernstorff argues against ad hoc balancing based on two principal reasons:</p> <p>(i) ad hoc balancing fails to erect stable and predictable standards of human rights protection, allowing even the most intensive infringements of civil liberties to be conveniently balanced out of existence when the stakes are high enough; and</p> <p>(ii) the lack of predictability leads to a situation where every act of parliament is threatened, however</p>	Canada	<p>(i) In absence of the balancing stage, the courts must be mindful of certain analytical weaknesses of the necessity stage that can be dealt with at the balancing stage.¹⁵²</p> <p>(ii) The core of the necessity test is whether an alternate measure is as effective in achieving the purpose as the measure under challenge, while being less restrictive. But often, considerations of balancing may become disguised in the necessity prong, as the court must confront uncertainty in weighing the efficacy of the alternatives.¹⁵³</p> <p>(iii) Some jurists/courts have suggested a strict</p>

	<p>well intentioned, in the judicial balancing exercise and thus ad hoc balancing is potentially overly intrusive from a separation of powers perspective.¹⁴⁶</p> <p>He, however, defends the use of judicially established bright-line rules for specific cases where intensive interferences are at stake. The bright line rule brings clarity to a law or regulation that could be interpreted in multiple ways. Bright line rules constitute the 'core', 'substance' or 'essence' of a particular right, making human rights categorical instead of open-ended in nature.</p> <p>A stricter evaluation of evidence becomes crucial at the necessity stage for an objective standard of review, in contrast to ad hoc</p>	<p>interpretation of necessity, where an alternate measure is only accepted as less restrictive when they prove to be as effective as the measure under challenge.</p> <p>David Bilchitz has also proposed that other alternatives must have both characteristics - equal realization of the purpose and lesser invasion/restriction on the right in question.¹⁵⁴</p> <p>David Blichitz's approach was followed in Aadhar (5J) (Privacy) (supra) case. This test was referenced in Anuradha Bhasin (supra), which applied a moderate interpretation of the necessity test. To conclude the findings of the necessity stage this Court in Anuradha Bhasin (supra) suggests that an overall comparison be undertaken between the measure and its feasible alternatives.</p>
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	<p>balancing. In Canada for instance, the onus of proof is on the person seeking to justify the limit, which is generally the government.¹⁴⁷</p> <ul style="list-style-type: none"> • The standard of proof is the civil standard or balance of probabilities.¹⁴⁸ • Where scientific or social science evidence is available, it will be required; • However, where such evidence is inconclusive, or does not exist and cannot be developed, reason and logic may suffice.¹⁴⁹ 		
Means-ends Test	<p>The doctrine is similar to a reasonableness inquiry, albeit with some variation.</p> <p>In Australia, for instance, courts</p>	<p>Australia</p> <p>The test was followed in Australia before the development of proportionality</p>	<p>The test is simplistic and gives limited judicial flexibility. It does not account for diverse factual scenarios.</p>

	enquire whether a law is 'reasonably appropriate and adapted' to achieving a legitimate end in a manner compatible with the constitutionally prescribed system of representative and responsible government.	and is not frequently used in contemporary times.	
Calibrated Scrutiny (evolved means-ends test)	<p>The essential elements of the approach are as follows:¹⁵⁵</p> <ul style="list-style-type: none"> • First, a judge determines the nature and intensity of the burden on the right by the challenged law; • Second, the judge calibrates 'the appropriate level of scrutiny to the risk posed to maintenance of the constitutionally prescribed system of representative and responsible 	<p>Australia</p> <p>While proportionality is the predominant doctrine in Australia, this alternate test is applied by a few judges. These judges raise concerns about the application of a test of structured proportionality and suggest that it was best understood as 'a tool' of analysis, or 'a means of setting out steps to a conclusion', 'not a constitutional doctrine'.</p>	<p>Critics of this approach have emphasized that it takes away from the flexibility that is required while considering factually diverse legal challenges. Therefore, the test cannot substitute a contextually guided judicial approach.¹⁵⁶</p>

	<p>government;</p> <ul style="list-style-type: none">• Third, the judge isolates and assesses the importance of constitutionally permissible purpose of the prohibition; and• Finally the judge applies the appropriate level of scrutiny so as to determine whether the challenged law is justified as reasonably appropriate and adapted to achieve that purpose in a manner compatible with the maintenance of the constitutionally prescribed system of government, The test is similar to some prongs of the		
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	<p>proportionality test. However, it is more rule oriented instead of being standard/principle oriented.</p>		
<p>Strict Scrutiny Test</p>	<p>This is considered one of the heightened forms of judicial review that can be used to evaluate the constitutionality of laws, regulations, or other governmental policies under legal challenge.¹⁵⁷</p> <p>Strict scrutiny is employed in cases of violation of the most fundamental liberties guaranteed to citizens in the United States of America. For instance, it is employed in cases of infringements on free speech.</p> <p>The test places the burden on the government to show a compelling, or strong interest in the law, and that the law is either very</p>	<p>United States of America</p> <p>The courts in the United States use a tiered approach of review with strict scrutiny, intermediate scrutiny and rational basis existing in decreasing degree of intensity.</p>	<p>Only a limited number of laws survive under the strict scrutiny test. Its application is reserved for instances where the most intensely protected fundamental rights are affected.</p>

	<p>narrowly tailored or is the least speech-restrictive means available to the government.</p> <p>The usual presumption of constitutionality is removed, and the law must also pass the threshold of both - necessity/end and means.</p>		
Unreasonableness / Wednesbury Principles	<p>A standard of unreasonableness is used for the judicial review of a public authority's decision. A reasoning or decision is unreasonable (or irrational) when no person acting reasonably could have arrived at it.</p> <p>This test has two limbs: (i) The court is entitled to investigate the action to check whether the authority has considered and decided on matters which they ought not to have considered, or conversely, have refused to consider or neglected to</p>	<p>Associated Provincial Picture Houses Ltd v. Wednesbury Corporation¹⁵⁸</p>	<p>The test is simplistic and is traditionally only used for policies/administrative decisions/delegated legislation.</p>

	<p>consider matters which they ought to have considered.</p> <p>(ii) If the above query is answered in favour of the local authority, it may be held that, although the local authority has ruled on matters which they ought to have considered, the conclusion they have arrived at is nonetheless so unreasonable that no reasonable authority could ever have arrived at it.</p>		
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Please note that:-

(i) The above table briefly summarises the different standards of constitutional review and it does not elaborate on the said tests in detail;

(ii) the theories propounded by the jurists are not followed in toto across the jurisdictions and this has been pointed out appropriately; and

(iii) the table does not provide an exhaustive account of the full range of standards of review employed internationally and is restricted to the tests identified therein. __

1 The Companies (Amendment) Act 1960, s 100 inserted into the Companies Act 1956, s 293A which stipulates that contributions to political parties cannot exceed 5% of the average net profit of the company during the three immediately preceding financial years.

2 The Companies (Amendment) Act 1969, s 3 substituted of the Companies Act 1956, s 293A introducing a ban on contributions to political parties.

3 The Companies (Amendment) Act 1985, s 2 replaced of the Companies Act 1956, s 293A bringing back the 5% cap on contributions to political parties.

4 The Companies Act 1956, s 293A.

5 For short, the "Board".

6 Second proviso to Section 293A(2), Companies Act, 1956.

7 As originally enacted.

8 Unamended second proviso to Section 182(1) of the Companies Act, 2013. This condition continues to remain.

9 Unamended first proviso to Section 182(1) of the Companies Act, 2013.

10 Unamended Section 182(3) of the Companies Act, 2013.

11 For short, "RBI".

12 For short, "Bonds".

13 First proviso to Section 182(1), Companies Act, 2013 has been omitted vide the Finance Act, 2017.

14 Section 182(3) of the Companies Act, 2013.

15 For short, "ECS".

16 Section 182(3A) of the Companies Act, 2013 was introduced vide Section 154 of the Finance Act, 2017.

17 As amended in 1978.

18 First proviso 1(a) to the unamended Section 13A of the Income Tax Act, 1961.

19 Second proviso to the unamended Section 13A of the Income Tax Act, 1961.

20 Third proviso to Section 13A Income Tax Act, 1961.

21 See Section 37 of the Income Tax Act, 1961.

22 Second proviso to Section 13A of the Income Tax Act, 1961.

23 Fourth proviso to Section 13A of the Income Tax Act, 1961.

24 Introduced vide Section 2, Election and Other Related Laws (Amendment) Act, 2003.

25 For short, "ECI".

26 Proviso to Section 29C(1) of the Representation of the People Act, 1951.

27 For short, "the Scheme".

28 Finance Act, 2017 has also amended and added Section 31(3) to the RBI Act, 1934 as the Bonds in question are bearer bonds like Indian currency. However, we do not think this amendment is required to be separately adjudicated as it merely effectuates the Bonds scheme.

29 Paragraph 2(a) of the Scheme.

30 Ibid.

31 Paragraph 2(d) of the Scheme defines a 'person' to include an individual, Hindu undivided family, company, firm, an association of persons or body of individuals, whether incorporated or not. It also includes every artificial judicial person and any agency, office or branch owned by such 'person'.

32 Paragraph 3(1) of the Scheme.

33 Paragraph 3(2) of the Scheme.

34 Paragraph 5 of the Scheme.

35 Paragraph 6 of the Scheme.

36 Paragraph 12(2) of the Scheme.

37 Paragraph 7(6) of the Scheme.

38 Paragraph 7 of the Scheme.

39 Paragraph 2(b) of the Scheme defines an authorized bank as the State Bank of India and its specified branches.

40 For short, "KYC".

41 Paragraph 4 of the Scheme.

42 Paragraph 11 of the Scheme.

43 Paragraph 7(4) of the Scheme.

44 Ibid.

45 Paragraph 3(3) of the Scheme.

46 Paragraph 3(4) of the Scheme.

47 Paragraph 8(1) of the Scheme.

48 Paragraph 8(2) of the Scheme.

49 Paragraph 14 of the Scheme.

50 Paragraph 12 of the Scheme.

51 Paragraph 13 of the Scheme.

52 For short, "the Constitution".

53 The Finance Act, 2017 was introduced and passed as a money bill by the Parliament under Article 110 of the Constitution.

54 Rojer Matthew v. South Indian Bank Ltd. and Ors., Civil Appeal No. 8588 of 2019.

55 (2019) 4 SCC 17.

56 (2019) 8 SCC 416.

57 R.K. Garg v. Union of India and Others, (1981) 4 SCC 675.

58 Ibid. See also Bhavesh D. Parish and Others v. Union of India and Others, (2000) 5 SCC 471, and Directorate General of Foreign Trade and Others v. Kanak Exports and Another, (2016) 2 SCC 226.

59 R. v. Oakes, (1986) 1 S.C.R. 103.

60 See Libman v. Quebec (A.G.), [1997] 3 S.C.R. 569; RJR-MacDonald Inc. v. Canada (Attorney General), [1995] 3 S.C.R. 199; Thomson Newspapers Co. v. Canada (A.G.), [1998] 1 S.C.R. 877; R. v. Sharpe, [2001] 1 S.C.R. 45; Harper v. Canada (A.G.), [2004] 1 S.C.R. 827, at paragraph 77; R. v. Bryan, [2007] 1 S.C.R. 527, at paragraphs 16-19, 29; Mounted Police Association of Ontario v. Canada (Attorney General), [2015] 1 S.C.R. 3, at paragraphs 143-144.

61 Article 326, Constitution.

62 Union of India v. Association for Democratic Reforms and Another, (2002) 5 SCC 294, and People's Union of Civil Liberties (PUCL) and Another v. Union of India and Another, (2003) 4 SCC 399.

63 Ibid.

64 The Representation of the People Act, 1951 permits candidates not set up by a recognized political party, that is independent candidates, to contest elections as well.

65 Under Explanation 1 to Section 77 of the Representation of the People Act, 1951, the expenditure incurred by 'leaders of political parties' on account of travel for propagating the programme of the political party, is not deemed to be election expenditure.

66 See observations of this court in Kanwar Lal Gupta v. Amar Nath Chawla & Ors., (1975) 3 SCC 646.

67 This function is elaborated as to "produce preferences, opinions, and decisions that are appropriately informed by facts and logic and are the outcome of substantive and meaningful consideration of relevant reasons(...). Because the topics of these deliberations are issues of common concern, epistemically well-grounded preferences, opinions, and decisions must be informed by, and take into consideration, the preferences and opinions of fellow citizens", Jane Mansbridge and others, 'A Systemic Approach to Deliberative Democracy' in John Parkinson and Jane Mansbridge (eds), *Deliberative Systems* (1st edn, Cambridge University Press 2012) 11.

68 Ibid at 12.

69 James S Fishkin, *When the People Speak: Deliberative Democracy and Public Consultation* (Oxford University Press 2011) 33- 34.

70 This is equally important from the perspective of the test of proportionality.

71 See K.S. Puttaswamy and Anr. v. Union of India and Ors. (9J) (Privacy), (2017) 10 SCC 1.

72 Paragraph 7(4) of the Scheme.

73 See Arun Jaitley, 'Why Electoral Bonds Are Necessary', Press Information Bureau, 2018.

74 See Aharon Barak, "Proportionality - Constitutional Rights and their Limitations", Cambridge University Press, 2012.

75 (2016) 7 SCC 353.

76 In Gujarat Mazdoor Sabha and Another v. State of Gujarat, (2020) 10 SCC 459, the Court added fifth prong to proportionality test. It stipulated that the state should provide sufficient safeguards against the abuse of such restriction. This was relied upon in Ramesh Chandra Sharma and Others v. State of U.P. and Others, 2023 SCC OnLine SC 162.

77 (2019) 1 SCC 1.

78 See David Bilchitz, "Necessity and Proportionality: Towards a Balance Approach?", (Hart Publishing, Oxford and Portland, Oregon 2016). Also see Aparna Chandra, "Proportionality: A Bridge to Nowhere?", (Oxford Human Rights Journal 2020).

79 (2020) 3 SCC 637.

80 Anuradha Bhasin (supra) at paragraph 71.

81 Dr. Justice D.Y. Chandrachud was in minority in K.S. Puttaswamy (Aadhaar) (supra), albeit his observations on the objective of the second prong of rational connection are good and in consonance with the law on the subject.

82 We will be referring to certain facets of the proportionality enquiry employed by these countries in our judgment. The test is also employed in various other jurisdictions like Israel, New Zealand, and the European Union.

83 See David Bilchitz at supra note 76.

84 In Anuradha Bhasin (supra), the Court stipulated the following requirement for a conclusion of findings on the necessity prong: "A judgment must be made whether the government measure is the best of all feasible alternatives, considering both the degree to which it realises the government objective and the degree of impact upon fundamental rights."

85 See Jochen von Bernstorff, Proportionality Without Balancing: Why Judicial Ad Hoc Balancing is Unnecessary and Potentially Detrimental to Realisation of Collective and Individual Self Determination, Reasoning Rights - Comparative Judicial Engagement, (Ed. Liaora Lazarus); Bernhard Schlink, 'Abwägung im Verfassungsrecht', Duncker & Humblot, 1976, and Francisco J. Urbina, 'Is It

Really That Easy? A Critique of Proportionality and Balancing as Reasoning' Canadian Journal of Law and Jurisprudence, 2014.

86 According to Robert Alexy, the 'Law of Balancing' is as follows: "the greater the degree of nonsatisfaction of, or detriment to, one principle, the greater must be the importance of satisfying the other." See Robert Alexy, *A Theory of Constitutional Rights* (Julian Rivers, trans. Oxford Univ. Press 2002).

87 For instance, in Canada, where the doctrine of proportionality is employed by courts, a cabinet directive requires the standard to be incorporated into law-making. These guidelines stipulate that prior to enactment of laws, the matter and its alternate solutions must be analysed, the relevant ministerial department should engage in consultation with those who have an interest in the matter, and they should analyse the impact of the proposed solution. See *Cabinet Directive on Law-making in Guide to Making Federal Acts and Regulations* (2nd edn, Government of Canada).

88 The first and second steps, legitimate aim and rational connection prong, and to some extent necessity prong, are factual.

89 See Article 1 and 20, Basic Law for the Federal Republic of Germany.

90 Niels Petersen, 'Proportionality and judicial Activism: Fundamental Rights Adjudication in Canada, Germany and South Africa, (CUP 2017).

91 Ibid.

92 See Annexure A.

93 See Yun-chien Chand & Peng-Hsiang Wang, *The Empirical Foundation of Normative Arguments in Legal Reasoning* (Univ. Chicago Coase-Sandor Inst. For L. & Econ., Res. Paper No. 745, 2016).

94 Lee Epstein & Andrew D. Martin, *An Introduction to Empirical Legal Research* 6 (2014).

95 See Joshua B. Fischman, Reuniting "Is" and "Ought" in Empirical Legal Scholarship, 162 U. Pa. L. Rev. 117 (2013).

96 Marilyn Strathern, *Improving Ratings: Audit in the British University System*, European review, Vol. 5 Issue 3, pp. 305-321 (1997).

97 Annexure A should not be read as an opinion of this Court or even as obiter dicta expressed by this Court. The Annexure is only for the purpose of pointing out different viewpoints on the test of proportionality.

98 See paragraph 23 of this judgment.

99 See Speech of Arun Jaitley, Minister of Finance, at paragraph 165, Budget 2017-18.

100 Ibid.

101 Section 182(3) of the Companies Act, 2013 requires companies to mention the total political contributions made.

102 Paragraph 4 of the Scheme.

103 In terms of paragraph 2(b) of the Scheme, only State Bank of India and its specified branches are allowed to issue Bonds.

104 Ibid.

105 Paragraph 3(4) of the Scheme.

106 See paragraph 7(4) of the Scheme.

107 Ibid.

108 In *Brown v. Socialist Workers Comm.*, 459 U.S. 87 (1982), the Supreme Court of the United States of America held that disclosure laws requiring the reporting of names and addresses of every campaign contributor could be waived when "specific evidence of hostility, threats, harassment and reprisals" existed, thus adopting a case-by-case approach. Marshall J., delivering the opinion of the court observed that the Socialist Workers Party, a minor political party had historically been the object of harassment by government officials and private parties. Therefore, the court held that the government was prohibited from compelling disclosures from the said party, a minor political party, since there existed a reasonable probability that the compelled disclosures would subject their donors, if identified, to threats, harassment or reprisals.

109 For short, "PMLA".

110 For short, "FATF".

111 Paragraph 3, Section B, International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation - The FATF Recommendations, 2012.

112 See also United Nations General Assembly Resolution A/RES/S-32/1, 02.06.2021, para 12.

113 This is inapplicable to Bonds under proviso (b) to Section 13A of the Income Tax Act, 1961.

114 For short, "Trust Scheme".

115 Similarly, early campaign finance laws in the United Kingdom permitted trusts to donate to political parties. It came to be disallowed since it was contrary to openness and accountability. See Suchindran Bhaskar Narayan and Lalit Panda, Money and Elections - Necessary Reforms in Electoral Finance, Vidhi 2018 at p. 19. See also Lord Neill of Bladen, QC, 'Fifth Report of the Committee on Standards in Public Life: The Funding of Political Parties in the United Kingdom', 1998 pp 61-62.

116 As elaborated in paragraph 27] of this judgement, Anuradha Bhasin (supra) proposes a four subpronged inquiry at the necessity stage of proportionality, that is (MN1) to (MN4). To arrive at the conclusion of the necessity inquiry, this Court has proposed at (MN4) that: "an overall comparison (and balancing exercise) must be undertaken between the measure and the alternatives. A judgment must be made whether the government measure is the best of all feasible alternatives, considering both the degree to which it realises the government objective and the degree of impact upon fundamental rights (the comparative component)."

117 [2004] 2 AC 457.

118 [2005] 1 AC 593.

119 [2005] EWHC 1564 (Fam).

120 Rustom Cavasjee Cooper v. Union of India, (1970) 1 SCC 248; K.S. Puttaswamy (9J) (Privacy) (supra), and Maneka Gandhi v. Union of India and Another, (1978) 1 SCC 248.

121 The test of single proportionality will apply.

122 See paragraphs 191 to 195 of the Hon'ble Chief Justice's judgment.

123 While giving the aforesaid finding, we are applying the single proportionality test.

124 See *Bernstein and Ors. v. Bester NO and Others*, (1996) ZACC 2, para 67.

125 *My Vote Counts NPC v. President of the Republic of South Africa and Ors.* (2017) ZAWCHC 105, para 67.

126 Harrison Moore, *The Constitution of the Commonwealth of Australia*, p.329 (1902).

127 (2015) HCA 34.

128 James Madison in the Federalist Paper No. 52 notes that a government must "depend on the people alone". This condition, according to Professor Lawrence Lessig, has two elements - first, it identifies a proper dependency ("on the people") and second, it describes that dependence as exclusive ("alone").

129 See *Federal Election Commission v. National Right to Work Committee*, 459 U.S. 197 (1982), where the petitioners submitted: "substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization should not be converted into political "war chests" which could be used to incur political debts from legislators who are aided by the contributions."

130 [2004] 1 SCR 827.

131 424 U.S. 1 (1976).

132 297 U.S. 233 (1936).

133 528 U.S. 377 (2000).

134 (2023) 6 SCC 161.

135 Law Commission of India, *Electoral Reforms*, Report No. 255, March 2015.

136 *R.C.Poudyal v. Union of India and Others*, (1994) Supp 1 SCC 324.

137 "Parties' unknown income rise despite electoral bonds", *The Hindu*, 02.11.2023, pg.7.

138 The proportionality test, as adopted and applied by us, essentially checks, invalidates and does not condone manifest arbitrariness. Proportionality analysis recognizes the thread of reasonableness which is the underlying principle behind the first three prongs, legitimate aim, rational connection and necessity test. The

balancing analysis of the permissible degree of harm for a constitutionally permissible purpose effectuates the guarantee of reasonableness. Therefore, any legislative action which is manifestly arbitrary, would be disproportionate and will fall foul when we apply the principle of proportionality. See also *Shayara Bano v. Union of India*, (2017) 9 SCC 1, where the Court held at paragraph 95, that rationality, logic and reasoning are the triple underpinnings of the test of manifest arbitrariness.

139 Francisco J. Urbina, *A Critique of Proportionality*, *American Journal of Jurisprudence*, Vol 57, 2012. Also see Ronald Dworkin, *Taking Rights Seriously* (Bloomsbury 2013), pp 41-42.

140 Robert Alexy, *A Theory of Constitutional Rights*, (translated by Julian Rivers, first published 2002, OUP 2010), pp. 47-48.

141 See Robert Alexy, *A Theory of Constitutional Rights* (Julian Rivers, trans. Oxford Univ. Press 2002).

142 See Article 1 and 20, Basic Law for the Federal Republic of Germany.

143 See Francisco J. Urbina, 'Is It Really That Easy? A Critique of Proportionality and Balancing as Reasoning' *Canadian Journal of Law and Jurisprudence*, 2014; and Bernhard Schlink, 'Abwägung im Verfassungsrecht', Duncker & Humblot, 1976.

144 Jochen von Bernstorff, *Proportionality Without Balancing: Why Judicial Ad Hoc Balancing is Unnecessary and Potentially Detrimental to Realisation of Collective and Individual Self Determination*, *Reasoning Rights - Comparative Judicial Engagement*, (Ed. Liaora Lazarus);

145 *Ibid.*

146 Jochen von Bernstorff, *Proportionality Without Balancing: Why Judicial Ad Hoc Balancing is Unnecessary and Potentially Detrimental to Realisation of Collective and Individual Self Determination*, *Reasoning Rights - Comparative Judicial Engagement*, (Ed. Liaora Lazarus); Also see Bernhard Schlink, 'Abwägung im Verfassungsrecht', Duncker & Humblot, 1976, pp. 192-219.

147 *R. v. Oakes* [1986] 1 S.C.R. 103.

148 *Oakes* (*supra*).

149 *Libman v. Quebec (A.G.)*, [1997] 3 S.C.R. 569; *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199; *Thomson Newspapers Co. v.*

Canada (A.G.), [1998] 1 S.C.R. 877; R. v. Sharpe, [2001] 1 S.C.R. 45; Harper v. Canada (A.G.), [2004] 1 S.C.R. 827, at paragraph 77; R. v. Bryan, [2007] 1 S.C.R. 527, at paragraphs 16-19, 29; Mounted Police Association of Ontario v. Canada (Attorney General), [2015] 1 S.C.R. 3, at paragraphs 143-144.

150 See Charterpedia, Department of Justice, Government of Canada, available at: <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/check/art1.html>. Also see Niels Petersen (supra).

151 Ibid. Also see Canada (Attorney General) v. JTI-Macdonald Corp., [2007] 2 S.C.R. 610, at paragraph 46; Alberta v. Hutterian Brethren of Wilson Colony, and [2009] 2 S.C.R. 567, at paragraphs 72-78.

152 Niels Petersen, 'Proportionality and judicial Activism: Fundamental Rights Adjudication in Canada, Germany and South Africa, (CUP 2017).

153 Ibid.

154 David Bilchitz, Necessity and Proportionality: Towards a Balance Approach?, (Hart Publishing, Oxford and Portland, Oregon 2016).

155 Judgment by Gagler J. in Clubb v. Edwards, (2019) 93 ALJR 448; Also see Adrienne Stone, Proportionality and its Alternatives, Melbourne Legal Studies Research Paper Series No. 848

156 See John Braithwaite, Rules and Principles: a Theory of Legal Certainty, Australian Journal of Legal Philosophy 47 (2002).

157 See Jennifer L. Greenblatt, Putting the Government to the (Heightened, Intermediate, or Strict) Scrutiny Test: Disparate Application Shows Not All Rights and Powers Are Created Equal, (2009) 10 Fla Coastal L Rev 421.

158 (1948) 1 KB 223.

IN THE SUPREME COURT OF INDIA

Mohd Abaad Ali & Anr.

Vs.

Directorate of Revenue Prosecution Intelligence

**[Criminal Appeal No. _____ of 2024
arising out of SLP (Crl.) No. 2052 of 2017]**

HEADNOTE – Delay occurred in filing appeal against acquittal under Sec. 378 Cr.P.C. can be condoned under Limitation Act. The benefit of Section 5 read with Sections 2 and 3 of the Limitation Act, 1963 can therefore be availed in an appeal against acquittal.

JUDGMENT

Sudhanshu Dhulia, J.

Leave granted.

1. The present appellant was one of the four accused in a case instituted, inter-alia under Section 135(1)(b) of Customs Act, 1962. He faced trial (S.C. No. 33 of 2009) where he was ultimately acquitted by the Additional Sessions Judge, North, Delhi vide order dated 06.10.2012.

2. Against the order of acquittal, the Directorate of Revenue Intelligence filed an appeal before the High Court on 27.06.2013. That appeal against acquittal filed under Section 378 of CrPC was accompanied by a delay condonation application, since the appeal was belated by 72 days. The delay condonation application was allowed by the Delhi High Court on 18.05.2016.

3. An application was then moved by the present appellant before the High Court under Section 482 of CrPC for recalling of the said order on grounds that Section 5 of the Limitation Act would not apply in case of an appeal against acquittal since the period of filing an appeal against acquittal, has been prescribed under Section 378(5) of CrPC itself, where there is no provision for condonation of delay. By order dated 20.01.2017 the Delhi High Court nonetheless dismissed the application for recall filed by the appellant, although no reasons were assigned while dismissing the application under Section 482.

4. This order has been challenged before us on the grounds that the High Court has committed a patent error in allowing the belated appeal against acquittal filed by public servant as the High Court has no powers to condone the delay since the

provisions of the Limitation Act would not be applicable as Section 378 is a self-contained Code as far as limitation is concerned since there is no period prescribed in the Limitation Act for filing an appeal against acquittal.

5. In support of his argument, the learned counsel for the appellant Mr. Vijay Kumar Aggarwal, has relied upon the judgment of this Court in *Kaushalya Rani v. Gopal Singh* (1964) 4 SCR 982. The facts of *Kaushalya Rani* are as follows: *Kaushalya Rani* had filed a case against one Gopal Singh under Section 493 IPC and alternatively under Section 496 IPC, alleging that Gopal Singh had deceitfully made her believe that he is her lawfully married husband and thus had sexual intercourse with her. Gopal Singh faced a trial in which he was acquitted by the Trial Court and an appeal against acquittal was filed by *Kaushalya Rani* under the Code of Criminal Procedure, 1898 (hereafter referred to as the "old CrPC"), under Section 417.

The appeal was filed beyond the period of 60 days as provided under sub-section (4) of Section 417, i.e., the then prevailing Criminal Procedure Code. The appeal was dismissed on grounds of limitation by the Punjab & Haryana High Court. This matter was thus taken by *Kaushalya Rani* before this Court. The case was filed before this Court on a certificate of fitness granted by the Punjab & Haryana High Court and the question for determination before this Court was whether the provisions of Section 5 of the Limitation Act, 1908 (i.e. Act 9 of 1908 i.e. the old Limitation Act) would apply to an application for special leave to appeal from an order of acquittal under sub-section 3 of Section 417 of the old CrPC.

6. This Court on its interpretation of sub-section 4 of Section 417 of old CrPC and Section 29(2) of the old Limitation Act i.e. Indian Limitation Act, 1908 held that Section 5 of the Limitation Act would not apply in an application for leave to appeal under sub-section 3 of Section 417 of the old CrPC before High Court, in as much as Section 417 is a special code in itself and the limitation prescribed therein is 60 days and the court has no power to relax such a limitation to condone the delay.

Relying upon a full Bench judgment of the Bombay High Court [*Anjanabai v. Yeshwantrao Daulatrao Dudhe* ILR (1961) Bom 135] which held that Section 417(4) was special law within the meaning of Section 29(2) of the Limitation Act. Thus, the appeal was dismissed while relying on Section 29(2) of the old Limitation Act. For ready convenience of this Court, Section 29(2) of the old Limitation Act is reproduced below:

"(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by the first schedule, the provisions of Section 3 shall apply, as if such period were

prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law-

(a) the provisions contained in Section 4, Sections 9 to 18, and Section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply."

A perusal of the aforesaid provision clearly shows that where there is a special or local law prescribing the period of limitation in any suit, appeal or application which is different from the period of limitation prescribed in the first schedule of the Limitation Act, the applicability of the Limitation Act will be only as regarding Section 4 and Sections 9 to 18 & 22 of the Limitation Act. The meaning thereby afforded is that Section 5 of the old Act was expressly excluded in cases where special law or local law provides for a period of limitation.

The learned counsel for the appellant would argue that although in the present case, we are dealing with present Criminal Procedure Code, 1973 and the new Limitation Act, 1963 however, the provisions in the present Code for appeal against acquittal i.e., under Section 378 of CrPC are of similar nature regarding the prescription of a period of limitation for filing an appeal and therefore the law as laid down by Kaushalya Rani (supra), would apply in the present case as well.

7. This submission of the learned counsel is not correct. Subsequent to the decision of this Court in Kaushalya Rani (supra), this Court in Mangu Ram v. Municipal Corporation of Delhi (1976) 1 SCC 392, while dealing with a similar problem of limitation (in an appeal against acquittal), distinguished Kaushalya Rani as Kaushalya Rani was dealing with the old Criminal Procedure Code, 1898 and the old Limitation Act, 1908, where provisions were differently worded. Under Section 378 of the new CrPC read with Section 29(2) of the Limitation Act, 1963 though a limitation is prescribed, yet Section 29(2) of 1963 Act, does not exclude the application of Section 5. Section 29(2) of Limitation Act, 1963 reads as under:-

"(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as,

and to the extent to which, they are not expressly excluded by such special or local law."

(emphasis supplied)

The crucial difference here is of applicability of Section 5 of Limitation Act. In both the Limitation Acts, i.e. Limitation Act of 1908 and the present Limitation Act of 1963, the provision of extension of time of limitation is given in Section 5 of the two Acts. Whereas 1908 Act specifically states that Section 5 will not apply when the period of limitation is given in special Acts, the 1963 Act makes Section 5 applicable even in the special laws when a period of limitation is prescribed, unless it is expressly excluded by such special law. A comparative provision of Section 29(2) in the two Acts is given below:-

Section 29(2) of the Old Limitation Act of 1908	Section 29(2) of the new Limitation Act of 1963
<p>(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply as if such period were prescribed therefor in that schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law:</p> <p>(a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and</p> <p>(b) the remaining provisions of this Act shall not apply.</p>	<p>(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.</p>

As Kaushalya Rani (supra) was decided under provisions of old Limitation Act of 1908, this Court in Mangu Ram (supra) distinguished Kaushalya Rani and held as under:

"There is an important departure made by the Limitation Act, 1963 insofar as the provision contained in Section 29, subsection (2), is concerned. Whereas, under

the Indian Limitation Act, 1908, Section 29, sub-section (2), clause (b) provided that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions of the Indian Limitation Act, 1908, other than those contained in Sections 4, 9 to 18 and 22, shall not apply and, therefore, the applicability of Section 5 was in clear and specific terms excluded, Section 29, subsection (2) of the Limitation Act, 1963 enacts in so many terms that for the purpose of determining the period of limitation prescribed for any suit, appeal or application by any special or local law the provisions contained in Sections 4 to 24, which would include Section 5, shall apply insofar as and to the extent to which they are not expressly excluded by such special or local law.

Section 29, sub-section (2), clause (b) of the Indian Limitation Act, 1908 specifically excluded the applicability of Section 5, while Section 29, sub-section (2) of the Limitation Act, 1963, in clear and unambiguous terms, provides for the applicability of Section 5 and the ratio of the decision in Kaushalya Rani case can, therefore, have no application in cases governed by the Limitation Act, 1963, since that decision proceeded on the hypothesis that the applicability of Section 5 was excluded by reason of Section 29(2)(b) of the Indian Limitation Act, 1908.

Since under the Limitation Act, 1963, Section 5 is specifically made applicable by Section 29, sub-section (2), it can be availed of for the purpose of extending the period of limitation prescribed by a special or local law, if the applicant can show that he had sufficient cause for not presenting the application within the period of limitation. It is only if the special or local law expressly excludes the applicability of Section 5, that it would stand displaced. Here, as pointed out by this Court in Kaushalya Rani case the time limit of sixty days laid down in sub-section (4) of Section 417 is a special law of limitation and we do not find anything in this special law which expressly excludes the applicability of Section 5.

It is true that the language of sub-section (4) of Section 417 is mandatory and compulsive, in that it provides in no uncertain terms that no application for grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal. But that would be the language of every provision prescribing a period of limitation. It is because a bar against entertainment of an application beyond the period of limitation is created by a special or local law that it becomes necessary to invoke the aid of Section 5 in order that the application may be entertained despite such bar.

Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5. The conclusion is, therefore, irresistible that in a case where an application for special leave to appeal from an order of acquittal is filed after the coming into force of the Limitation Act, 1963, Section 5 would be available to the applicant and if he can show that he had sufficient cause for not preferring the application within the time limit of sixty days prescribed in sub-section (4) of Section 417, the application would not be barred and despite the expiration of the time limit of sixty days, the High Court would have the power to entertain it.

(emphasis supplied)

8. Mr. Vijay Kumar Aggarwal, learned counsel would then rely upon two cases, namely, *Hukumdev Narain Yadav v. Lalit Narain Mishra* [AIR 1974 SC 480] and subsequently *Gopal Sardar v. Karuna Sardar* [2004 (4) SCC 252].

9. Both the above mentioned cases were dealing with special laws where a period of limitation was prescribed. Whereas *Hukumdev Narain Yadav* (supra) relates to Election matter where Section 81 of the Representation of People's Act, 1951, prescribes a limitation of 45 days for filing an Election Petition, *Gopal Sardar* (supra) dealt with the right of pre-emption under Section 8 of the West Bengal Land Reforms Act, 1955 which again prescribed three months limitation for a bargadar and four months for a 'raiyat' to make an application for pre-emption to the concerned authorities.

10. There can be no quarrel with the argument that where a special law prescribes a period of limitation, Section 5 of the Limitation Act would have no application, subject only to the language used in the special statute. The language prescribing a period of limitation is an important factor as well. For example, in the Representation of Peoples Act, 1951 Section 81 prescribes limitation for presenting an election petition as under:-

"81. Presentation of petitions.-

(1) An election petition calling in question any election may be presented on one or more of the grounds specified in 207[sub-section (1)] of Section 100 and Section 101 to the 208[High Court] by any candidate at such election or any elector 209[within forty three five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates].

Explanation.-In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2) [Omitted]

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition [* * *] and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition."

Section 86(1) further says that in case an election petition is filed beyond a period of 45 days it shall be dismissed. Section 86(1) reads as under:-

"86. Trial of election petitions.-

(1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.

Explanation.- An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of Section 98."

The election statute thus expressly bars filing of an election petition beyond 45 days. The language of the statute, leaves no ambiguity in this regard. "The High Court shall dismiss an election petition", is the language given in the statute. Simply put the Court has no choice but to dismiss an election petition, which is filed beyond a period of 45 days. There is no scope for condoning the delay in an election matter. Therefore in *Hukumdev Narain Yadav (supra)* it was stated as under:-

"17. Though Section 29(2) of the Limitation Act has been made applicable to appeals both under the Act as well as under the Code of Criminal Procedure, no case has been brought to our notice where Section 29(2) has been made applicable to an election petition filed under Section 81 of the Act by virtue of which either Sections 4, 5 or 12 of the Limitation Act has been attracted.

Even assuming that where a period of limitation has not been fixed for election petitions in the Schedule to the Limitation Act which is different from that fixed under Section 81 of the Act, Section 29(2) would be attracted, and what we have to determine is whether the provisions of this Section are expressly excluded in the case of an election petition. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation.

The provisions of Section 3 of the Limitation Act that a suit instituted, appeal preferred and application made after the prescribed period shall be dismissed are provided for in Section 86 of the Act which gives a peremptory command that the High Court shall dismiss an election petition which does not comply with the provisions of Sections 81, 82 or 117.

(emphasis supplied)

11. Later, while dealing another special statute viz West Bengal Land Reforms Act, 1955 this Court in Gopal Sardar (supra) had an occasion to comment on Mangu Ram (supra) where it says that the decision of Hukumdev Narain Yadav (supra) was not brought to the notice of this Court when Mangu Ram (supra) was decided (we have discussed Mangu Ram in the preceding paragraphs). Much reliance has been placed by the learned counsel for the appellant Shri Agarwal on this observation of the Court. Hukumdev Narain Yadav as we have already discussed above relates to election laws which falls in an entirely different category, as far as period of limitation is concerned.

A bare comment of this Court that a case was not considered would not mean that the entire findings of the court arrived in Mangu Ram (supra) are wrong. We must appreciate Gopal Sardar for what it decides and the facts and the context on which this decision is based. What were the facts of Gopal Sardar and what were the findings of this Court? In Gopal Sardar, this Court was again dealing with the period of limitation relating to West Bengal Land Reforms Act, 1955 and the application of Section 5 of the Limitation Act.

Section 8 of the West Bengal Land Reforms Act, 1955 gave certain right to a "raiyat" for transfer of land of cosharer, exercising his right of pre-emption but this right had to be exercised "within a period of 4 months of the date of cause of action". The same Act in its Section 14-'O' and Section 19 while discussing the period of appeal provides that Section 5 of the Limitation Act would apply.

This Court thus came to a finding that though Section 5 of the Limitation Act would apply in the case of appeal but it will not apply in a case when the proceedings itself had to be initiated in form of suit under Section 8 of the Act which had to be done within a period of 4 months. Section 8 of the West Bengal Land Reforms Act, 1955 reads as under:

"8. Right of purchase by co-sharer or contiguous tenant.-

(1) If a portion or share of a plot of land of a raiyat is transferred to any person other than a cosharer of a raiyat in the plot of land, the bargadar in the plot of land may, within three months of the date of such transfer, or any co-sharer of a raiyat in the plot of land may, within three months of the service of the notice

given under subsection (5) of Section 5, or any raiyat possessing land adjoining such plot of land, may, within four months of the date of such transfer, apply to the Munsif having territorial jurisdiction for transfer of the said portion or share of the plot of land to him, subject to the limit mentioned in Section 14-M on deposit of the consideration money together with a further sum of ten per cent of that amount.

This is what this Court said on these two provisions:

"19. We conclude that Section 5 of the Limitation Act cannot be pressed into service in aid of a belated application made under Section 8 of the Act seeking condonation of delay. The right of preemption conferred under Section 8 is a statutory right besides being weak; it has to be exercised strictly in terms of the said section and consideration of equity has no place.

On the facts found in these appeals, applications under Section 8 were not made within four months from the date of transfer but they were made four years and six years after the date of transfer respectively which were hopelessly barred by time. Benefit of Section 5 of the Limitation Act not being available to the applications made under Section 8, Section 3 of the Limitation Act essentially entails their dismissal."

Neither Hukumdev Narain Yadav nor Gopal Sardar would help the case of the appellant as both these cases deal with special laws which prescribed a period of limitation and the expression of the language contained in the law is very clear that under no circumstances can such a limitation be condoned. The relevant provisions have already been discussed earlier.

In the present case, there is no such exclusionary provision under Section 378 of CrPC, or at any other place in the Code. The benefit of Section 5 read with Sections 2 and 3 of the Limitation Act, 1963 can therefore be availed in an appeal against acquittal. There is no force in the contentions raised by the appellants as regards the non-application of Section 5 of the Limitation Act in the present case and the appeal is therefore dismissed.

12. The interim order dated 20.03.2017 passed by this Court is hereby vacated. The Registry is hereby directed to apprise these proceedings to the Delhi High Court so that the matter may continue.

.....J. [Sudhanshu Dhulia]

.....J. [Prasanna Bhalachandra Varale]

New Delhi.

1 Section 417 of the old CrPC is as follows:

417 (1) Subject to the provisions of sub-section (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of a acquittal passed by any Court other than a High Court.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (XXXV of 1946), the Central Government may also direct the Public Prosecutor to present an appeal to the High Court from the order of acquittal.

(3) If such an order of acquittal is passed in any case instituted upon the complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(4) No application under sub-section (3) for the grant of special leave to appeal from the order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal.

(5) If, in any case, the application under sub-section (3) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1).

IN THE SUPREME COURT OF INDIA

Kalinga @ Kushal

Vs.

State of Karnataka by Police Inspector, Hubli

[Criminal Appeal No. 622 of 2013]

HEADNOTE – Extra-judicial confession can't be strong evidence if not supported by other evidence on record

JUDGMENT

Satish Chandra Sharma, J.

1. Master Hrithik, aged 2.5 years, lost his life on the fateful day of 03.11.2002 in Hubli, Karnataka. PW-1, his father and complainant in this case, filed a complaint and the allegation was levelled against the appellant/accused, who is the younger brother of PW-1. After a full-fledged trial, Trial Court acquitted the appellant from the charges levelled upon him.

The High Court reversed the order of acquittal and convicted the appellant. The mystery of Hrithik's death continues as the matter has landed before this Court in the form of the present appeal, which assails the order dated 28.03.2011 passed by the High Court of Karnataka (Circuit Bench at Dharwad) in Criminal Appeal No. 130/2005.

Factual Matrix

2. At the outset, we consider it apposite to note that there is considerable divergence between the parties (as well as between the decisions rendered by the Trial Court and the High Court) as regards the sequence of events and timelines involved in this case. To avoid any confusion or presumption, the facts delineated herein represent the version of the prosecution for the purpose of understanding the story.

On 03.11.2002, at around 11 A.M., the son of PW-1 had gone out for playing and went missing. PW-1 and other family members of the child searched for him in and around the locality. Upon finding no trace of the child till evening, a missing complaint was lodged at around 10 P.M. by PW-1 at PS Vidyanagar, Hubli, Karnataka. The complaint came to be registered as Crime No. 215/2002.

3. Fast forward to 14.11.2002, the appellant (also the brother of PW-1) appeared at the house of PW-1 in a drunken state and started blabbering about the missing incident of Hrithik and about mishappening with the child. The encounter on 14.11.2002 happened late at night and PW-1 did not pursue the same at that point of time. On the morning of 15.11.2002, PW-1 went to his shop and returned around 12:30 P.M.

At this point, PW-1, his mother and wife enquired about the child from the appellant and the appellant stated that he had murdered Hrithik and thrown his body in the well. Thereafter, PW-1 took the appellant to PS Vidyanagar for filing the complaint which led to the registration of the First Information Report (FIR) in this case.

4. It is the case of the prosecution that on reaching the police station, the appellant confessed to the commission of crime as well as the act of throwing the child in the well. The voluntary statement of the accused, in the nature of extra judicial confession, was recorded by PW-16 (Investigating Officer/IO of the case) as Ex.P.21.

At the instance of the appellant, PW-16 took PW-1, mother and wife of PW-1 and panchas in a police jeep to a place near the back side of Kamat CafÃ©. On reaching there, the appellant took PW-16, PW-1 and panchas near the well and told them that the dead body of the deceased was thrown in the said well. When they looked into the well, a dead body of a child was found floating there.

The dead body was taken out and inquest panchnama was conducted. Thereafter, spot panchnama was prepared and the body was sent for post mortem. Thereafter, accused no. 2 and 3 were arrested and upon their disclosure and at their instance, jewelry articles exhibited as M.O.s 5 and 6 were recovered from PW-17, which were allegedly taken off from the body of the deceased child and were sold off to PW-17.

5. In this factual backdrop, PW-16 investigated the case and filed the chargesheet. Upon committal of the case to the Court of Sessions, charges were framed upon the three accused persons under Sections 201, 302, 363, 364 read with 34 of Indian Penal Code, 18601. Upon the culmination of trial, the Trial Court acquitted all the accused persons vide order dated 30.04.2004 passed by Ld. ASJ-01, Dharwad (Hubli).

6. While ordering acquittal of the accused persons, the Trial Court gave the following reasons:

i. There is no eye witness to support the case of the prosecution and the case is entirely based on circumstantial evidence.

ii. The prosecution case is built upon the extrajudicial confession of the appellant and factum of recovery of the dead body from the well in consequence of the information disclosed by the appellant.

iii. The credibility of an extra judicial confession depends upon the veracity of the witnesses before whom it is given and the circumstances in which it was given. The statements of PW-1 in the Court and in the complaint Ex.P1 are different. In the complaint, PW-1 had mentioned about the involved of co-accused persons, whereas his testimony in the Court was completely silent regarding the involved of other accused persons.

iv. PW-1 stated that his wife and mother were also present when the confession was made by the appellant. However, neither wife nor mother of PW- 1 was examined by the prosecution as a witness.

v. PW-1 deposed that after the confession was made by the appellant, he took the appellant to the police station where he disclosed the involvement of accused no. 2 and 3. However, in the complaint Ex.P1 which was given by him at the police station, there is no mention of accused no. 3. The contradiction in this regard is material as, if the appellant had disclosed the involvement of accused no. 2 and 3 before going to the police station, there was no reason for PW-1 to skip the name of accused no. 3 from Ex.P1.

vi. The Trial Court noted the multiplicity of versions by PW-1 and held that an extra judicial confession must be free from suspicion, which is not the case in the testimony of PW-1.

vii. The Trial Court also noted the discrepancy regarding the arrest of the accused. PW-1 deposed that he took the appellant to the police station after his disclosure, whereas PW-16 deposed that after registering the complaint, he had arrested the appellant from his house.

viii. No mention of the incident of utterance of certain words by the appellant on 14.11.2002 in the complaint given by PW-1 on the following day.

ix. PW-1 took no steps in furtherance of the information supplied by PW-5 that he had seen the appellant taking away the child on 03.11.2002 or in furtherance of the information supplied by PW-7, who had informed PW-1 on 10.11.2002 that he had seen three people throwing something into the well. The conduct of PW-1 was not found to be natural.

x. PW-1 failed to explain the discrepancy in the clothes allegedly worn by the deceased and the clothes found on the body of the deceased. Moreover, PW-12

deposed that at the time of filing the complaint, he had enquired from PW-1 regarding any ornaments on the child. PW-1 had replied in negative.

xi. The theory of last seen was also rejected by the Trial Court and PWs in that regard - PW-5, PW- 6, PW-7 and PW-18 - were disbelieved.

7. The decision of the Trial Court was assailed before the High Court by the State in appeal. The High Court analyzed the evidence on record and partially allowed the appeal by holding the appellant guilty for the commission of offences punishable under Sections 201, 302, 363, 364 of IPC. Notably, the High Court was in agreement with the conclusion of acquittal regarding accused no. 2 and 3.

8. On a re-appreciation of evidence pitched against accused no. 2 and 3, the High Court agreed with the view of the Trial Court that the evidence was not trustworthy. The theory of last seen, as propounded to bring accused no. 2 and 3 within the ambit of criminality, was rejected. Similarly, the allegation of recovery of ornaments from PW-17 at the instance of the accused was also rejected.

Since, there is no divergence of opinion with respect to accused no. 2 and 3, this Court is not required to delve further into the same. The High Court set aside the view of the Trial Court regarding the rejection of the voluntary extra judicial confession of PW-1 and recovery of dead body of the deceased at his instance. The High Court went on to convict the appellant on the strength of the following reasons:

i. The extra judicial confession of the appellant was a voluntary confession and there is no reason to doubt the same.

ii. Information disclosed by the appellant led to the discovery of dead body of the deceased and minor discrepancies in the version of PW-1 are not material.

iii. The Trial Court committed an error by not properly appreciating the evidence of PW-1, especially the voluntary statement and recovery of dead body.

Submissions of Appellant

9. Assailing the order of the High Court, the appellant submits that the High Court did not appreciate the discrepancies in the evidence of PW-1 and went on to accept the same. He further submits that the High Court failed to take note of the improvements made by PW-1 at every stage.

He further submits that the Trial Court had elaborately appreciated the entire evidence on record and it was not open for the High Court to reappraise the entire evidence and arrive at a different conclusion of its own. Further, it is

submitted that the High Court did not notice the absence of mother and wife of PW-1 from the list of witnesses of the prosecution.

10. The appellant further submits that the finding of the Trial Court regarding the sequence of arrest of the appellant has not been discussed at all in the impugned order. It is further submitted that the High Court did not examine the extra judicial confession of the appellant in its correct perspective, especially in light of the suspicion raised by the Trial Court.

It is urged that the High Court did not subject the extra judicial confession to a stern test and went on to place undue reliance on the same. It is further contended that the High Court overlooked the discrepancy between the description of clothes found on the dead body and that indicated by PW-1 in his complaint. Lastly, it is submitted that if two views were possible on a reappraisal of evidence, the High Court must have adopted the view in favour of the accused, thereby providing benefit of doubt to the appellant.

11. Per contra, it is submitted on behalf of the State that there is no infirmity in the impugned order as it is based on a correct appreciation of evidence. It is further submitted that the voluntary extra judicial confession of PW-1 constituted crucial evidence and the fact that it led to the discovery of the dead body of the deceased, added credibility to the same. Reliance has been placed upon the decisions of this Court in *Sansar Chand v. State of Rajasthan*² and *Piara Singh v. State of Punjab*³.

It is further submitted that the Court must not consider every doubt as a reasonable doubt and minor discrepancies must not be allowed to demolish the entire testimony of a witness. In this regard, reliance has been placed upon the decisions of this Court in *Mallikarjun v. State of Karnataka*⁴ and *Hari Singh & Anr. v. State of Uttar Pradesh*⁵.

12. We have heard Sh. Sharan Thakur, Advocate for the appellant and Mr. Muhammed Ali Khan, AAG, for the respondent State.

Discussion

13. We may now proceed to delineate the issues that arise for the consideration of this Court, as follows:

- i. Whether the extra judicial confession of the appellant/accused was admissible, credible and sufficient for conviction of the accused thereon?
- ii. Whether the testimony of PW-1 could be termed as reliable and trustworthy?

iii. Whether the chain of circumstantial evidence is complete and consistent for arriving at the conclusion of guilt?

14. The conviction of the appellant is largely based on the extra judicial confession allegedly made by him before PW-1. So far as an extra judicial confession is concerned, it is considered as a weak type of evidence and is generally used as a corroborative link to lend credibility to the other evidence on record. In *Chandrapal v. State of Chattisgarh*⁶, this Court reiterated the evidentiary value of an extra judicial confession in the following words:

"11. At this juncture, it may be noted that as per Section 30 of the Evidence Act, when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession.

However, this court has consistently held that an extra judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra judicial confession.

As held in case of *State of M.P. Through CBI v. Paltan Mallah*, the extra judicial confession made by the co-accused could be admitted in evidence only as a corroborative piece of evidence. In absence of any substantive evidence against the accused, the extra judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra judicial confession of the coaccused."

15. It is no more *res integra* that an extra judicial confession must be accepted with great care and caution. If it is not supported by other evidence on record, it fails to inspire confidence and in such a case, it shall not be treated as a strong piece of evidence for the purpose of arriving at the conclusion of guilt. Furthermore, the extent of acceptability of an extra judicial confession depends on the trustworthiness of the witness before whom it is given and the circumstances in which it was given.

The prosecution must establish that a confession was indeed made by the accused, that it was voluntary in nature and that the contents of the confession were true. The standard required for proving an extra judicial confession to the satisfaction of the Court is on the higher side and these essential ingredients must be established beyond any reasonable doubt. The standard becomes even higher

when the entire case of the prosecution necessarily rests on the extra judicial confession.

16. In the present case, the extra judicial confession is essentially based on the deposition of PW-1, the father of the deceased. Without going into the aspect of PW-1 being an interested witness at the threshold, his testimony is fatal to the prosecution case on multiple parameters. PW-1 deposed that the appellant had arrived at his residence on 14.11.2002 and mentioned about the deceased. Despite so, the appellant was allowed to leave the residence and no action whatsoever was taken by PW-1.

The incident took place on 03.11.2002 and despite lapse of 11 days, PW-1 had no clue about his deceased son. On the eleventh day, when the appellant arrives at his residence and mentions adversely about his deceased son, PW-1 does nothing about it. In fact, on the next day as well, PW-1 started off normally and went to his shop in a routine manner.

Thereafter, he came back home in the afternoon of 15.11.2002 and confronted the appellant about the incident. There is no explanation as to how the appellant arrived at his residence again on 15.11.2002. Nevertheless, PW-1 deposed that when he, his mother and wife confronted the appellant, he confessed to the murder of the deceased. Thereafter, they took him to the police station.

17. Before we refer to the proceedings which took place at the police station, it is of utmost relevance to note that the confession was made before PW-1, his mother and wife. However, the mother and wife of PW-1 were never examined as witnesses by the prosecution. This glaring mistake raises a serious doubt on the very existence of a confession, or even a statement, of this nature by the appellant.

18. Once the appellant was taken to the police station, as the examination in chief of PW-1, the appellant confessed to the act of throwing the deceased in the well along with accused no. 2 and 3. Notably, there was no mention of the co-accused persons in the original statement of the appellant, as per the examination in chief of PW-1. One finds a third version of the same fact when the complaint Ex.P1 is perused. The said complaint was given by PW-1 at the police station of 15.11.2002.

As per this complaint, the appellant was queried by PW-1 and his mother (presence of wife not mentioned). Furthermore, as per the complaint, the appellant confessed to the commission of offence along with one other accused (accused no.2) only. The complaint Ex.P1 is also silent on the episode that took place at the residence of PW-1 on 14.11.2002, a day prior to the filing of

complaint. There is no explanation as to how and in what circumstances the incident of 14.11.2002 was omitted from Ex.P1.

The omission assumes great importance in light of the fact that the incident of 14.11.2002 was the precursor of the confrontation that followed the next day, which culminated into the act of filing the complaint. The complaint Ex.P1 is also silent on the information received by PW-1 from PW-5 and PW-6 that they had seen his child going with the appellant on the date of incident. The introduction of these witnesses was an exercise of improvement, as we shall see in the following discussion.

19. The confession was followed by two things - arrest of the appellant and recovery of dead body of the deceased. The evidentiary aspects concerning these facts are equally doubtful. As per the testimony of PW-1, he had taken the appellant to the police station and he was arrested there. Contrarily, PW-16/I.O. deposed that after recording the complaint, he had arrested the appellant from his house. The mode and manner of arrest, especially the place of arrest, is doubtful.

It also raises a question on the aspect of confession - whether the confession was recorded when the appellant himself visited the police station with PW-1 or when he was arrested from his house and was taken to the police station by PW-16. The confessions, one made after a voluntary visit to the police station and the other made after arrest from the house, stand on materially different footings from the point of view of voluntariness. The likelihood of the latter being voluntary is fairly lesser in comparison to the former.

20. The next element which weighed upon the High Court in reversing acquittal is the recovery of dead body of the deceased at the instance of the appellant. Notably, the element of recovery is based on the same statement/confession of the appellant which, as observed above, fails to inspire the confidence of the Court. The Trial Court has rightly analyzed the evidence regarding the recovery of dead body and the High Court fell in an error in accepting the evidence on its face value, without addressing the reasonable doubts raised by the Trial Court.

21. The recovery of dead body from the well is not in question. However, the proof of such recovery to be at the instance of the appellant is essentially based on the disclosure statement made by the appellant. Again, the prime witness for proving the disclosure statement is PW-1, whose testimony has failed to inspire the confidence of the Court, in light of the contradictions, multiplicity of versions and material improvements.

The other witness to prove the recovery is PW-2, the panch. Notably, PW- 2 was a waiter at a restaurant and he deposed that he had visited the police station

himself. It is difficult to accept that PW-2 just happened to visit the police station on his own and ended up becoming a witness of recovery of the dead body. Firstly, his visit to the police station does not fit in the normal chain of circumstances as it is completely unexplained.

A police station is not per se a public space where people happen to visit in the ordinary course of business and therefore, an explanation is warranted. Secondly, a normal person would generally be hesitant in becoming a witness to the recovery of a dead body. There is nothing on record to indicate that any notice to join investigation was given to PW-2 by the I.O./PW-16. In such circumstances, it would not be safe to rely upon the testimony of PW-2 as he could reasonably be a stock witness of the I.O.

22. Furthermore, we deem it appropriate to note that the identity of the dead body recovered from the well is also not beyond question. The Trial Court had also noted the doubts regarding the identity of the dead body, however, the identity of the deceased was held to be established in light of the fact that the identification was done by PW-1, father of the deceased. The Trial Court also relied upon the fact that the identification was not challenged by either side.

Be that as it may, we consider it important to note that there exist serious doubts regarding the identity of the dead body recovered from the well. The description of the deceased given by PW-1 in his complaint Ex.P1 did not match with the description of the dead body. The clothes found on the dead body were substantially different from the clothes mentioned by PW-1 in his complaint. The presence of ornaments was not mentioned in the complaint.

Furthermore, identification of the dead body by face was not possible as the body had started decomposing due to lapse of time. Admittedly, the dead body was recovered after 12 days of the incident from a well. Sensitive body parts were found bitten by aquatic animals inside the well. The theory of ornaments has already been held to be a figment of imagination by the Trial Court and the High Court in an unequivocal manner. Therefore, the prosecution case regarding the identity of the dead body is not free from doubts.

23. Another circumstance which weighs against PW-1 in a material sense is the deafening silence on his part when PW-5 and PW-6 informed him regarding the factum of the deceased being thrown into the well. Notably, the said fact was brought to the knowledge of PW-1 well before 15.11.2002. Despite so, PW-1 maintained silence and did not even approach the police for investigation or information on such a crucial aspect of investigation.

An anxious father would have rushed to the police station on receiving an information of this nature. The subsequent conduct of PW-1, after the receipt of such material information, is unnatural. Furthermore, PW-5 only saw the appellant taking away the child, PW-6 also saw the appellant only and PW-7 saw three persons throwing the child in the well. The versions are manifold. In such circumstances, it cannot be held that the testimony of PW-1 is trustworthy and reliable.

24. Notably, it is a peculiar case wherein the appellant has been convicted for the commission of murder without ascertaining the cause of death in a conclusive manner. The report prepared by PW-14 reveals drowning as the cause of death. For attributing the act of throwing the deceased into the well upon the appellant, the prosecution has relied upon PW-7 and PW-18, the witnesses in support of the last seen theory.

The testimonies of these witnesses have been held to be incredible by both Trial Court and the High Court. We suffice to observe that we agree with the findings of the said Courts on this point. Furthermore, the post mortem reveals the time of death within a time frame of 3 to 12 days. Allegedly, the death took place on 03.11.2002.

Such a wide time frame concerning the crucial question of time of death raises a serious doubt on the reliability of the post mortem report. When this fact is seen in light of the already existing doubts on the identity of the deceased, one is constrained to take the report with a pinch of salt. More so, this discrepancy again brings into question the element of recovery of the dead body and identity of the deceased.

25. This Court cannot lose sight of the fact that the Trial Court had appreciated the entire evidence in a comprehensive sense and the High Court reversed the view without arriving at any finding of perversity or illegality in the order of the Trial Court.

The High Court took a cursory view of the matter and merely arrived at a different conclusion on a re-appreciation of evidence. It is settled law that the High Court, in exercise of appellate powers, may reappreciate the entire evidence. However, reversal of an order of acquittal is not to be based on mere existence of a different view or a mere difference of opinion.

To permit so would be in violation of the two views theory, as reiterated by this Court from time to time in cases of this nature. In order to reverse an order of acquittal in appeal, it is essential to arrive at a finding that the order of the Trial

Court was perverse or illegal; or that the Trial Court did not fully appreciate the evidence on record; or that the view of the Trial Court was not a possible view.

26. At the cost of repetition, it is reiterated that the anomaly of having two reasonably possible views in a matter is to be resolved in favour of the accused. For, after acquittal, the presumption of innocence in favour of the accused gets reinforced. In *Sanjeev v. State of H.P.*⁷, this Court summarized the position in this regard and observed as follows:

"7. It is well settled that:

7.1. While dealing with an appeal against acquittal, the reasons which had weighed with the trial court in acquitting the accused must be dealt with, in case the appellate court is of the view that the acquittal rendered by the trial court deserves to be upturned (see *Vijay Mohan Singh v. State of Karnataka*⁸, *Anwar Ali v. State of H.P.*⁹)

7.2. With an order of acquittal by the trial court, the normal presumption of innocence in a criminal matter gets reinforced (see *Atley v. State of U.P.*¹⁰)

7.3. If two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the appeal against acquittal (see *Sambasivan v. State of Kerala*¹¹)"

27. It may be noted that the entire case of the prosecution is based on circumstantial evidence. The principles concerning circumstantial evidence are fairly settled and are generally referred as the "Panchsheel" principles. Essentially, circumstantial evidence comes into picture when there is absence of direct evidence. For proving a case on the basis of circumstantial evidence, it must be established that the chain of circumstances is complete. It must also be established that the chain of circumstances is consistent with the only conclusion of guilt.

The margin of error in a case based on circumstantial evidence is minimal. For, the chain of circumstantial evidence is essentially meant to enable the court in drawing an inference. The task of fixing criminal liability upon a person on the strength of an inference must be approached with abundant caution. As discussed above, the circumstances sought to be proved by the prosecution are inconsistent and the inconsistencies in the chain of circumstances have not been explained by the prosecution.

The doubtful existence of the extra judicial confession, unnatural conduct of PW-1, recovery of dead body in the presence of an unreliable witness PW-2, contradictions regarding arrest, unnatural prior and subsequent conduct of PW-1,

incredible testimony of the witnesses in support of the last seen theory etc. are some of the inconsistencies which strike at the root of the prosecution case.

To draw an inference of guilt on the basis of such evidence would result into nothing but failure of justice. The evidence on record completely fails the test laid down for the acceptability of circumstantial evidence. Therefore, in light of the consolidated discussion, all three issues are hereby answered in negative.

28. Before parting, we consider it our duty to refer to the catena of judgments relied upon by the respondent to contend that minor inconsistencies could not be construed as reasonable doubts for ordering acquittal. Reference has been made to *Sucha Singh v. State of Punjab*¹², *Mallikarjun*¹³ and *Hari Singh v. State of Uttar Pradesh*¹⁴.

29. No doubt, it is trite law that a reasonable doubt is essentially a serious doubt in the case of the prosecution and minor inconsistencies are not to be elevated to the status of a reasonable doubt. A reasonable doubt is one which renders the possibility of guilt as highly doubtful. It is also noteworthy that the purpose of criminal trial is not only to ensure that an innocent person is not punished, but it is also to ensure that the guilty does not escape unpunished.

A judge owes this duty to the society and effective performance of this duty plays a crucial role in securing the faith of the common public in rule of law. Every case, wherein a guilty person goes unpunished due to any lacuna on the part of the investigating agency, prosecution or otherwise, shakes the conscience of the society at large and diminishes the value of the rule of law.

Having observed so, the observations in this regard may not advance the case of the respondent in the present appeal. It is so because the inconsistencies in the case of the prosecution are not minor inconsistencies. As already discussed above, the prosecution has miserably failed to establish a coherent chain of circumstances. The present case does not fall in the category of a light-hearted acquittal¹⁵, which is shunned upon in law.

30. In light of the foregoing discussion, we hereby conclude that the High Court has erred in reversing the decision of acquittal. The evidence of the prosecution, at best, makes out a case for suspicion, and not for conviction. Accordingly, the impugned order and judgment are set aside.

We find no infirmity in the order of the Trial Court and the same stands restored. Consequently, the appellant is acquitted from all the charges levelled upon him. The appellant is directed to be released forthwith, if lying in custody.

31. The captioned appeal stands disposed of in the aforesaid terms. Interim applications, if any, shall also stand disposed of.

32. No order as to costs.

.....J. [Bela M. Trivedi]

.....J. [Satish Chandra Sharma]

New Delhi

February 20, 2024

1 Hereinafter referred as "IPC"

2 (2010) 10 SCC 604

3 (1977) 4 SCC 452

4 (2019) 8 SCC 359

5 Criminal Appeal No. 186 of 2018 (SC)

6 (2022) SCC On Line SC 705

7 (2022) 6 SCC 294

8 (2019) 5 SCC 436

9 (2020) 10 SCC 166)

10 AIR 1955 SC 807

11 (1998) 5 SCC 412

12 (2003) 7 SCC 643

13 Supra

14 Supra

15 'Proof of Guilt', Glanville Williams.

IN THE SUPREME COURT OF INDIA

Ramji Lal Jat
Vs.
State of Rajasthan

CIVIL APPEAL No. 2744 of 2024
(Arising out of SLP (C) No. 1294 of 2023)

ORDER

1. Leave granted.

2. The appellant is an ex-serviceman, who retired from defence services on 31.01.2017. He applied for the post of Police Constable in the Rajasthan Police on 25.05.2018, but his candidature was rejected in light of Rule 24(4) of the Rajasthan Police Subordinate Service Rules, 1989, on the ground that since he had more than two children after 01.06.2002, he stood disqualified for public employment under the State, as per the Rajasthan Various Service (Amendment) Rules, 2001 (for short, 'the 2001 Rules'), which, inter alia, provides that "no candidate shall be eligible for appointment to the service who has more than two children on or after 01.06.2002."

3. The aggrieved appellant approached the High Court of Judicature for Rajasthan and a Division Bench, vide the impugned judgment dated 12.10.2022, has turned down his claim on the premise that the subject-Rule, under which the appellant has been disqualified, falls within the realm of policy and does not warrant any interference by the Court.

4. We have heard learned counsel for the appellant at a considerable length and carefully perused the material placed on record. A somewhat similar provision, which was introduced as an eligibility condition to contest Panchayat elections, has been upheld by this Court in **Javed and others Vs. State of Haryana and others, (2003) 8 SCC 369**. This Court held that the classification, which disqualifies candidates for having more than two living children, was non-discriminatory and intra-vires the Constitution, since the objective behind the provision was to promote family planning.

5. It is the appellant's contention that, in addition to 109 sets of Statutory Service Rules, where the aforesaid eligibility condition has been introduced, there are Rules regarding the absorption of ex-servicemen where the condition of not having more than two children has not been specified. Assuming it to be correct, we are of the

view that such a plea does not advance the appellant's case. It is undisputed that the appellant applied for recruitment to the post of Constable in Rajasthan Police and such recruitment is governed by the Rajasthan Police Subordinate Service Rules, 1989. These 1989 Rules have been specifically enlisted at Serial No.104 of the Schedule appended to the 2001 Rules.

6. In view of this, we do not find any ground to interfere with the view taken by the High Court.

7. The appeal is, accordingly, dismissed.

.....J. (SURYA KANT)

.....J. (DIPANKAR DATTA)

.....J. (K.V. VISWANATHAN)

NEW DELHI;

FEBRUARY 20, 2024.

IN THE SUPREME COURT OF INDIA

William Stephen

Vs.

State of Tamil Nadu and Anr.

[Criminal Appeal No. 607/2024]

[Criminal Appeal No. 608/2024]

HEADNOTE – Mere demand for ransom after kidnapping won't amount to Sec.364A IPC offence if there's no death threat.

JUDGMENT

Abhay S. Oka, J.

Facts

1. These two Appeals have been preferred by the accused nos.2 and 1 respectively against the impugned judgment dated 27th July, 2016 passed by the High Court of Judicature at Madras, whereby their conviction and sentence have been confirmed. The appellants-accused have been convicted for the offence punishable under Section 364A read with Section 34 of the Indian Penal Code, 1860 (for short, "IPC"). Both of them have been sentenced to undergo life imprisonment.

2. With a view to appreciate the controversy, a brief reference to the factual aspects will be necessary. PW-1 and PW-3 are respectively the father and the mother of PW-2 (the child who is the victim of the offence). The age of the child-PW-2 at the relevant time was eight years. The child/PW-2 was taking education in third standard. After returning from the school, the child-PW-2 used to visit the house of PW-5, who was running tuition classes. The child-PW-2 used to return around 07:30 p.m.

3. On 20th October, 2010, the child-PW-2 did not return from the tuition class at usual hour. The case of the prosecution is that after the tuition class was over, while the child-PW-2 was walking back towards his home, a Maruti Car came there. Two persons (appellants-accused) came out and told the child-PW-2 that his father was going to purchase a car from them and, therefore, he should accompany them. Accordingly, the child-PW-2 got into the car and was kidnapped by the appellants-accused.

4. The case of the prosecution is that on 20th October, 2010, from a particular cell phone number, there was a call received by PW-3 of a male person who

informed her that he has kidnapped the child. He demanded ransom of Rs.5 lakhs for releasing the child. The PW-1 lodged a complaint on the same date in the night with the Police. PW-14 (who was running a shop in the locality) informed the PW-1 and PW-3 that he saw the child being taken in a Maruti Swift grey colour car.

Accordingly, a First Information Report under Section 364A of IPC was registered. PW-19 is the Investigating Officer. As per the information received, PW-19 went to Pallikonda toll gate, Vellore District on 21st October, 2010. Around 12:00 noon, the car in question came towards the toll gate which was intercepted. In the car, the appellants-accused along with the child were found. PW-19 arrested the accused and rescued the child.

5. The prosecution evidence, as can be seen from both the judgments, was in the form of the call records and the evidence of PW-1 to PW-3 and PW-19, the Investigating Officer. As far as the call records are concerned, we find that the entire evidence of the prosecution has been discarded by the High Court for want of a certificate as required under Section 65B of the Indian Evidence Act, 1872 (for short, "the Evidence Act").

Submissions

6. The learned senior counsel appearing for both the appellants have taken us through the evidence of the prosecution witnesses. Their submission is that there is absolutely no evidence regarding the demand of ransom or any threat being administered by the appellants-accused to kill the child or to put him to some harm.

Therefore, the necessary ingredients of Section 364A of IPC have not been proved. By inviting our attention to the evidence of the child, who is PW-2, and, in particular, his cross-examination by the learned counsel representing the accused no.2, the learned senior counsel contended that the victim child was tutored by his father-PW-1 and, therefore, his testimony cannot be considered.

7. The learned senior counsel appearing for the State submitted that this was a case where there was a reasonable apprehension in the mind of the PW-1 and PW-3 that the accused, who had kidnapped their son, may put their son to death or cause hurt to him. He would, therefore, submit that on the basis of the evidence of PW-1 and PW-3, the ingredients of Section 364A of IPC have been proved by the prosecution.

Our View

8. We have carefully considered the submissions. Firstly, we may refer to Section 361 of IPC which defines 'kidnapping from lawful guardianship'. It provides that whoever takes or entices any minor male child under sixteen years of age, out of the keeping of the lawful guardian of such minor, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship. In this case, there is no dispute about the lawful guardianship of PW-1 and PW-3. The kidnapping from lawful guardianship is made punishable under Section 363 of IPC and the maximum punishment is imprisonment of either description which may extend to seven years.

9. Now, we turn to Section 364A of IPC which reads thus:

"364a. Kidnapping for Ransom, Etc.-

Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

10. The first ingredient of Section 364A is that there should be a kidnapping or abduction of any person or a person should be kept in detention after such kidnapping or abduction. If the said act is coupled with a threat to cause death or hurt to such person, an offence under Section 364A is attracted. If the first act of kidnapping or abduction of a person or keeping him in detention after such kidnapping is coupled with such conduct of the person kidnapping which gives rise to a reasonable apprehension that the kidnapped or abducted person may be put to death or hurt, still Section 364A will be attracted. In the light of this legal position, now we refer to the evidence of the child-PW-2.

11. We have carefully perused the evidence of the child-PW-2, who is the victim of the offence. At the relevant time, the age of the child was eight years. In the examination-in-chief, he has given vivid account of what exactly transpired at the time of the incident. He stated thus:

"I had been getting back home around 07.00 'O' Clock at night, after attending the tuition, as usual. A Swift Car, in grey shade, bearing Reg.No.TN 05 V 7290, gave a halt by my side. There were two persons on board. They summoned me, stating that my father is going to buy a car. They took me on board. They sought the phone number of my father. I gave them my father's phone number 98840 49011.

They asked my mother's number. I gave them my mother's phone number 98402 58273. Subsequently, I fell asleep in the car. When I got up in the morning, I found the car in a check post. The police got them napped. The persons who took me in the car as such are the accused who are present before this Court. The car is marked as M.O.1. The police questioned me. I have recounted the turn of events."

12. We have carefully perused the cross-examination. On the main incident, his version has not been shaken in the cross-examination. It is true that in response to the questions put to him in the cross-examination by the Advocate appearing for the accused no.2, the child-PW-2 deposed that his father-PW-1 taught him the particulars which need to be reproduced in the Court and that he has recounted the particulars taught by his father before the Court.

13. We find from the cross-examination of the child-PW-2 that there is hardly any challenge to the main incident. In fact, a suggestion was given to him that the men who had taken him in the car are the ones who were acquaintance with him and his father. This is the defence as reflected from the cross-examination.

14. It is not brought on record by the accused that there was a prior enmity or animosity between the parents of the victim child and the accused. There was no reason for the father of the victim to falsely implicate the appellants and tutor the child to depose against them. Therefore, the case sought to be made out that the child was tutored by his father was not rightly accepted by the Courts below. Therefore, it can be said that the 'kidnapping' within the meaning of Section 361 of IPC was established by the prosecution. Hence, the appellants are guilty of the offence punishable under Section 363 of IPC.

15. The learned senior counsel appearing for the appellants were at pains to point out inconsistent versions of PW-1 and PW-3 about who received the phone call demanding ransom. However, this issue need not detain us. The details of the phone call records were produced by the Police. It is an admitted position that the Police could not trace the name of the person who was holding the cell phone number stated by both, the PW-1 and PW-3, in their examination-in-chief. Their version is that they received the call demanding ransom from the said number.

The record relating to the call details has been discarded by the High Court as there was no certification under Section 65B of the Evidence Act. The call records could have been the best possible evidence for the prosecution to prove the threats allegedly administered by the accused and the demand of ransom. Even taking the evidence of PW-1 and PW-3 as correct, all that is proved is that they received a phone call from someone for demanding ransom and the person threatened to kill their son in case ransom is not paid.

However, the prosecution is not able to connect the alleged demand and the threat with both the accused. Therefore, the ingredients of Section 364A of IPC were not proved by the prosecution inasmuch as the prosecution failed to lead cogent evidence to establish the second part of Section 364A about the threats given by the accused to cause death or hurt to such person.

In a given case, if the threats given to the parents or the close relatives of the kidnapped person by the accused are established, then a case can be made out that there was a reasonable apprehension that the person kidnapped may be put to death or hurt may be caused to him. However, in this case, the demand and threat by the accused have not been established by the prosecution.

16. Therefore, the only conclusion is that the conviction of the appellants for the offence punishable under Section 364A of IPC will have to be set aside. However, there will be a conviction for the lesser offence of kidnapping defined by Section 361 of IPC, which is punishable under Section 363 of IPC.

It is not in dispute that the appellants have undergone actual incarceration for a period of more than eight years. The maximum sentence for the offences punishable under Section 363 of IPC extends to seven years with fine. The appellants have undergone more than the maximum sentence prescribed.

17. Before we part with the judgment, we must note here that the PW-19, the Investigating Officer, was not aware of the procedure to be followed for obtaining a certificate under Section 65B of the Evidence Act. He cannot be blamed as a proper training was not imparted to him. The State Government must ensure that the Police Officers are imparted proper training on this aspect.

18. Therefore, the Appeals are partly allowed and the conviction and sentence of the appellants for the offence punishable under Section 364A of IPC is hereby quashed and set aside and it is held that the appellants are guilty of the offence punishable under Section 363 of IPC.

As the appellants are in custody and as they have undergone maximum sentence for the offence punishable under Section 363 of IPC, we direct that they shall be forthwith set at liberty.

.....J. (Abhay S.Oka)

.....J. (Ujjal Bhuyan)

New Delhi;

February 21, 2024.

IN THE SUPREME COURT OF INDIA

Shiv Jatia
Vs.
Gian Chand Malick & Ors.

[Criminal Appeal No. 777 of 2024]

[Criminal Appeal No. 776 of 2024]

HEADNOTE – Once Magistrate seeks report from police under Sec. 202 Cr.P.C., summons to accused be postponed until police report is received

JUDGMENT

Abhay S. Oka, J.

Factual Aspects

1. The appellant in Criminal Appeal no.776 of 2024 is the accused no.2 in the complaint filed by the 1st respondent-complainant under Section 200 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.PC') alleging the commission of offences under Sections 420, 406, 467, 468 and 472 read with Section 120B of the Indian Penal Code, 1860 (for short, 'the IPC') and Section 13 of the Essential Commodities Act, 1955.

The appellants in Criminal Appeal no.777 of 2024 are the accused nos.1, 4 and 5 in the same Complaint. The appellants in these two appeals filed a petition under Section 482 of the Cr.PC before the High Court of Punjab and Haryana at Chandigarh for quashing the said complaint and for quashing the summoning order dated 16th July 2013 passed on the said complaint. The High Court, by the impugned judgment dated 25th August 2014, dismissed the said petition.

2. On 23rd September 2002, under the Liquefied Petroleum Gas (LPG) Distributorship Agreement (for short, 'the Distributorship Agreement'), the accused no.1 - M/s.Energy Infrastructure (India) Limited (for short, 'the accused company') appointed the 2nd respondent-accused no.7 (Arun Sharma, Proprietor of M/s.Arshya Max Agencies) as a distributor for distribution of LPG cylinders in the areas of Panchkula and Chandigarh.

The 2nd respondent, on behalf of the accused company, purported to execute a Point of Sale agreement on 7th March 2003 (for short, 'the POS agreement') by which he purported to appoint the 1st Respondent-complainant as a sales outlet (Point of Sale) in the town of Dhanas to sell MaxGas to the consumers. By the POS agreement, the 2nd respondent agreed to pay a flat rate commission per

cylinder sold by the 1st respondent-complainant. A demand draft in the sum of Rs.74,900/was issued in favour of the accused company by the 1st respondent-complainant.

3. The accused company addressed a letter dated 3rd March 2004 to the 2nd respondent alleging serious lapses in customer services rendered by the 2nd respondent, which allegedly caused a big dent in the reputation of the accused company. Various instances of lapses in service were set out in the said letter. The accused company also stated that the 2nd respondent had illegally supplied the cylinders to the 1st Respondent-complainant beyond the assigned territory in Punjab.

It was specifically stated in the said letter that the name of the 1st respondent-complainant was not reflected in the records of the accused company as a Point of Sale. The accused company alleged that, thus, the 2nd respondent had committed a breach of the Distributorship Agreement. Another allegation in the said letter was that a cheque issued by the 2nd respondent had been dishonoured.

4. A private complaint was filed by the 1st respondent-complainant on 17th July 2004 before the Illaqa Magistrate, Chandigarh. The allegation in the said complaint is that the 2nd respondent, along with accused nos.5 and 6, approached the 1st respondent-complainant and disclosed that they were involved in the business of manufacturing and selling LPG. The 1st respondent-complainant has relied upon the alleged information furnished by the three accused and their representations.

There is an allegation that the accused allured the 1st respondent-complainant to join hands with them and relinquish his old venture of supplying LPG in the market. The 1st respondent-complainant alleged in the complaint that while the POS agreement was executed on 7th March 2004, he paid a sum of Rs.74,900/to the accused company by way of a demand draft. It is alleged that the accused company encashed the said demand draft. Further allegation in the complaint is that the 1st respondent-complainant paid the security deposit for 360 empty cylinders at the rate of Rs.700/per cylinder to the accused and received the cylinders/refills.

Based on the assurance that the accused company will supply at least 600 refills against 300 empty cylinders in a month, the 1st respondent-complainant made investments to purchase trucks, engage staff, take telephone connections, etc. The allegation is that apart from the sum of Rs.74,900/, the 1st respondent-complainant paid a sum of Rs.2,10,000/to the accused company. It is alleged that the accused company supplied only 250 to 300 refills to the 1st respondent-complainant against the assurance of 600 refills.

It is further alleged that from 5th March 2004, the accused company stopped supplying LPG refills to the 1st respondent-complainant. It is alleged that the accused company did not take delivery of the empty cylinders and failed to refund the security deposit. Notwithstanding the letter dated 17th May 2004 sent by the 1st Respondent-complainant, no action was taken by the accused company.

Therefore, the allegation is that the accused company committed a breach of trust by not refunding the security deposit and not accepting the empty cylinders from the 1st respondent-complainant. It is alleged that there was a common intention on the part of the accused company and other accused to play fraud upon the 1st respondent-complainant. It is alleged that due to the nonsupply of refills by the accused company, the reputation of the 1st respondent-complainant has been adversely affected.

The appellant in the Criminal Appeal no.776 of 2024 was arraigned as an accused in the capacity of the Managing Director of the accused company. The 1st appellant in the Criminal Appeal no.777 of 2024 is the accused company. The 2nd and 3rd appellants have been described in the complaint as "liable officers" of the accused company as per the averments made in the complaint. They are the accused nos.4 and 5.

5. The learned Judicial Magistrate, First Class, Chandigarh, from 17th November 2004 onwards, recorded the statements of the 1st respondent-complainant and other witnesses. After examining the witnesses, on 15th December 2011, the learned Magistrate held that for proper adjudication of the case, it was necessary to send the complaint to the jurisdictional police station for investigation in accordance with Section 202 of the Cr.PC.

According to the case made out by the appellant, a report under Section 202 of the Cr.PC was never submitted by the Police, and without waiting for the said report, the learned Magistrate passed the summoning order on 16th July 2013 for the offences punishable under Sections 420, 406, 467, 468 and 472 read with Section 120B of the IPC and Section 13 of the Essential Commodities Act, 1955.

By the impugned judgment and order dated 25th August 2014, the High Court dismissed the quashing petition by holding that disputed questions of fact were involved in the petition, which can be dealt with only after recording evidence.

Submissions

6. The learned senior counsel appearing for the appellant pointed out that subsection (1) of Section 202 of Cr.PC provides that if an accused resides at a place beyond the area where the learned Magistrate exercises his jurisdiction, the

issue of process shall be postponed by directing that a police officer or any other person should make an investigation.

An option is available to the learned Magistrate to inquire into the case himself. He submitted that from the record of the Trial Court called for by this Court and from the affidavit filed by the 3rd respondent-Union Territory of Chandigarh, it is established that the report under Section 202 of the Cr.PC was not received by the Court before passing the order of summoning. The Police forwarded no such report.

He urged that in view of subsection (1) of Section 202 of the Cr.PC, as the individual accused were admittedly residing outside the territorial jurisdiction of the learned Magistrate, without compliance with Section 202 of the Cr.PC, the order of summoning could not have been passed. He submitted that the three accused were the residents of New Delhi. He, thus, submitted that the summoning order was completely illegal. He submitted that the accused company is a limited company which never authorised the 2nd respondent 7th accused to execute the said agreement on its behalf.

He submitted that in any case, on the plain reading of the complaint, there is no allegation against the appellants about the commission or omission of any acts which constitute any offence. He submitted that, reading the complaint as a whole, it is apparent that no case was made out to issue a process against the appellants. He pointed out that the High Court has not considered the case on merits.

7. The learned senior counsel appearing for the 1st Respondent-complainant submitted that though the Police report under Section 202 of the Cr.PC may not have been on record, but it cannot be said that the Police had not prepared any such report. He submitted that by the Distributorship Agreement, the accused company had appointed the 2nd respondent as its distributor of LPG cylinders.

Therefore, the 2nd respondent was competent enough to execute an agreement on behalf of the accused company in favour of the 1st respondent-complainant. He submitted that the security deposit amount had gone to the account of the accused company. He submitted that the ingredients of the offences alleged were made out on a plain reading of the complaint.

Whether the 2nd respondent was empowered to execute the said agreement on behalf of the accused company can be decided only after evidence is adduced. He also submitted that on a plain reading of subsection (1) of Section 202 of the Cr.PC, it was not necessary for the learned Magistrate to appoint a Police Officer to carry out the investigation.

The learned Magistrate had the jurisdiction to conduct an inquiry himself as specifically provided under subsection (1) of Section 202 of the Cr.PC. He submitted that the learned Magistrate recorded the statements of the 1st respondent-complainant and two other witnesses. The 1st respondent-complainant, also produced documents in support of the complaint.

He submitted that the recording of the evidence of three witnesses and consideration of the documents by the learned Magistrate constitutes an inquiry under subsection (1) of Section 202 of the Cr.PC. He would, therefore, submit that the High Court has rightly held that this is a case where the 1st respondent-complainant, should be allowed to lead evidence. The issues raised by the appellant can be decided only after the evidence is adduced.

Consideration of Submissions

8. In this case, there is no dispute that some of the accused, including three of the appellants, were residing outside the territorial jurisdiction of the Court of the learned Magistrate before whom the complaint was filed by the 1st respondent-complainant. Subsection (1) of Section 202 of the Cr.PC was amended with effect from 23rd June 2006 by the Act No.25 of 2005. Subsection (1) of Section 202 of the Cr.PC, as amended, reads thus:

"202. Postponement of issue of process.-

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding: Provided that no such direction for investigation shall be made,-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200."

(emphasis added)

The portion starting from "and" and ending with "his jurisdiction" was added with effect from 23rd June 2006. The requirement of postponing the issue of the

process was introduced on 23rd June 2006 which is applicable only when one of the accused stays outside the jurisdiction of the court. The said requirement is held to be mandatory.

The mandatory requirement of postponing the issue of the process because the accused was residing at a place beyond the area where the learned Magistrate exercises his jurisdiction was not applicable when the complaint was filed in 2004. The mandate introduced with effect from 23rd June 2006 was not applicable on the date of filing of the complaint. We are not examining whether the amended provision will apply to a complaint filed before 23rd June 2006 in which the order of issue of process has been passed after 23rd June 2006.

9. We may note here that when the order dated 15th December 2011, calling for the report from the concerned Police Station under Section 202 of the Cr.PC was passed, the learned Magistrate had already recorded the evidence of the 1st respondent/complainant and two witnesses-S.C.Mahto (CW1) and Rajiv Kumar (CW3).

Therefore, after recording the evidence of the three witnesses, the learned Magistrate was not satisfied that the material on the record of the complaint, including the testimony of the three witnesses, was sufficient to pass the summoning order. That is why the learned Magistrate had called for the report under Section 202 of the Cr.PC.

10. Initially, some controversy was raised as the order dated 17th December 2012, passed by the learned Magistrate, records that a report was received. Therefore, we called for a soft copy of the record of the complaint. The record reveals that the report referred to in the order dated 17th December 2012 was submitted by the Police, seeking two more months to file the report.

It is an admitted position that on record of the complaint, the report made by the Police under Section 202 of the Cr.PC was not received. In any case, Shri Kanwardeep Kaur, IPS, Senior Superintendent of Police, Union Territory of Chandigarh, in the affidavit filed on 24th October 2023, categorically stated that the Police did not file the report under Section 202 of the Cr.PC till 16th July 2013, when the summoning order was issued by the learned Magistrate.

11. After recording the evidence of the three witnesses and perusing the documents on record, the learned Magistrate passed the order calling for the report under Section 202 of the Cr.PC. He postponed the issue of the process. The learned Magistrate ought to have waited until the report was received. He had an option of conducting an inquiry contemplated by subsection (1) of Section

202 of the Cr.PC himself due to the delay on the part of the Police in submitting the report. But, he did not exercise the said option.

For issuing the order of summoning, the learned Magistrate could not have relied upon the same material which was before him on 15th December 2011 when he passed the order calling for the report under Section 202 of the Cr.PC. The reason is that, obviously, he was not satisfied that the material was sufficient to pass the summoning order. It is not the case of the 1st respondent-complainant that when the learned Magistrate passed the order dated 16th July 2013, there was some additional material on record. At least, the order of the learned Magistrate does not say so.

The order does not even consider the earlier order dated 15th December 2011 calling for the report under subsection (1) of Section 202 of the Cr.PC. The order issuing process has drastic consequences. Such orders require the application of mind. Such orders cannot be passed casually. Therefore, in our view, the learned Magistrate was not justified in passing the order to issue a summons.

12. Therefore, an order of remand is warranted. But, we cannot overlook that the complaint subject matter of these appeals was filed on 17th July 2004, and the order of summoning was passed nine years thereafter, i.e. on 13th August 2013. The complaint is nearly twenty years old; even the summoning order was passed eleven years ago.

Therefore, we allowed the learned senior counsel appearing for the parties to address us on merits. We may note that the High Court has not recorded cogent reasons for not entertaining the prayer for quashing the complaint. The only reason given by the High Court is that there were disputed questions of fact, and therefore, the controversy can be decided only after evidence is recorded.

13. We have perused the averments made in the complaint and examined the documents relied upon by the 1st respondent-complainant. The first document is the Distributorship Agreement dated 23rd September 2002 executed by the accused company in favour of the 2nd respondent Arun Sharma, in his capacity as the Proprietor of M/s. Arshya Max Gas. Under the said agreement, the accused company appointed the 2nd respondent as its exclusive distributor confined to the territory specified in Annexure-A to the agreement.

The territory was limited to Panchkula and Chandigarh. Clause 1 of the said agreement clearly states that the 2nd respondent accepted the appointment as an exclusive distributor of the accused company in the territory as defined in Annexure A. Taking the said agreement as correct, there is no clause in the

agreement which allows the 2nd respondent to appoint anyone as a sales outlet (Point of Sale) on behalf of the accused company.

14. Now, we come to the POS agreement relied upon in the complaint. A photocopy of the agreement is placed on record. The agreement is purportedly executed on behalf of the accused company by the 2nd respondent, showing his designation below his signature as the Proprietor of M/s.Arshya Max Gas. Admittedly, neither any Director nor any officer of the accused company has signed the same. The said agreement does not contain anything to show that the accused company had authorised the 2nd respondent to execute the said agreement.

There is no such recital. In the complaint as well as in the deposition of the 1st respondent- complainant, it is stated that in February and March, 2003, accused no.7 (2nd respondent) and accused nos.4 and 5 approached him for involving him in their business and appoint him as their Point of Sale for the area of Chandigarh and its surroundings. It is stated that the accused company and other accused (except accused no.7) had appointed respondent no.7 as the sole distributor in Chandigarh.

In his deposition, the 1st respondent-complainant stated that the 2nd respondent provided empty cylinders to the 1st respondent-complainant on payment of a security deposit of Rs.700/per cylinder. Thus, the empty cylinders were not provided by the accused company. The 1st respondent-complainant deposed that the POS agreement was executed by the 2nd respondent- accused no.7, and he identified the signature of the 2nd respondent. Only one thing is relevant in his evidence: he claims that a demand draft of Rs.74,900/was issued in the name of the accused company and was encashed by the accused company.

There is a specific averment in the complaint that the appellant-accused no.2 was the Managing Director of the accused company. Very general allegations are made in the complaint by referring to the "accused" without explicitly referring to any particular accused. But, the claim is that the money was taken by the accused company and the agreement was executed in favour of the 1st respondent-complainant by the accused company, which was signed by the 2nd respondent, who was neither an Officer nor a Director of the accused-company.

It is not the case in the complaint that the 2nd respondent was authorised by the Board Resolution of the accused company to sign the POS agreement with the 1st respondent-complainant. The Distributorship Agreement executed by the accused company did not authorise the 2nd respondent to execute the POS agreement on behalf of the company. Moreover, it is not the case that the 1st respondent

complainant handed over the demand draft to any of the directors of the accused company.

It was apparently handed over to the 2nd respondent. The deposit of the demand draft in the account of the accused company will, at the most, give rise to civil liability. Even the empty cylinders were provided to the 1st respondent-complainant by the 2nd respondent against the deposit. The accused company had no role in this. There is no contractual relationship between the accused company and the 1st respondent-complainant.

15. In fact, the entire dispute is of a civil nature arising out of a commercial transaction. Therefore, in our considered view, taking the complaint and documents relied upon by the 1st respondent-complainant as correct, no case was made in the complaint or in the evidence of the 1st respondent to proceed against the appellants.

The evidence of CW3 (Rajiv Kumar) shows that he has stated that the 2nd, 5th and 6th respondents in the Criminal Appeal of accused no.2 had approached the 1st respondent-complainant and had represented that the accused company is a limited company and accused nos.2 to 4 are its Directors.

There is no allegation that the accused company was involved, in any manner, with the transaction between the 2nd accused and the 1st respondent-complainant. Hence, continuing the complaint against the appellants will amount to an abuse of the process of law. Therefore, a case is made out for quashing the complaint as against the appellants.

16. Hence, the Appeals must succeed. The impugned judgment dated 25th August 2014 is set aside insofar as the appellants are concerned. The complaint bearing Criminal Complaint no.128 dated 17th July 2004 pending in the Court of Judicial Magistrate, 1st Class, Chandigarh is, hereby, quashed only insofar as the appellants are concerned.

The complaint will proceed against the rest of the accused. The other accused can raise appropriate defences at the time of framing charge or Trial.

The Appeals are partly allowed on the above terms with no order as to costs.

.....**J. (Abhay S. Oka)**

.....**J. (Ujjal Bhuyan)**

New Delhi;

February 23, 2024.

IN THE SUPREME COURT OF INDIA

Bharti Cellular Ltd. (Now Bharti Airtel Ltd.)

Vs.

Assistant Commissioner of Income Tax, Circle 57, Kolkata and Anr.

[Civil Appeal No. 7257 of 2011]

[Civil Appeal Nos. 2652-2653, 4949-4950 and 4947-4948 of 2015; 7455 of 2018; 111 and 2860 of 2021; 8902 of 2022; 7729, 7735, 7736, 7737, 7738, 7739, 7740, 7741, 7742, 7743, 7679, 7680, 7681, 7682, 7744, 7745, 7746, 7747, 7748, 7848, 7849, 7852, 7853, 7854, 7855, 7856, 7857 And 7859 of 2023; and 3514, 3515, 3516 and 3517 of 2024]

HEADNOTE – Distributor is not an agent. He is an independent contractor.

JUDGMENT

Sanjiv Khanna, J.

1. This common judgment decides the aforesaid appeals preferred by the Revenue and the assesseees, who are cellular mobile telephone service providers. The issue relates to the liability to deduct tax at source under Section 194-H of the Income Tax Act, 1961 on the amount which, as per the Revenue, is a commission payable to an agent by the assesseees under the franchise/distributorship agreement between the assesseees and the franchisees/distributors.

As per the assesseees, neither are they paying a commission or brokerage to the franchisees/distributors, nor are the franchisees/distributors their agents. The High Courts of Delhi and Calcutta have held that the assesseees were liable to deduct tax at source under Section 194-H of the Act, whereas the High Courts of Rajasthan, Karnataka and Bombay have held that Section 194-H of the Act is not attracted to the circumstances under consideration.

2. To avoid prolixity and repetition, we are not referring to the facts and arguments in the beginning, and will preface our judgment by reproducing Section 194-H of the Act and explaining its contours. The relevant portion of Section 194-H reads as under:

"194-H. Commission or brokerage.-

Any person, not being an individual or a Hindu undivided family, who is responsible for paying, on or after the 1st day of June, 2001, to a resident, any income by way of commission (not being insurance commission referred to in

Section 194-D) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income tax thereon at the rate of five per cent:

Provided that no deduction shall be made under this section in a case where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the account of, or to, the payee, does not exceed fifteen thousand rupees:

Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed one crore rupees in case of business or fifty lakh rupees in case of profession during the financial year immediately preceding the financial year in which such commission or brokerage is credited or paid, shall be liable to deduct income tax under this section.

Provided also that no deduction shall be made under this section on any commission or brokerage payable by Bharat Sanchar Nigam Limited or Mahanagar Telephone Nigam Limited to their public call office franchisees."

3. Section 194-H of the Act imposes the obligation to deduct tax at source, states that any person responsible for paying at the time of credit or at the time of payment, whichever is earlier, to a resident any income by way of commission or brokerage, shall deduct income tax at the prescribed rate. The expression "any person (...) responsible for paying" is a term of art, defined vide Section 2042 of the Act. As per the clause (iii) of Section 204, in the case of credit or in the case of payment in cases not covered by clauses (i), (ii), (ii)(a), (ii)(b), "the person responsible for paying" is the payer himself, or if the payer is a company, the company itself and the principal officer thereof.

4. Explanation (i) to Section 194-H3 of the Act defines the expressions 'commission' or 'brokerage', as:

"Explanation. - For the purposes of this section, -

(i) "commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities;"

Payment is received when it is actually received or paid. The payment is receivable when the amount is actually credited in the books of the payer to the

account of the payee, though the actual payment may take place in future. The payment received or receivable should be to a person acting on behalf of another person. The words "another person" refers to "the person responsible for paying". The words "direct" or "indirect" in Explanation (i) to Section 194-H of the Act are with reference to the act of payment.

Without doubt, the legislative intent to include "indirect" payment ensures that the net cast by the section is plugged and not avoided or escaped, albeit it does not dilute the requirement that the payment must be on behalf "the person responsible for paying". This means that the payment/credit in the account should arise from the obligation of "the person responsible for paying". The payee should be the person who has the right to receive the payment from "the person responsible for paying". When this condition is satisfied, it does not matter if the payment is made "indirectly".⁴

5. The services rendered by the agent to the principal, according to the latter portion of Explanation (i) to Section 194-H of the Act, should not be in the nature of professional services. Further, Explanation (i) to Section 194-H of the Act restricts application of Section 194-H of the Act to the services rendered by the agent to the principal in the course of buying and selling of goods, or in relation to any transaction relating to any asset, valuable article, or thing, not being securities. The latter portion of the Explanation (i) to Section 194-H of the Act is a requirement and a pre-condition. It should not be read as diminishing or derogating the requirement of the principal and agent relationship between the payer and the recipient/payee.

6. It is settled by a series of judgments of this Court that the expression 'acting on behalf of another person' postulates the existence of a legal relationship of principal and agent, between the payer and the recipient/payee.⁵ The law of agency is technical. Whether in law the relationship between the parties is that of principal-agent is answered by applying Section 182 of the Contract Act, 1872.

Therefore, the obligation to deduct tax at source in terms of Section 194-H of the Act arises when the legal relationship of principal-agent is established. It is necessary to clarify this position, as in day to day life, the expression 'agency' is used to include a vast number of relationships, which are strictly, not relationships between a principal and agent.

7. Section 182 of the Contract Act, defines the words 'agent' and 'principal' and reads as under:

"182. "Agent" and "principal" defined.- An "agent" is a person employed to do any act for another, or to represent another in dealings with third persons. The

person for whom such act is done, or who is so represented, is called the "principal".

Agency in terms of Section 182 exists when the principal employs another person, who is not his employee, to act or represent him in dealings with a third person. An agent renders services to the principal. The agent does what has been entrusted to him by the principal to do. It is the principal he represents before third parties, and not himself. As the transaction by the agent is on behalf of the principal whom the agent represents, the contract is between the principal and the third party. Accordingly the agent, except in some circumstances, is not liable to the third party.

8. Agency is therefore a triangular relationship between the principal, agent and the third party. In order to understand this relationship, one has to examine the inter se relationship between the principal and the third party and the agent and the third party. When we examine whether a legal relationship of a principal and agent exists, the following factors/aspects should be taken into consideration:

(a) The essential characteristic of an agent is the legal power vested with the agent to alter his principal's legal relationship with a third party and the principal's co-relative liability to have his relations altered.⁷

(b) As the agent acts on behalf of the principal, one of the prime elements of the relationship is the exercise of a degree of control by the principal over the conduct of the activities of the agent. This degree of control is less than the control exercised by the master on the servant, and is different from the rights and obligations in case of principal to principal and independent contractor relationship.

(c) The task entrusted by the principal to the agent should result in a fiduciary relationship. The fiduciary relationship is the manifestation of consent by one person to another to act on his or her behalf and subject to his or her control, and the reciprocal consent by the other to do so.⁸

(d) As the business done by the agent is on the principal's account, the agent is liable to render accounts thereof to the principal. An agent is entitled to remuneration from the principal for the work he performs for the principal.

9. At this stage, three other relevant aspects/considerations should be noted. First is the difference between 'power' and 'authority'. The two terms though connected, are not synonymous. Authority refers to a factual position, that is, the terms of contract between the two parties. The power of the agent however, is not, strictly speaking, conferred by the contract or by the principal but by the law of agency.

When a person gives authority to another person to do the acts which bring the law of agency into play, then, the law vests power with the agent to affect the principal's legal relationship with the third parties. The extent and existence of the power with the agent is determined by public policy. The authority, as observed above, refers to the factual situation. The second consideration is that the primary task of an agent is to enter into contracts on behalf of his principal, or to dispose of his principal's property.

The factors mentioned in clauses (b) to (d) in paragraph 8 above flow, and are indicia of this primary task. Clauses (b) to (d) of paragraph 8 are useful as tests or standards to examine the true nature or character of the relationship. Lastly, the substance of the relationship between the parties, notwithstanding the nomenclature given by the parties to the relationship, is of primary importance. The true nature of the relationship is examined by reference to the functions, responsibility and obligations of the so-called agent to the principal and to the third parties.

10. An agent is distinct from a servant, in that an agent is subject to less control than a servant, and has complete, or almost complete discretion as to how to perform an undertaking. As Seavey said, "a servant (...) is an agent under more complete control than is a nonservant".⁹ The difference is "in the degree of control rather than in the acts performed. The servant sells primarily his services measured by time; the agent his ability to produce results."¹⁰ This distinction can be criticised, for servants may have very wide discretion, and may not really be subject to control at all in practice, while agents may have their power to act circumscribed by detailed instructions.¹¹

11. This Court in *Bhopal Sugar Industries Limited v. Sales Tax Officer, Bhopal*¹², has expounded the difference between principal-agent and principal-principal relationship, in the following words:-

"5. the essence of the matter is that in a contract of sale, title to the property passes on to the buyer on delivery of the goods for a price paid or promised. Once this happens the buyer becomes the owner of the property and the seller has no vestige of title left in the property. The concept of a sale has, however, undergone a revolutionary change, having regard to the complexities of the modern times and the expanding needs of the society, which has made a departure from the doctrine of *laissez faire* by including a transaction within the fold of a sale even though the seller may by virtue of an agreement impose a number of restrictions on the buyer, e.g. fixation of price, submission of accounts, selling in a particular area or territory and so on.

These restrictions per se would not convert a contract of sale into one of agency, because in spite of these restrictions the transaction would still be a sale and subject to all the incidents of a sale. A contract of agency, however, differs essentially from a contract of sale inasmuch as an agent after taking delivery of the property does not sell it as his own property but sells the same as the property of the principal and under his instructions and directions. Furthermore, since the agent is not the owner of the goods, if any loss is suffered by the agent he is to be indemnified by the principal. This is yet another dominant factor which distinguishes an agent from a buyer-pure and simple. In Halsbury's Laws of England, Vol. 1, 4th Edn., in para 807 at p. 485, the following observations are made:

"807. Rights of agent. -The relation of principal and agent raises by implication a contract on the part of the principal to reimburse the agent in respect of all expenses, and to indemnify him against all liabilities, incurred in the reasonable performance of the agency, provided that such implication is not excluded by the express terms of the contract between them, and provided that such expenses and liabilities are in fact occasioned by his employment."

12. The aforesaid judgment in the context of distinction between a contract of sale and contract of agency observes that the agent is authorised to sell or buy on behalf of the principal, whereas the essence of contract of sale is the transfer of title of goods for the price paid or promised to be paid. In case of an agency to sell, the agent who sells them to the third parties, sells them not as his own property, but as a property of the principal, who continues to be the owner of the goods till the sale. The transferee is the debtor and liable to account for the price to be paid to the principal, and not to the agent for the proceeds of the sale. An agent is entitled to his fee or commission from the principal.

13. This distinction and test was referred to by this Court in Commissioner of Income Tax, Ahmedabad and Others v. Ahmedabad Stamp Vendors Association¹³, which is a case relating to Section 194-H of the Act. This Court had approved the decision of the High Court in Ahmedabad Stamp Vendors Association v. Union of India¹⁴. We may also refer to two more decisions of this Court. In the case of Director, Prasar Bharati v. Commissioner of Income Tax, Thiruvananthapuram¹⁵, this Court has observed that the explanation appended to Section 194- H of the Act defining the expression 'commission or brokerage' is an inclusive definition giving wide meaning to the expression 'commission'.

The second decision is in the case of Singapore Airlines Limited v. Commissioner of Income Tax, Delhi¹⁶, which we shall refer to subsequently in some detail as to its exact purport and ratio. However, at this stage, we would like

to examine in some detail commercial relationships in the nature of an independent contractor, that are legally, principal to principal dealings.

14. The passage from Bhopal Sugar Industries Limited (supra) highlights the principles and the complexities involved in determining the correct nature of the legal relationship between a principal and an agent. Law permits individuals to enter into complex contracts incorporating multiple rights and obligations. The relationships between contracting parties have become multi-dimensional, which may not strictly fall within an employer-employee, principal-agent or principal-principal relationship.

A singular contract may create different legal relationships and obligations. Independent contractors on occasion act for themselves, and at other times may be creating legal relations between their employers and third persons. For example, a solicitor may start by giving advice (independent contractor), and then as a consequence make a contract for his employer with another person (agent).

15. In *Labreche v. Harasymiw*¹⁷, Valin J. delineated the question of what an agency involves, stating that:

(i) it refers to the power of the agent to affect the principal's position. However, this is not the sole test, though it still remains one of the main criteria in determining whether someone is an agent. There are several features in the definition of an agent¹⁸. There can be several situations where one person represents or acts for another, but this does not create the relationship of principal and agent. It is only when the representation or action on another's behalf affects the latter's legal position, that is to say his rights against, or his liability towards, other people, that the law of agency applies;

(ii) the second feature is the importance of the way in which law regards the relationship which is created. The effect of the law is that it regulates the way in which parties conduct themselves. The conduct of the parties is considered in terms of law, regardless of the language or nomenclature used by the parties. The true factual position must be investigated to determine whether a relationship of agency has come into existence between a set of parties or individuals.

16. The significant observation in the aforesaid judgment is that all kinds of interactions with third parties or interested parties, resulting from the introduction of the third parties with one who wishes a particular undertaking to be performed, may not be a result of an agency. For instance, a retail dealer or supplier of goods, obtains goods from a wholesale supplier or a manufacturer for subsequent resale to retail customers or suppliers who, in turn, deals with retail dealers or shopkeepers.

Such 'middlemen' are sometimes referred to as 'agents', when in fact they are franchisees of the manufacturer or supplier, or are distributors of the manufacturer's goods, perhaps with a 'sole agency' or special dealership for his goods. Such 'agents' can be real buyers, acting as principals on their own behalf. Consequently, they are not liable to the manufacturer or supplier in the way an agent might be for failure of duty, nor do their contracts with other parties - whether it be suppliers, retail dealers or individual customers - hold the party who sold to them, liable, for any breach including misrepresentation or sale of defective goods.

The seller's contractual or tortious liability is different from the manufacturer's liability on account of warranty/guarantee, statutory liability or even obligation to a third party who purchases the goods or avails services from/through the independent contractor. An agent renders service to the principal, who he/she represents, and therefore the principal, and not the agent, is liable to the third parties. Further, the money received by an independent contractor from his customers will belong to the independent contractor and not to the party who sold to him.

The money will be a part of such independent contractor's property in the event of his bankruptcy or liquidation. This may be the case even if the contract of sale is one of 'sale or return'. It is important to avoid confusion, by applying the legal tests, that may arise where the functions of the 'buyer' - described as an 'agent' - is really as that of a 'middleman', and the necessary elements for creation of principal and an agent relationship are absent. Two level commercial transaction can result in an tripartite arrangement/agreement with respective rights and obligations, without any of the two parties having principal-agent relationship.

17. Clause (d) in paragraph 8 observes that the agent is liable to render accounts to the principal as the business done by the agent is on principal's account. The agent is entitled to remuneration from the principal for the work he performs. To decide whether a contracting party acts for himself as an independent contractor, we may examine whether in the course of work, he intends to make profits for himself, or is entitled to receive prearranged remuneration.

If the party is concerned about acting for himself and making the maximum profits possible, he is usually regarded as a buyer, or an independent contractor and not as an agent of the principal. This would be true even when certain terms and conditions have been fixed relating to the manner in which the seller conducts his business. We shall subsequently further elucidate on the characteristics of an independent contractor, and differentiate them from the principal-agent relationship.

18. We now turn to the facts of the present case. The assessees, as noticed above, are cellular mobile telephone service providers in different circles as per the licence granted to them under Section 4 of the Indian Telegraph Act, 1885¹⁹ by the Department of Telecommunications²⁰, Government of India. To carry on business, the assessees have to comply with the licence conditions and the rules and regulations of the DoT and the Telecom Regulatory Authority of India.²¹

Cellular mobile telephone service providers have wide latitude to select the business model they wish to adopt in their dealings with third parties, subject to statutory compliances being made by the operators. As per the business model adopted by the telecom companies, the users can avail post-paid and prepaid connections. In the present case, we are only concerned with the business operations under the prepaid model.

19. Under the prepaid business model, the end-users or customers are required to pay for services in advance, which can be done by purchasing recharge vouchers or top-up cards from the retailers. For a new prepaid connection, the customers or end-users purchase a kit, called a start-up pack, which contains a Subscriber Identification Mobile card²², commonly known as SIM card, and a coupon of the specified value as advance payment to avail the telecom services.

20. The assessees have entered into franchise or distribution agreements with several parties, the terms and conditions of which we would refer to subsequently. It is the case of the assessees that they sell the start-up kits and recharge vouchers of the specified value at a discounted price to the franchisee/distributors. The discounts are given on the printed price of the packs. This discount, as per the assessees, is not a 'commission or brokerage' under Explanation (i) to Section 194-H of the Act.

The Revenue, on the other hand, submits that the difference between 'discounted price' and 'sale price' in the hands of the franchisee/distributors being in the nature of 'commission or brokerage' is the income of the franchisee/ distributors, the relationship between the assessees and the franchisee/distributor is in the nature of principal and agent, and therefore, the asseses are liable to deduct tax at source under Section 194-H of the Act.

21. In order to decide the dispute in question, we would like to refer to some of the relevant clauses of the franchisee/distributor agreement between Bharti Airtel Limited and the franchisee/distributors, which read as under²³:

Bharti Airtel Limited

"WHEREAS THE FRANCHISEE has approached BML and have expressed their keen desire to be one of the FRANCHISEE's to undertake the job of

promoting and marketing of Pre Paid and also other related services all under the brand name of "MAGIC" to the potential subscribers, under the terms of this Agreement. The FRANCHISEE has also represented that they have infrastructure, manpower and experience in the above area and they possess the financial to perform the above functions and such other functions as may be assigned to them by BML from time to time.

A. It is expressly understood that the Agreement does not confer any exclusive right to the FRANCHISEE to market the Services nor does the Agreement gives any territorial right to the FRANCHISEE. The BML expressly reserves its right to enter into similar arrangements with other party(ies) to market and promote the Services and to market the Services directly to the customers if considered appropriate in terms of business exigency and market requirements.

2.1 Subject to the terms and conditions of this Agreement, BML hereby appoints Central Supply Corporation, as its FRANCHISEE to promote and market the Pre Paid Services of BML and more particularly in terms of the policies of BML as shall be informed by BML from time to time and the FRANCHISEE hereby accepts the appointment as the FRANCHISEE of BML.

2.3 The parties recognize that it is commercially prudent and desirable for the FRANCHISEE in the performance of the obligations under this Agreement to appointment (sic) Retailers/outlets for the retail promotion and marketing of Pre Paid services. In such an event the FRANCHISEE shall obtain the prior approval of BML for appointment(s) of Retailers/outlets, and also to the terms and conditions of such appointment.

2.4 The FRANCHISEE acknowledges that the business of cellular mobile services is extremely competitive and exists in an ever expanding market. The FRANCHISEE agrees and acknowledges that during the term of this Agreement it shall not undertake the activities under this Agreement for any other provider of Cellular Mobile Telephone Services or any similar competitive business.

3.1 The FRANCHISEE warrants and represents that: (a) It has all necessary statutory, regulatory and municipal permissions, approvals and permits for the running and operation of its establishment and for the conduct of its business, more particularly for the business as provided for in this Agreement. (b) It is in compliance of all laws, regulars and rules in the conduct of its business and the running of its business establishment.

3.2 The FRANCHISEE shall indemnify and keep indemnified BML from and against all and any costs, expenses and charges imposed on BML as a result of any action by a statutory, regulatory or municipal authority arising out of non-

compliance by the FRANCHISEE of laws, rules or regulations in the running, operation and conduct of its business and business establishment, more particularly with respect to the conduct of its business provided for in this Agreement.

4.1 The FRANCHISEE shall maintain a suitable establishment for the conduct of its business and the performance of its obligations under this Agreement. The FRANCHISEE shall use its best efforts to actively provide effective ways to market and promote the Pre Paid Services and shall always act in the interest of both BML and the subscribers to the Services of BML.

4.2 As covenanted for in clause 2.4, the FRANCHISEE shall not involve himself in any manner either directly or indirectly in any business or activity which is competitive with the business of activities of BML. The FRANCHISEE acknowledges that the adherence to this provision is a material obligation of the FRANCHISEE under this Agreement.

4.4 The FRANCHISEE shall, in the conduct of its business and performing its obligations under this Agreement, conform and adhere to the policies of BML communicated to the FRANCHISEE from time to time. The FRANCHISEE shall not charge the customers of BML for the services anything more than the rates specified by the BML from time to time.

4.5 The FRANCHISEE shall employ adequate employees for performing its obligations under this Agreement and in the promoting and marketing of the Pre Paid Services. All contractual and statutory payments, including wages and salaries to the employees of the FRANCHISEE, shall be the sole liability and responsibility of the FRANCHISEE.

4.6 The FRANCHISEE in respect of its business establishment shall, if so desired by BML, in order to effectively project the Franchisee, make alterations, modifications in and install such furniture, fixture and air conditioning equipment, fax, computer, with internet connection as required necessary and mutually agreed upon and the cost of such alterations, renovation shall be borne exclusively by the FRANCHISEE.

4.7 The FRANCHISEE agrees and undertakes to maintain proper and sufficient quantities of the prepaid start up packs and recharge coupons in respect of the Pre Paid service in order to meet the market requirements at all times and in accordance with the guidelines and instructions issued by BML from time to time.

4.8 The FRANCHISEE shall use its best efforts and endeavours to market and promote the Pre Paid Services to meet the growing demands of the Subscribers.

At no point of time shall any right, title or interest pass to the FRANCHISEE in respect of the Pre-Paid Cards for the Pre Paid Services given to the subscribers for connection to the Service and all right, title, ownership and property rights in such cards shall at all times vest with BML.

4.9 The FRANCHISEE shall seek prior written approval from BML for its promotional literature campaign (including promotional material which bears the Trademarks, logos and trade names of BML) for the Pre Paid Services. BML will not share the expenditure incurred by the FRANCHISEE for such advertising and publicity of the Services unless agreed to earlier in writing. Any share of the expenditure stated above and the ratio for the same shall be decided by BML from time to time at its sole discretion.

4.10 The FRANCHISEE shall be solely liable and responsible, at its business premises, for the safety and storage of all pre paid start up kits, recharge cards and other material in respect of the Pre Paid Services. BML shall not be liable for any loss, pilferage or damage to the items as stated here above and the FRANCHISEE shall indemnify BML from all loss caused to BML arising out of any loss, pilferage or damage to the items as stated here above.

4.12 The liability to insure and keep insured the items as stated in Clause 4.10 at the business establishment of the FRANCHISEE shall be of the FRANCHISEE and the liability for any loss or damage due to any fire, burglary, theft, etc. will be that of the FRANCHISEE.

4.14 The FRANCHISEE shall be responsible for collection of all necessary agreement/contract forms and other related forms, and for obtaining the signature of the customer on these forms. The FRANCHISEE shall forward all such forms, duly completed in all respects and signed by customers to BML for its verification and records.

5.1 From time to time, BML will review with the FRANCHISEE minimum subscription, targets for the Pre Paid Services, taking into account the market development and market potential and other relevant factors. The achievements of these prescribed targets by the FRANCHISEE is a material obligation of the FRANCHISEE under this Agreement.

6.2 The FRANCHISEE shall employ a fully trained service staff whose training has been completed in accordance with the standards set out by BML.

8.1 The FRANCHISEE's price and payment for services will be specified by BML from time to time. The rates are subject to variation during the terms of this Agreement at the sole discretion of BML and shall be intimated to the Distributor from time to time.

8.3 All other tax liabilities arising in connection with or out of the agreement transactions pertaining to the FRANCHISEE shall be the responsibility of the FRANCHISEE.

10.1 The FRANCHISEE accepts for all purposes that all trademarks, logos, trade names or identifying marks and slogans used by BML in respect of the Service and the Pre Paid Services, whether registered or not, constitute the exclusive property of BML or their affiliated companies as the case may be, and cannot be used by the FRNCHISEE except in connection with the promotion and marketing of the Services of BML and that too with the express written consent of BML. The FRANCHISEE shall not contest, at any time, the right of the BML or its affiliated companies to any such Trademark or trade name used or claimed by BML or such affiliated companies in respect of the Service or Pre Paid Services.

11.2 During the term of this Agreement, the FRANCHISEE is authorised to use BML's trademarks, logos and trade names only in connection with the FRANCHISEE's use of such trademarks, logos and trade names as set out in this Agreement. The FRANCHISEE's use of such trademarks, logos and trade names shall be in accordance with the guidelines issued by BML. Nothing herein shall give the FRANCHISEE any right, title or interest in such trademarks, logos or trade names, in the event of termination of this Agreement, however caused, the FRANCHISEE'S right to use such Trademarks, logos or trade names shall cease forthwith. The FRANCHISEE agrees not to attach any additional trademarks, logos or trade designation to the Trademarks of BML.

11.3 For as long as this Agreement continues in force but not thereafter, the FRANCHISEE may identify itself as an authorised FRANCHISEE of BML, but shall not use the Trademarks, logos and trade names of BML as part of its proprietorship name/corporate/partnership name or otherwise indicate to the public that it is an affiliate of BML.

11.5 BML shall allow the FRANCHISEE to use its logo to be displayed on the sign board to be placed at the FRANCHISEE's outlet(s) and on the each memos and/or official business documents issued by the FRANCHISEE towards the services effected from the outlet(s). However, the intellectual property rights associated with Trademarks, logos and trade names are and shall remain the sole property of BML.

14.1 BML shall not be liable to the FRANCHISEE or any other party by virtue of the termination of this Agreement for any reason whatsoever, including but not limited to any claim for loss of profits or compensation or prospective profits or on account of any expenditure, investments, leases, capital improvements or any other commitments made by the FRANCHISEE in connection with the business

made in reliance upon or by virtue of FRANCHISEE's appointment under this Agreement. It is expressly agreed that no compensation whatsoever shall be payable by BML to the FRANCHISEE upon the termination of this Agreement.

14.2 Upon receipt of any notice of termination of this Agreement the FRANCHISEE shall conduct all its operations until the effective date of termination mentioned in such notice in the manner which is consistent with the obligation of the FRANCHISEE hereunder and the FRANCHISEE shall not prejudice the reputation or goodwill of BML and the interests of the subscribers in any manner whatsoever.

14.3 Upon termination of this Agreement for any reason, the FRANCHISEE shall cease to represent himself as the authorised FRANCHISEE of BML and shall not act in a manner, which is likely to cause confusion or to deceive the public. The FRANCHISEE shall promptly remove all Trademarks, signs, words, trademarks (sic), logos and any other representations connected with BML.

In the event the FRANCHISEE fails to comply with the above, BML shall have the right to enter upon the FRANCHISEE's premises and remove, without liability, all Trademarks, signs, logos, trademarks (sic), materials written documents and any other representations connected with BML and the FRANCHISEE shall reimburse to BML all costs and expenses incurred thereof.

14.4 In the event of termination of this Agreement, FRANCHISEE shall return to BML by the effective date of termination all advertising and promotional materials, marketing aids and other documents and materials received and all Confidential Information received under this Agreement.

14.5 Both parties agree that goodwill created with respect to Service and Pre Paid Services is the exclusive property of BML. Any expenditure for promotion, advertising and other efforts by FRANCHISEE is made with the knowledge that this Agreement may be terminated pursuant to Article 13 hereof. Under no circumstance shall BML be obliged to pay to the FRANCHISEE upon termination of this Agreement any termination pay or compensation for subscriber acquisition, special indemnification, or any other termination compensation.

16.1 The FRANCHISEE understands that it is an independently owned business entity and this Agreement does not make the FRANCHISEE, its employees, associates or agents as employees, agents or legal representatives of BML for any purpose whatsoever. The FRANCHISEE has no express or implied right or authority to assume or to undertake any obligation in respect of or on behalf of or in the name of BML, or to bind BML in any manner. In case, the FRANCHISEE,

its employees, associates or agents hold out as employees, agents, or legal representatives of BML, the FRANCHISEE shall forthwith upon demand make good any/all loss, cost, damages, including consequential loss, suffered by BML on this account.

16.2 It is understood that the relationship between the parties is solely on principal-to-principal. FRANCHISEE shall not acquire, by virtue of any provision of this Agreement or otherwise, any right, power or capacity to act as an agent or commercial representative of BML for any purpose whatsoever. Nothing contained in the contract shall be deemed or construed as creating a joint venture relationship or legal partnership etc. between BML and the FRANCHISEE.

16.3 The FRANCHISEE shall not obtain/offer the pre paid cards and/or recharge coupons for the Pre Paid Service from any other source other than BML unless such permission is granted in writing by BML in order to meet the specific needs of the market and subscribers as determined by BML."

22. As per the agreement, the franchisee/distributor is appointed for marketing of prepaid services and for appointing the retailer or outlets for sale promotion. It is pertinent to note that the retailers or outlets for sale promotion are appointed by the franchisee/ distributor and not the assessee. The franchisees/distributors have agreed not to undertake activities mentioned in the agreement for any other competitive cellular mobile telephone service provider in the business. The franchisees/distributors have to comply with statutory, regulatory and municipal permissions while conducting the business.

The franchisees/distributors have agreed to indemnify and keep indemnified the assessee against any and all costs, expenses and charges imposed on the assessee because of any action by a statutory, regulatory or municipal authority due to non-compliance by the franchisee/distributor. The franchisee/ distributor has to maintain a suitable establishment for the conduct of business and performance of obligations. While doing so, the franchisee/distributor shall conform and adhere to the policies communicated to it from time to time by the assessee.

The franchisee/distributor shall employ adequate employees for performing its obligations, and all contractual and statutory payments, including wages, are to be paid by the franchisee/distributor. The assessee can, if it so desires, call upon the franchisee/distributor to make alterations, modifications in furniture, air conditioning equipment etc., as required and necessary and mutually agreed. Costs of such alternations and distributions are to be borne by the franchisee/distributor.

23. The franchisee/distributor has to maintain proper and sufficient quantities of prepaid start-up packs and recharge coupons to meet the market requirements. The franchisee/distributor shall follow the guidelines and directions issued by the assessee from time to time. At no point of time, the right, title, or interest in the prepaid cards shall pass on to the franchisee/distributor. All rights, title ownership and property rights in the cards shall rest with the assessee

The franchisee/distributor shall be solely responsible and liable for safety and storage of prepaid start-up kits, recharge cards and other material. The assessee will not be liable for any loss, pilferage or damage to the pre-paid coupons/starter-kits. The franchisee/ distributor is to indemnify the assessee for any loss caused on this account. The franchisee/distributor is to insure the prepaid start-up kits/ recharge coupons. The liability for any loss or damage due to fire, burglary, theft etc. is that of the franchisee/distributor.

24. On termination of the agreement, the franchisee/distributor shall continue its operation till the effective date of termination mentioned in the notice. Upon termination, the franchisee/distributor is required to return all advertising and promotional material, etc. to the assessee by the effective date of termination. Further, the assessee is not liable to the franchisee/distributor or any other party for any loss of profits or compensation or prospective profits or on account of any expenditure, etc. in the event of termination.

25. The assessee is to review the minimum subscriptions/targets for prepaid services taking into account market development and potential and other relevant factors. The franchisee/distributor is to employ a fully trained service staff, who have undergone training in accordance to the standards set out by the assessee. The franchisee/distributor will be responsible to collect all necessary agreement/contract forms and other related forms, after obtaining signatures of the customers on the said forms. These forms, duly completed in all respects and signed by the customers, will be forwarded to the assessee for its verification and record.

26. The franchisee's/distributor's price and payment for services will be specified by the assessee from time to time. The rates can be varied during the terms of the agreement at the discretion of the assessee and such variation is to be intimated to the franchisee/distributor. All tax liabilities in connection with, or arising out of, the transactions pertaining to the agreement shall be the responsibility of the franchisee/distributor.

27. The trademarks, logos, trade names or identifying marks and slogans used by the assessee, whether registered or not, are exclusive property of the assessee or the affiliated companies. The use of such marks, logos etc. will be in accordance

with the guidelines issued by the assessee. As long as the agreement is in force, but not thereafter, the franchisee/distributor shall identify itself as an authorised franchisee, but shall not use trademarks, logos, tradenames, as part of its proprietorship name/corporate/ partnership name or otherwise. The franchisee/distributor is entitled to use its logo on the side door at its outlets and on its memos and official business documents towards the services effected from the outlet.

28. On the question of actual business financial model adopted and followed, it is an admitted position that the franchisees/distributors were required to pay in advance the price of the welcome kit containing the SIM card, recharge vouchers, top-up cards, e-tops, etc. The abovementioned price was a discounted one. Such discounts were given on the price printed on the pack of the prepaid service products. The franchisee/distributor paid the discounted price regardless of, and even before, the prepaid products being sold and transferred to the retailers or the actual consumer. The franchisee/distributor was free to sell the prepaid products at any price below the price printed on the pack. The franchisee/distributor determined his profits/income.

29. The Revenue has highlighted that the prepaid SIM cards were not the property of franchisee/distribution and no right, title or interest was transferred to them. These were always to remain the property of the assessee. This is correct, but it is equally true that this is a mandate and requirement of the licence issued to the assessee by the DoT.

In actual practice, the right to use the SIM card and its possession is handed over and given to the end-user, that is, the customer who installs the SIM card in his phone to avail the telecommunication services. Similarly, the franchisees/distributors are to ensure that the post-paid customers/end-users fill up the form as prescribed along with the documents which are given and submitted to the assessee. These are mandates prescribed by the licence issued by the DoT to the assessees. The contractual obligations of the distributors/franchisees, do not reflect a fiduciary character of the relationship, or the business being done on the principal's account.

30. The franchisees/distributors earn their income when they sell the prepaid products to the retailer or the end-user/customer. Their profit consists of the difference between the sale price received by them from the retailer/end-user/customer and the discounted price at which they have 'acquired' the product. Though the discounted price is fixed or negotiated between the assessee and the franchisee/distributor, the sale price received by the franchisee/ distributor is within the sole discretion of the franchisee/distributor. The assessee has no say in this matter.

31. It is not the case of the Revenue that the tax at source under Section 194-H of the Act is to be deducted on the difference between the printed price and the discounted price. This cannot be the case as the Revenue cannot insist that the franchisee/distributor must sell the products at the printed price and not at a figure or price below the printed price.

The obligation to deduct tax at source is fixed by the statute itself, that is, on the date of actual payment by any mode, or at the time when income is credited to the account of the franchisee/distributor, whichever is earlier. In the context of the present case, the income of the franchisee/distributor, being the difference between the sale price received by the franchisee/distributor and the discounted price, is paid or credited to the account of the franchisee/distributor when he sells the prepaid product to the retailer/end-user/customer.

The sale price and accordingly the income of the franchisee/distributor is determined by the franchisee/distributor and the third parties. Accordingly, the assessee does not, at any stage, either pay or credit the account of the franchisee/distributor with the income by way of commission or brokerage on which tax at source under Section 194-H of the Act is to be deducted.

32. Faced with the above situation, the Revenue has relied upon the use of the expression "payment received or receivable directly or indirectly by a person acting on behalf of the other person", that is, 'the principal'. It is argued that even if the franchisee/distributor receives payment in the form of income from the retailer/end-user/customer, it would require deduction of tax at source as payment received or receivable, directly or indirectly, is to be subjected to deduction of tax. In support of the argument, reliance is placed upon decision in the case of Singapore Airlines Limited (supra).

33. The decision in Singapore Airlines Limited (supra) is required to be understood in the context of the contract in the said case, which was in terms of the rules/agreement set up by the International Airport Transport Association²⁴. IATA would fix a ceiling price, and the price an airline could charge from its customers with a discretion to the airlines to sell their tickets at a net fare lower than the base fare but not higher. The air carriers were required to furnish a fare list to the Director General of Civil Aviation.

The arrangement between the airlines and travel agents was covered by the Passenger Sales Agency Agreement²⁵, which would set out the conditions under which the travel agent carried out sale of tickets along with other ancillary services. The travel agents were entitled to 7% commission on sale of the tickets for its services as the standard commission based on the price bar set by the

IATA. The airlines were deducting tax at source under Section 194-H of the Act on the 7% commission.

In addition to the 7% commission, the travel agents were also entitled to additional/supplementary commission on the tickets sold by them. The additional/supplementary commission and the amount at which the tickets were sold were computed by the travel agents and transmitted to the billing and settlement plan (BSP). The BSP, functioning under the aegis of the IATA, managed, inter alia, logistics vis-à-vis payments, and acted as a forum for agents and airlines to examine details pertaining to the sale of the flight tickets.

33.1 This Court examined the operation of the BSP where the financial data regarding sale of tickets was stored. The BSP agglomerated the data from multiple transactions. Thereupon, this data was transmitted either bimonthly or twice a month to the airlines. It is on the basis of this data that the airlines/air carriers were required to pay the additional commission to the travel agents. These are the striking distinguishing features in Singapore Airlines Limited (supra) case.

33.2 Having considered the aforesaid mechanism and the nature of relationship between a principal and an agent²⁶, this Court found considerable merit in the argument of the Revenue that the airlines/ air carriers utilised the BSP to discern the amount earned as additional/supplementary commission and accordingly arrive at the income earned by the agent to deduct tax at source, in accordance with the provisions of Section 194-H of the Act. If the aforesaid mechanism is understood, then it is not difficult to appreciate and understand the conclusion arrived at by this Court in the said case.

33.3 Thus, the question whether there was relationship of principal and agent was not in dispute, but nevertheless the assessee in the said case disputed liability to deduct tax at source on the additional/supplementary commission. However, the judgment does refer to the difference between the legal relationship of master and servant, principal and agent, and between principal and principal. In this context, reference is made to the statement of law in Halsbury's Law of England²⁷, which reads:

"The difference between the relations of master and servant and of principal and agent may be said to be this: a principal has the right to direct what work the agent has to do: but a master has the further right to direct how the work is to be done."

"An agent is to be distinguished on the one hand from a servant, and on the other from an independent contractor. A servant acts under the direct control and

supervision of his master, and is bound to conform to all reasonable orders given him in the course of his work; an independent contractor, on the other hand, is entirely independent of any control or interference and merely undertakes to produce a specified result, employing his own means to produce that result.

An agent, though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise to the direct control or supervision of the principal. An agent, as such is not a servant, but a servant is generally for some purposes his master's implied agent, the extent of the agency depending upon the duties or position of the servant."

34. We have already expounded on the main provision of Section 194-H of the Act, which fixes the liability to deduct tax at source on the 'person responsible to pay' - an expression which is a term of art - as defined in Section 204 of the Act and the liability to deduct tax at source arises when the income is credited or paid by the person responsible for paying.²⁸ The expression "direct or indirect" used in Explanation (i) to Section 194-H of the Act is no doubt meant to ensure that "the person responsible for paying" does not dodge the obligation to deduct tax at source, even when the payment is indirectly made by the principal-payer to the agentpayee.

However, deduction of tax at source in terms of Section 194-H of the Act is not to be extended and widened in ambit to apply to true/genuine business transactions, where the assessee is not the person responsible for paying or crediting income. In the present case, the assessee neither pay nor credit any income to the person with whom he has contracted. Explanation (i) to Section 194-H of the Act, by using the word "indirectly", does not regulate or curtail the manner in which the assessee can conduct business and enter into commercial relationships.

Neither does the word "indirectly" create an obligation where the main provision does not apply. The tax legislation recognises diverse relationships and modes in which commerce and trade are conducted, albeit obligation to tax at source arises only if the conditions as mentioned in Section 194-H of the Act are met and not otherwise. This principle does not negate the compliance required by law.

35. Deduction of tax at source is a substantial source of the direct tax revenue. The ease of collection and recovery is obvious. Deduction and deposit of tax at source checks evasion and non-payment of tax. It expands the tax base. However, the assessee as a deductor is not paying tax on his/her income, and collects and pays tax otherwise payable by the third party. Liability of the third party to pay

tax when not deducted remains unaffected. Failure to deduct tax at source has serious and quasi-penal consequences for an assessee.

The deduction of tax provisions should be programmatically and realistically construed, and not as enmeshes or by adopting catch-as-catch-can approach. In case of a legal or factual doubt in a given case, the assessee can rely on the doctrine of presumption against doubtful penalisation.²⁹ Whether or not the said doctrine should be applied³⁰, will depend on facts and circumstances of the case, including the past practice followed by the assessee and accepted by the department.

When there is apparent divergence of opinion, to avoid litigation and pitfalls associated, it may be advisable for the Central Board of Direct Taxes to clarify doubts by issuing appropriate instruction/circular after ascertaining view of the assesses and stakeholders.³¹ In addition to enhancing revenue and ensuring tax compliance, an equally important aim/objective of the Revenue is to reduce litigation. The instructions/circular, if and when issued, should be clear, and when justified - require the obligation to be made prospective.

36. Notably, the Delhi High Court in Commissioner of Income Tax v. Singapore Airlines Ltd.³² had held that tax under Section 194-H of the Act is not required to be deducted on the discounted tickets sold by the airlines/air carriers through travel agents. Revenue did not challenge the decision of the Delhi High Court to this extent and therefore, this dictum attained finality. As noted, it is not the case of the Revenue that tax is to be deducted when payment is made by the distributors/franchisees to the mobile service providers.

It is also not the case of the revenue that tax is to be deducted under Section 194-H of the Act on the difference between the maximum retail price income of the distributors/ franchisees and the price paid by the distributors/franchisees to the assesseees. The assesseees are not privy to the transactions between distributors/franchisees and third parties. It is, therefore, impossible for the assesseees to deduct tax at source and comply with Section 194-H of the Act, on the difference between the total/sum consideration received by the istributors/franchisees from third parties and the amount paid by the distributors/ franchisees to them.

37. The argument of the Revenue that assesseees should periodically ask for this information/data and thereupon deduct tax at source should be rejected as far-fetched, imposing unfair obligation and inconveniencing the assesses, beyond the statutory mandate. Further, it will be willy-nilly impossible to deduct, as well as make payment of the tax deducted, within the timelines prescribed by law, as

these begin when the amount is credited in the account of the payee by the payer or when payment is received by the payee, whichever is earlier.

The payee receives payment when the third party makes the payment. This payment is not the payment received or payable by the assessee as the principal. The distributor/franchisee is not the trustee who is to account for this payment to the assessee as the principal. The payment received is the gross income or profit earned by the distributor/franchisee. It is the income earned by distributor/franchisee as a result of its efforts and work, and not a remuneration paid by the assessee as a cellular mobile telephone service provider.

38. We must, therefore, reject the argument of the Revenue relying upon the decision of this Court in *Singapore Airlines Limited* (supra) that assessees would be liable to deduct tax at source even if the assessees are not making payment or crediting the income to the account of the franchisee/distributor. When the obligation, and the time and manner in which the tax is mandated by law to be deducted at source, is fixed by the statute, the same cannot be shifted/altered/modified or postponed on a concession in the court by the Revenue. The concession may be granted, when permissible, by way of a circular issued in accordance with Section 119 of the Act. We do not think that the decision in *Singapore Airlines Limited* (supra) can be read in the manner as suggested by the Revenue.

39. Coming back to the legal position of a distributor, it is to be generally regarded as different form that of an agent. The distributor buys goods on his account and sells them in his territory. The profit made is the margin of difference between the purchase price and the sale price. The reason is, that the distributor in such cases is an independent contractor. Unlike an agent, he does not act as a communicator or creator of a relationship between the principal and a third party. The distributor has rights of distribution and is akin to a franchisee. Franchise agreements are normally considered as *sui generis*, though they have been in existence for some time.

Franchise agreements provide a mechanism whereby goods and services may be distributed. In franchise agreements, the supplier or the manufacture, i.e. a franchisor, appoints an independent enterprise as a franchisee through whom the franchisor supplies certain goods or services. There is a close relationship between a franchisor and a franchisee because a franchisee's operations are closely regulated, and this possibly is a distinction between a franchise agreement and a distributorship agreement. Franchise agreements are extremely detailed and complex.

They may relate to distribution franchises, service franchises and production franchises. Notwithstanding the strict restrictions placed on the franchisees - which may require the franchisee to sell only the franchised goods, operate in a specific location, maintain premises which are required to comply with certain requirements, and even sell according to specified prices - the relationship may in a given case be that of an independent contractor. Facts of each case and the authority given by 'principal' to the franchisees matter and are determinative.

40. An independent contractor is free from control on the part of his employer, and is only subject to the terms of his contract. But an agent is not completely free from control, and the relationship to the extent of tasks entrusted by the principal to the agent are fiduciary.

As contract with an independent agent depends upon the terms of the contract, sometimes an independent contractor looks like an agent from the point of view of the control exercisable over him, but on an overview of the entire relationship the tests specified in clauses (a) to (d) in paragraph 8 may not be satisfied. The distinction is that independent contractors work for themselves, even when they are employed for the purpose of creating contractual relations with the third persons. An independent contractor is not required to render accounts of the business, as it belongs to him and not his employer.

41. Thus, the term 'agent' denotes a relationship that is very different from that existing between a master and his servant, or between a principal and principal, or between an employer and his independent contractor. Although servants and independent contractors are parties to relationships in which one person acts for another, and thereby possesses the capacity to involve them in liability, yet the nature of the relationship and the kind of acts in question are sufficiently different to justify the exclusion of servants and independent contractors from the law relating to agency.

In other words, the term 'agent' should be restricted to one who has the power of affecting the legal position of his principal by the making of contracts, or the disposition of the principal's property; viz. an independent contractor who may, incidentally, also affect the legal position of his principal in other ways. This can be ascertained by referring to and examining the indicia mentioned in clauses (a) to (d) in paragraph 8 of this judgment. It is in the restricted sense in which the term agent is used in Explanation (i) to Section 194-H of the Act.

42. In view of the aforesaid discussion, we hold that the assessee would not be under a legal obligation to deduct tax at source on the income/profit component in the payments received by the distributors/franchisees from the third

parties/customers, or while selling/transferring the pre-paid coupons or starter-kits to the distributors.

Section 194-H of the Act is not applicable to the facts and circumstances of this case. Accordingly, the appeals filed by the assessee - cellular mobile service providers, challenging the judgments of the High Courts of Delhi and Calcutta are allowed and these judgments are set aside.

The appeals filed by the Revenue challenging the judgments of High Courts of Rajasthan, Karnataka and Bombay are dismissed. There would be no orders as to cost. Pending applications, if any, shall stand disposed of.

.....**J. (Sanjiv Khanna)**

.....**J. (S.V.N. Bhatti)**

New Delhi;

February 28, 2024.

1 "The Act", for short.

2 204. Meaning of "person responsible for paying".- For the purposes of the foregoing provisions of this chapter and Section 285, the expression "person responsible for paying" means-

(i) in the case of payments of income chargeable under the head "Salaries" other than payments by the Central Government or the Government of a State, the employer himself or, if the employer is a company, the company itself, including the principal officer thereof;

(ii) in the case of payments of income chargeable under the head "Interest on securities" other than payments made by or on behalf of the Central Government or the Government of a State, the local authority, corporation or company, including the principal officer thereof;

(ii-a) in the case of any sum payable to a non-resident Indian, being any sum representing consideration for the transfer by him of any foreign exchange asset, which is not a short-term capital asset, the authorised person responsible for remitting such sum to the non-resident Indian or for crediting such sum of his Non-resident (External) Account maintained in accordance with the Foreign Exchange Management Act, 1999 (42 of 1999)], and any rules made thereunder;

(ii-b) in the case of furnishing of information relating to payment to a non-resident, not being a company, or to a foreign company, of any sum, whether or not chargeable under the provisions of this Act, the payer himself, or, if the payer is a company, the company itself including the principal officer thereof;

(iii) in the case of credit or, as the case may be, payment of any other sum chargeable under the provisions of this Act, the payer himself, or, if the payer is a company, the company itself including the principal officer thereof.

(iv) in the case of credit, or as the case may be, payment of any sum chargeable under the provisions of this Act made by or on behalf of the Central Government or the Government of a State, the drawing and disbursing officer or any other person, by whatever name called, responsible for crediting, or as the case may be, paying such sum.

(v) in the case of a person not resident in India, the person himself or any person authorised by such person or the agent of such person in India including any person treated as an agent under Section 163.]

Explanation.-For the purposes of this section, -

(a) "non-resident Indian" and "foreign exchange asset" shall have the meanings assigned to them in Chapter XII-A;

(b) "authorised person" shall have the meaning assigned to it in clause (c) of Section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).

3 Sub-section 1 to Section 194-H of the Act can be interpreted as requiring deduction of tax at source on commission and brokerage, even when the principal and agent relationship does not exist between the parties.

Explanation (i) to Section 194-H of the Act can be read as expanding and widening the scope of the provision of sub-section (1) to include in the ambit of brokerage and commission, payments made by the principal to the agent, when covered under the four corners of the said explanation. We would not like to pronounce on this aspect as it has not been argued by the Revenue, and it appears that the requirement of relationship of principal and agent has been read into the main section.

Further, applying common or commercial parlance meaning to the terms 'brokerage' or 'commission', given the wide divergence in which it is understood, would lead to confusion and has pitfalls. Deduction of Tax provisions should be pragmatically and realistically construed, and not as enmeshes or by adopting catch-as-catch-can approach. When doubts exist, the Central Board of Direct

Taxes may examine this question and may issue appropriate instructions/circular after ascertaining the views of assesseees and other stakeholders. The decision should be clear, and we trust and hope that an obligation, if imposed, will be prospective. (See paragraph 34 of the judgment.)

4 We are unable to visualize 'indirect' credit in the books of the payer to the account of the payee. Credit entry is required even in cases of set-off. Nevertheless, this judgment should not be read as laying down that 'indirect' credit in the books shall not require deduction of tax under Section 194-H of the Act.

5 Singapore Airlines Ltd. and Another v. Commissioner of Income Tax, (2023) 1 SCC 497, ¶¶ 23-29.

6 "Contract Act", for short.

7 F.E. Dowrick, The Relationship of Principal and Agent, 17 MLR 24, 37 (1954).

8 RESTATEMENT (THIRD) OF AGENCY (AMERICAN LAW INSTITUTE PUBLISHERS 2007).

9 Warren A. Seavey, The Rationale of Agency, 29 YALE L.J. 859, 866 (1920).

10 Ibid.

11 G.H.L. FRIDMAN, THE LAW OF AGENCY 33 (Butterworths, 7 ed. 1996).

12 (1977) 3 SCC 147.

13 (2014) 16 SCC 114.

14 (2002) 257 ITR 202 (Guj.).

15 (2018) 7 SCC 800.

16 (2023) 1 SCC 497.

17 (1992) 89 DLR (4th) 95 at 107.

18 See ¶8 of the judgment.

19 The '1885 Act', for short.

20 'DoT', for short.

21 'TRAI', for short.

22 'SIM card', for short.

23 Agreements in the case of assesseees Vodafone Idea Limited (formerly known as Vodafone Mobile Services Limited) and Idea Cellular Limited (now known as Vodafone Idea Limited) are somewhat different. To avoid repetition or prolixity, we are not reproducing the said clauses.

24 'IATA', for short.

25 'PSA', for short.

26 As stated above the airlines were deducting tax at source under Section 194-H on the 7% commission (standard commission). The dispute only related to whether the airlines were liable to deduct tax at source on the additional commission (supplementary commission).

27 Vol. 22, p. 113, ¶ 192 and Vol. 1, at p. 193, Article 345.

28 See ¶ 5 of the judgment.

29 See Securities and Exchange Board of India v. Sunil Krishna Khaitan and Others, (2023) 2 SCC 643. However, in the present case doctrine of presumption against doubtful penalisation is not applicable. The assesseees were earlier deducting tax at source under Section 194-H of the Act, though the amount on which tax was being deducted is unclear. On legal opinion they stopped deducting tax at source.

30 This would include the question of prospective or retrospective application.

31 We do acknowledge that the Central Board of Direct Taxes has on several occasions quelled doubts and issued instructions/circulars.

32 (2009) 319 ITR 29.

IN THE SUPREME COURT OF INDIA

High Court Bar Association Allahabad

Vs.

State of Uttar Pradesh

Criminal Appeal No. 3589 of 202

HEADNOTE – It is in the interest of justice to provide that a reasoned stay order, once granted in any civil or criminal proceedings, if not specified to be time-bound, would remain in operation till the decision of the main matter and until and unless an application is moved for its vacation and a speaking order is passed adhering to the principles of natural justice either extending, modifying, varying, or vacating the same.

Overruled Asian Resurfacing of Road Agency Private Limited & Anr. Vs. Central Bureau of Investigation (2018) 16 SCC 299

JUDGMENT

ABHAY S. OKA, J.

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D. CONCLUSIONS

A. FACTUAL BACKGROUND

By the order dated 1st December 2023, a Bench of three Hon'ble Judges of this Court expressed a view that a decision of this Court in the case of **Asian Resurfacing of Road Agency Private Limited & Anr. Vs. Central Bureau of Investigation (2018) 16 SCC 299** requires reconsideration by a larger Bench.

I. Directions in Asian Resurfacing

1. In Asian Resurfacing¹, this Court dealt with the scope of interference by the High Court with an order of framing charge passed by the Special Judge under the provisions of the Prevention of Corruption Act, 1988 (for short, 'the PC Act'). The issue was whether an order of framing charge was an interlocutory order. The High Court held that an order of framing charge under the PC Act was interlocutory. A Bench of two Hon'ble Judges of this Court, by the order dated 9th September 2013, referred the case to a larger Bench to consider the issue of whether the case of Mohan Lal Magan Lal Thacker v. State of Gujarat² was correctly decided. A Bench of three Hon'ble Judges held that the order of framing charge was neither an interlocutory nor a final order. Therefore, it was held that the High Court has jurisdiction in appropriate cases to consider a challenge to an order of framing charge.

Furthermore, the High Court has jurisdiction to grant a stay of the trial proceedings. Thereafter, it proceeded to consider in which cases a stay of the proceedings ought to be granted. The Bench considered the question in the context of a criminal trial, particularly under the PC Act. In paragraphs 30 and 31, the Bench observed thus:

“30. It is well accepted that delay in a criminal trial, particularly in the PC Act cases, has deleterious effect on the administration of justice in which the society has a vital interest. Delay in trials affects the faith in Rule of Law and efficacy of the legal system. It affects social welfare and development. Even in civil or tax cases it has been laid down that power to grant stay has to be exercised with restraint. Mere prima facie case is not enough. Party seeking stay must be put to terms and stay should not be an incentive to delay. The AIR 1968 SC 733 order granting stay must show application of mind. The power to grant stay is coupled with accountability. [Siliguri Municipality v. Amalendu Das, (1984) 2 SCC 436, para 4 : 1984 SCC (Tax) 133; CCE v. Dunlop India Ltd., (1985) 1 SCC 260, para 5 : 1985 SCC (Tax) 75; State (UT of Pondicherry) v.

P.V. Suresh, (1994) 2 SCC 70, para 15 and State of W.B. v. Calcutta Hardware Stores, (1986) 2 SCC 203, para 5]

31. Wherever stay is granted, a speaking order must be passed showing that the case was of exceptional nature and delay on account of stay will not prejudice the interest of speedy trial in a corruption case. Once stay is granted, proceedings should not be adjourned, and concluded within two-three months.” (Emphasis added)

2. We have been called upon to decide the correctness of the view taken in paragraphs 36 and 37 of the said decision, which read thus:

“36. In view of the above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalised. The trial court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.

37. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order.

Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 CrPC or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to reappreciate the matter. Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day basis so that stay does not operate for an unduly long period. Though no mandatory time-limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted

by a specific speaking order, as already indicated. Mandate of speedy justice applies to the PC Act cases as well as other cases where at trial stage proceedings are stayed by the higher court i.e. the High Court or a court below the High Court, as the case may be. In all pending matters before the High Courts or other courts relating to the PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on the above parameters. Same course may also be adopted by civil and criminal appellate/Revisional Courts under the jurisdiction of the High Courts. The trial courts may, on expiry of the above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced.” (Emphasis added)

3. A Miscellaneous Application was filed in the decided case, in light of the order passed on 4th December 2019 by the Learned Additional Chief Judicial Magistrate, Pune. When the learned Magistrate was called upon to proceed with the trial on the ground of automatic vacation of stay after the expiry of a period of six months, the learned Magistrate expressed a view that when the jurisdictional High Court had passed an order of stay, a Court subordinate to the High Court cannot pass any order contrary to the order of stay. By the order dated 15th October 2020, this Court held that when the stay granted by the High Court automatically expires, unless an extension is granted for good reasons, the Trial Court, on expiry of a period of six months, must set a date for trial and go ahead with the same. Later, an attempt was made to seek clarification of the law laid down in the case of Asian Resurfacing¹. This Court, by the order dated 25th April 2022, did not apply the direction issued in Asian Resurfacing¹ to the facts of the case before it. An attempt was made to apply the directions to an order of stay of the order of the learned Single Judge of the High Court passed by a Division Bench in a Letters Patent Appeal.

II. Order of reference to Larger Bench

4. In the order of reference dated 1st December 2023, in paragraph 10, this Court observed thus:

“10. We have reservations in regard to the correctness of the broad formulations of principle in the above terms. There can be no gainsaying the fact that a stay of an indefinite nature results in prolonging civil or criminal proceedings, as the case may be, unduly. At the same time, it needs to be factored in that the delay is not always on account of conduct of the parties involved. The delay may also be occasioned by the inability of the Court to take up proceedings expeditiously.

The principle which has been laid down in the above decision to the effect that the stay shall automatically stand vacated (which would mean an automatic vacation of stay without application of judicial mind to whether the stay should

or should not be extended further) is liable to result in a serious miscarriage of justice.” (Emphasis added)

5. We are called upon to decide the following questions: -

(a) Whether this Court, in the exercise of its jurisdiction under Article 142 of the Constitution of India, can order automatic vacation of all interim orders of the High Courts of staying proceedings of Civil and Criminal cases on the expiry of a certain period?

(b) Whether this Court, in the exercise of its jurisdiction under Article 142 of the Constitution of India, can direct the High Courts to decide pending cases in which interim orders of stay of proceedings has been granted on a day-to-day basis and within a fixed period?

B. SUBMISSIONS

6. The main submissions were canvassed by Shri Rakesh Dwivedi, the learned senior counsel appearing on behalf of the appellant in Criminal Appeal no.3589 of 2023. We are summarising the submissions of Shri Rakesh Dwivedi as follows:

a. Automatic Vacation of the interim order is in the nature of judicial legislation. This Court cannot engage in judicial legislation;

b. Article 226 is a part of the basic structure of the Constitution of India, and it can neither be shut out nor whittled down by the exercise of powers under Articles 141 and 142;

c. The High Court is also a constitutional Court which is not judicially subordinate to this Court;

d. An order granting interim relief cannot be passed without an application of judicial mind. Application of mind is a pre-requisite of judicial decision making. The absence of application of mind would render a decision arbitrary. Similarly, an order vacating interim relief cannot be passed without the application of judicial mind;

e. If an interim order is to be passed, it should be initially for a short period so that there is an effective opportunity for the respondent to contest the same;

f. Two Constitution Benches in the cases of **Abdul Rehman Antulay & Ors. v. R.S. Nayak & Anr. (1992) 1 SCC 225** and **P. Ramachandra Rao v. State of Karnataka (2002) 4 SCC 578** held that it is not permissible for this Court to fix the time limit for completion of a trial;

g. No such directions could have been issued in the exercise of the jurisdiction of this Court under Article 142 of the Constitution of India;

h. Even under Article 226 (3) of the Constitution, an interim order cannot be automatically vacated unless a specific application is made for vacating the interim order;

i. A provision of automatic vacation of the Appellate Tribunal's stay order was incorporated in Section 254 (2A) of the Income Tax Act, 1961 (for short, 'the IT Act'). It provided that if an appeal preferred before the Appellate Tribunal was not disposed of within 365 days, the stay shall stand vacated even if the delay in disposing of the appeal is not attributable to the assessee. This court struck down the provision in the case of **Deputy Commissioner of Income Tax & Anr. v. Pepsi Foods Limited (2021) 7 SCC 413** on the ground that it was manifestly arbitrary; and j. The automatic vacation of interim relief is unjust, unfair and unreasonable.

7. Shri Tushar Mehta, the learned Solicitor General appearing for the State of Uttar Pradesh, supported the submissions of Shri Dwivedi. In addition, he submitted that:

a. As held by the Constitution Bench in the case of **Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur AIR 1965 SC 895**, laws of procedure are grounded in principles of natural justice, which require that no decision can be reached behind the back of a person and in his absence;

b. If the condition imposed by a provision of law to do a certain thing within a time frame is upon the institution and the consequences of that institution failing to comply with the condition are to fall upon someone who has no control over the institution, the provision of law will have to be construed as directory;

c. An interim relief order is always granted after considering the three factors: prima facie case, the balance of convenience and irreparable injury to the aggrieved party. Once a finding is recorded regarding the entitlement of the appellant/applicant to get the order of stay, the order does not become automatically bad on the ground that it has lived for six months; and

d. In the decision of this Court in **Kailash v. Nanhku & Ors. (2005) 4 SCC 480**, it has been held that the process of justice may be speeded up and hurried, but fairness, which is the basic element of justice, cannot be permitted to be buried. The discretion conferred upon the High Court cannot be taken away by exercising power under Article 142 of the Constitution of India.

8. Shri Gaurav Mehrotra, the learned counsel appearing for the applicant in I.A. no.252872 of 2023 in Criminal Appeal no.3589 of 2023, in addition to the aforesaid submissions, relied upon a decision of the Constitution Bench in the case of **Sanjeev Coke Manufacturing Company v. M/s. Bharat Coking Coal Ltd. & Anr.,(1983) 1 SCC 147**, to contend that the Court should not decide any important question without there being a proper lis.

9. Shri Vijay Hansaria, the learned senior counsel appearing for the Gauhati High Court Bar Association, made the following submissions:

a. As regards the interpretation of clause (3) of Article 226 of the Constitution of India, various High Courts have taken different views on the issue of whether the provision for automatic vacation of stay is mandatory or directory. He urged that the provision will have to be held as a directory;

b. In Asian Resurfacing¹, the Court was dealing with a petition filed in the High Court arising from a prosecution under the PC Act. The cases of other categories were not the subject matter of challenge before this Court;

c. The power under Article 142 of the Constitution of India can be exercised for doing complete justice in any case or matter pending before it. The issue of the duration of the order of stay did not arise in the case of Asian Resurfacing¹; and

d. A successful litigant whose application for stay is allowed by the High Court cannot be prejudiced only on the ground that the High Court does not hear the main case within six months for reasons beyond the control of the said litigant.

10. Shri Amit Pai, the learned counsel appearing for the appellant in one of the appeals, while adopting the submissions, relied upon a decision of this Court in the case of **Deoraj v. State of Maharashtra & Ors. (2004) 4 SCC 697** and contended that recourse is taken to the order of grant of interim relief as the conclusion of hearing on merits is likely to take some time. He submitted that the said object has not been considered in Asian Resurfacing¹. He urged that passing an interim order of stay is a judicial act. Therefore, such an order must be vacated only by a judicial act.

11. Prof (Dr) Pankaj K Phadnis, representing the intervenor – Abhinav Bharat Congress, has filed written submissions. He has contended that he was not permitted to join the hearing through video conferencing. He has come out with the draft of Supreme Court Rules, 2024. His submissions, based on the draft, are entirely irrelevant.

C. ANALYSIS

12. We have no manner of doubt that the direction issued in paragraph 36 of *Asian Resurfacing*¹ regarding automatic vacation of stay has been issued in the exercise of the jurisdiction of this Court under Article 142 of the Constitution of India. Even the direction in paragraph 37 of conducting day- to-day hearing has been issued in exercise of the same jurisdiction. The effect of the direction issued in paragraph 36 is that the interim order of stay granted in favour of a litigant stands vacated without even giving him an opportunity of being heard, though there may not be any default on his part.

I. Object of passing interim orders

13. Before we examine the questions, we need to advert to the object of passing orders of interim relief pending the final disposal of the main case. The reason is that the object of passing interim order has not been considered while deciding **Asian Resurfacing**. An order of interim relief is usually granted in the aid of the final relief sought in the case. An occasion for passing an order of stay of the proceedings normally arises when the High Court is dealing with a challenge to an interim or interlocutory order passed during the pendency of the main case before a trial or appellate Court. The High Court can grant relief of the stay of hearing of the main

proceedings on being satisfied that a prima facie case is made out and that the failure to stay the proceedings before the concerned Court in all probability may render the remedy adopted infructuous. When the High Court passes an interim order of stay, though the interim order may not expressly say so, the three factors, viz; prima facie case, irreparable loss, and balance of convenience, are always in the back of the judges' minds. Though interim orders of stay of proceedings cannot be routinely passed as a matter of course, it cannot be said that such orders can be passed only in exceptional cases. Nevertheless, the High Courts, while passing orders of stay in serious cases like the offences under the PC Act or serious offences against women and children, must be more cautious and circumspect. An occasion for passing an order of stay of proceeding arises as it is not possible for the High Court to take up the case for final hearing immediately. While entertaining a challenge to an order passed in a pending case, if the pending case is not stayed, the trial or the appellate Court may decide the pending case, rendering the remedy before the High Court ineffective. Such a situation often leads to the passing of an order of remand. In our legal system, which is facing a docket explosion, an order of remand should be made only as a last resort. The orders of remand not only result in more delays but also increase the cost of litigation. Therefore, to avoid the possibility of passing an order of remand, the grant of stay of proceedings is called for in many cases.

II. High Court's power to vacate or modify interim relief

14. When a High Court grants a stay of the proceedings while issuing notice without giving an opportunity of being heard to the contesting parties, it is not an interim order, but it is an ad-interim order of stay. It can be converted into an interim order of stay only after an opportunity of being heard is granted on the prayer for interim relief to all the parties to the proceedings. Ad-interim orders, by their very nature, should be of a limited duration. Therefore, such orders do not pose any problem.

15. The High Courts are always empowered to vacate or modify an order of interim relief passed after hearing the parties on the following, amongst other grounds: -

(a) If a litigant, after getting an order of stay, deliberately prolongs the proceedings either by seeking adjournments on unwarranted grounds or by remaining absent when the main case in which interim relief is granted is called out for hearing before the High Court with the object of taking undue advantage of the order of stay;

(b) The High Court finds that the order of interim relief is granted as a result of either suppression or misrepresentation of material facts by the party in whose favour the interim order of stay has been made; and

(c) The High Court finds that there is a material change in circumstances requiring interference with the interim order passed earlier. In a given case, a long passage of time may bring about a material change in circumstances.

These grounds are not exhaustive. There can be other valid grounds for vacating an order of stay.

III. Whether an Interim Order can come to an end automatically only due to the lapse of time

16. Interim order of stay can come to an end: -

(a) By disposal of the main case by the High Court, in which the interim order has been passed. The disposal can be either on merits or for default or other reasons such as the abatement of the case; or

(b) by a judicial order vacating interim relief, passed after hearing the contesting parties on the available grounds, some of which we have already referred to by way of illustration.

Elementary principles of natural justice, which are well recognised in our jurisprudence, mandate that an order of vacating interim relief or modification of the interim relief is passed only after hearing all the affected parties. An order of

vacating interim relief passed without hearing the beneficiary of the order is against the basic tenets of justice. Application of mind is an essential part of any decision-making process. Therefore, without application of mind, an order of interim stay cannot be vacated only on the ground of lapse of time when the litigant is not responsible for the delay. An interim order lawfully passed by a Court after hearing all contesting parties is not rendered illegal only due to the long passage of time.

Moreover, the directions issued in *Asian Resurfacing*¹ regarding automatic vacation of interim orders of stay passed by all High Courts are applicable, irrespective of the merits of individual cases. If a High Court concludes after hearing all the concerned parties that a case was made out for the grant of stay of proceedings of a civil or criminal case, the order of stay cannot stand automatically set aside on expiry of the period of six months only on the ground that the High Court could not hear the main case. If such an approach is adopted, it will be completely contrary to the concept of fairness. If an interim order is automatically vacated without any fault on the part of the litigant only because the High Court cannot hear the main case, the maxim “*actus curiae neminem gravabit*” will apply. No litigant should be allowed to suffer due to the fault of the Court. If that happens, it is the bounden duty of the Court to rectify its mistake.

17. In the subsequent clarification in the case of *Asian Resurfacing*¹, a direction has been issued to the Trial Courts to immediately fix a date for hearing after the expiry of the period of six months without waiting for any formal order of vacating stay passed by the High Court. This gives an unfair advantage to the respondent in the case before the High Court. Moreover, it adversely affects a litigant's right to the remedies under Articles 226 and 227 of the Constitution of India. Such orders virtually defeat the right of a litigant to seek and avail of statutory remedies such as revisions, appeals, and applications under Section 482 of the Code of Criminal Procedure, 1973 (for short, ‘Cr. PC’) as well as the remedies under the Code of Civil Procedure, 1908 (for short, ‘CPC’). All interim orders of stay passed by all High Courts cannot be set at naught by a stroke of pen only on the ground of lapse of time.

18. The legislature attempted to provide for an automatic vacation of stay granted by the Income Tax Appellate Tribunal by introducing the third proviso to Section 254 (2A) of the IT Act. It provided that if an appeal in which the stay was granted was not heard within a period of 365 days, it would amount to the automatic vacation of stay. In the case of *Pepsi Foods Limited*⁵, this Court held that a provision automatically vacating a stay was manifestly arbitrary and, therefore, violative of Article 14 of the Constitution of India. Paragraphs 20 and 22 of the said decision read thus:

“20. Judged by both these parameters, there can be no doubt that the third proviso to Section 254(2-A) of the Income Tax Act, introduced by the Finance Act, 2008, would be both arbitrary and discriminatory and, therefore, liable to be struck down as offending Article 14 of the Constitution of India. First and foremost, as has correctly been held in the impugned judgment, unequals are treated equally in that no differentiation is made by the third proviso between the assesseees who are responsible for delaying the proceedings and assesseees who are not so responsible. This is a little peculiar in that the legislature itself has made the aforesaid differentiation in the second proviso to Section 254(2-A) of the Income Tax Act, making it clear that a stay order may be extended up to a period of 365 days upon satisfaction that the delay in disposing of the appeal is not attributable to the assessee. We have already seen as to how, as correctly held by **Narang Overseas [Narang Overseas (P) Ltd. v. Income Tax Appellate Tribunal, 2007 SCC OnLine Bom 671 : (2007) 295 ITR 22]** , the second proviso was introduced by the Finance Act, 2007 to mitigate the rigour of the first proviso to Section 254(2-A) of the Income Tax Act in its previous avatar. Ordinarily, the Appellate Tribunal, where possible, is to hear and decide appeals within a period of four years from the end of the financial year in which such appeal is filed. It is only when a stay of the impugned order before the Appellate Tribunal is granted, that the appeal is required to be disposed of within 365 days. So far as the disposal of an appeal by the Appellate Tribunal is concerned, this is a directory provision. However, so far as vacation of stay on expiry of the said period is concerned, this condition becomes mandatory so far as the assessee is concerned.”

21.

22. Since the object of the third proviso to Section 254(2-A) of the Income Tax Act is the automatic vacation of a stay that has been granted on the completion of 365 days, whether or not the assessee is responsible for the delay caused in hearing the appeal, such object being itself discriminatory, in the sense pointed out above, is liable to be struck down as violating Article 14 of the Constitution of India. Also, the said proviso would result in the automatic vacation of a stay upon the expiry of 365 days even if the Appellate Tribunal could not take up the appeal in time for no fault of the assessee. Further, the vacation of stay in favour of the Revenue would ensue even if the Revenue is itself responsible for the delay in hearing the appeal. In this sense, the said proviso is also manifestly arbitrary being a provision which is capricious, irrational and disproportionate so far as the assessee is concerned.” (Emphasis added) Therefore, even if the legislature were to come out with such a provision for automatic vacation of stay, the same may not stand judicial scrutiny as it may suffer from manifest arbitrariness.

IV. Scope of exercise of powers under Article 142 of the Constitution

19. The directions issued in *Asian Resurfacing*¹ are obviously issued in the exercise of jurisdiction of this Court under Article 142 of the Constitution, which confers jurisdiction on this Court to pass such a decree or make such order necessary for doing complete justice in any case or matter pending before it. In *Asian Resurfacing*¹, the first issue was, whether an order framing of charge in a case under the PC Act was in the nature of an interlocutory order. The second question was of the scope of powers of the High Court to stay proceedings of the trial under the PC Act while entertaining a challenge to an order of framing charge. The question regarding the duration of the interim orders passed by the High Courts in various other proceedings did not specifically arise for consideration in the case of *Asian Resurfacing*¹. The provisions of Article 142 of the Constitution of India are meant to further the cause of justice and to secure complete justice. The directions in the exercise of power under Article 142 cannot be issued to defeat justice. The jurisdiction under Article 142 cannot be invoked to pass blanket orders setting at naught a very large number of interim orders lawfully passed by all the High Courts, and that too, without hearing the contesting parties. The jurisdiction under Article 142 can be invoked only to deal with extraordinary situations for doing complete justice between the parties before the Court.

20. While dealing with the scope of power under Article 142, a Constitution Bench of this Court in the case of **Prem Chand Garg & Anr. v. The Excise Commissioner, U.P. and Ors., 1962 SCC Online SC 37** in paragraphs 12 and 13 held thus:

“12. Basing himself on this decision, the Solicitor-General argues that the power conferred on this Court under Article 142(1) is comparable to the privileges claimed by the members of the State Legislatures under the latter part of Article 194(3), and so, there can be no question of striking down an order passed by this Court under Article 142(1) on the ground that it is inconsistent with Article 32. It would be noticed that this argument proceeds on the basis that the order for security infringes the fundamental right guaranteed by Article 32 and it suggests that under Article 142(1) this Court has jurisdiction to pass such an order. In our opinion, the argument thus presented is misconceived. In this connection, it is necessary to appreciate the actual decision in the case of *Sharma* [(1959) 1 SCR 806 at 859-860] and its effect. The actual decision was that the rights claimable under the latter part of Article 194(3) were not subject to Article 19(1)(a), because the said rights had been expressly provided for by a constitutional provision viz. Article 194(3), and it would be impossible to hold that one part of the Constitution is inconsistent with

another part. The position would, however, be entirely different if the State Legislature was to pass a law in regard to the privileges of its members. Such a law would obviously have to be consistent with Article 19(1)(a). If any of the provisions of such a law were to contravene any of the fundamental rights guaranteed by Part III, they would be struck down as being unconstitutional.

Similarly, there can be no doubt that if in respect of petitions under Article 32 a law is made by Parliament as contemplated by Article 145(1), and such a law, in substance, corresponds to the provisions of Order 25 Rule 1 or Order 41 Rule 10, it would be struck down on the ground that it purports to restrict the fundamental right guaranteed by Article 32. The position of an order made either under the rules framed by this Court or under the jurisdiction of this Court under Article 142(1) can be no different. If this aspect of the matter is borne in mind, there would be no difficulty in rejecting the Solicitor-General's argument based on Article 142(1). The powers of this Court are no doubt very wide and they are intended to be and will always be exercised in the interest of justice. But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. An order which this Court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws. Therefore, we do not think it would be possible to hold that Article 142(1) confers upon this Court powers which can contravene the provisions of Article 32.

13. In this connection, it may be pertinent to point out that the wide powers which are given to this Court for doing complete justice between the parties, can be used by this Court, for instance, in adding parties to the proceedings pending before it, or in admitting additional evidence, or in remanding the case, or in allowing a new point to be taken for the first time. It is plain that in exercising these and similar other powers, this Court would not be bound by the relevant provisions of procedure if it is satisfied that a departure from the said procedure is necessary to do complete justice between the parties.” (Emphasis added)

21. Another Constitution Bench in the case of **Supreme Court Bar Association v. Union of India & Anr., (1998) 4 SCC 409**, in paragraphs 47 and 48, held thus:

“47. The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties. This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law. There is no doubt that it is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Court to prevent “clogging or obstruction of the stream of justice”. It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to “supplant” substantive law applicable to the case or cause under consideration of the Court.

Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, a power otherwise statutorily available only to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142. The construction of Article 142 must be functionally informed by the salutary purposes of the article, viz., to do complete justice between the parties. It cannot be otherwise. As already noticed in a case of contempt of court, the contemner and the court cannot be said to be litigating parties.

48. The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is necessary for doing complete justice “between the parties in any cause or matter pending before it”.

The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the

conflicting claims of the litigating parties by “ironing out the creases” in a cause or matter before it. Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. It is well recognised and established that this Court has always been a law-maker and its role travels beyond merely dispute- settling. It is a “problem-solver in the nebulous areas” (see **K. Veeraswami v. Union of India [(1991) 3 SCC 655 : 1991 SCC (Cri) 734]**) but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject.” (Emphasis added)

22. It is very difficult to exhaustively lay down the parameters for the exercise of powers under Article 142 of the Constitution of India due to the very nature of such powers.

However, a few important parameters which are relevant to the issues involved in the reference are as follows:-

(i) The jurisdiction can be exercised to do complete justice between the parties before the Court. It cannot be exercised to nullify the benefits derived by a large number of litigants based on judicial orders validly passed in their favour who are not parties to the proceedings before this Court;

(ii) Article 142 does not empower this Court to ignore the substantive rights of the litigants; and

(iii) While exercising the jurisdiction under Article 142 of the Constitution of India, this Court can always issue procedural directions to the Courts for streamlining procedural aspects and ironing out the creases in the procedural laws to ensure expeditious and timely disposal of cases. This is because, while exercising the jurisdiction under Article 142, this Court may not be bound by procedural requirements of law.

However, while doing so, this Court cannot affect the substantive rights of those litigants who are not parties to the case before it. The right to be heard before an adverse order is passed is not a matter of procedure but a substantive right.

(iv) The power of this Court under Article 142 cannot be exercised to defeat the principles of natural justice, which are an integral part of our jurisprudence.

V. Position of the High Courts and its power of superintendence

23. A High Court is also a constitutional Court. It is well settled that it is not judicially subordinate to this Court. In the case of **Tirupati Balaji Developers (P) Ltd. & Ors. v. State of Bihar & Ors. (2004) 5 SCC 1**, this Court has explained the position of the High Courts vis-à-vis this Court. In paragraph 8, this Court observed thus:

“8. Under the constitutional scheme as framed for the judiciary, the Supreme Court and the High Courts, both are courts of record. The High Court is not a court “subordinate” to the Supreme Court. In a way the canvas of judicial powers vesting in the High Court is wider inasmuch as it has jurisdiction to issue all prerogative writs conferred by Article 226 of the Constitution for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose while the original jurisdiction of the Supreme Court to issue prerogative writs remains confined to the enforcement of fundamental rights and to deal with some such matters, such as Presidential elections or inter-State disputes which the Constitution does not envisage being heard and determined by High Courts. The High Court exercises power of superintendence under Article 227 of the Constitution over all subordinate courts and tribunals; the Supreme Court has not been conferred with any power of superintendence. If the Supreme Court and the High Courts both were to be thought of as brothers in the administration of justice, the High Court has larger jurisdiction but the Supreme Court still remains the elder brother. There are a few provisions which give an edge, and assign a superior place in the hierarchy, to the Supreme Court over High Courts. So far as the appellate jurisdiction is concerned, in all civil and criminal matters, the Supreme Court is the highest and the ultimate court of appeal.

It is the final interpreter of the law.

Under Article 139-A, the Supreme Court may transfer any case pending before one High Court to another High Court or may withdraw the case to itself. Under Article 141 the law declared by the Supreme Court shall be binding on all courts, including High Courts, within the territory of India. Under Article 144 all authorities, civil and judicial, in the territory of India — and that would include High Courts as well — shall act in aid of the Supreme Court.” (Emphasis added) A High Court is constitutionally independent of the Supreme Court of India and is not subordinate to this Court. This Court has dealt with the issue of jurisdiction of the High Courts in the case of **L. Chandra Kumar v. Union of India & Ors., (1997) 3 SCC 261**. The relevant part of paragraph 78 and paragraph 79 read thus:

“78. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and

essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided.” (Emphasis added)

24. The power of the High Court under Article 227 of the Constitution to have judicial superintendence over all the Courts within its jurisdiction will include the power to stay the proceedings before such Courts. By a blanket direction in the exercise of power under Article 142 of the Constitution of India, this Court cannot interfere with the jurisdiction conferred on the High Court of granting interim relief by limiting its jurisdiction to pass interim orders valid only for six months at a time. Putting such constraints on the power of the High Court will also amount to making a dent on the jurisdiction of the High Courts under Article 226 of the Constitution, which is an essential feature that forms part of the basic structure of the Constitution.

VI. Whether the Court should deal with an issue not arising for consideration

25. In the case of **Sanjeev Coke Manufacturing Company**, a Constitution Bench of this Court in paragraph 11 held thus:

“11.We have serious reservations on the question whether it is open to a court to answer academic or hypothetical questions on such considerations, particularly so when serious constitutional issues are involved. We (Judges) are not authorised to make disembodied pronouncements on serious and cloudy issues of constitutional policy without battle lines being properly drawn. Judicial pronouncements cannot be immaculate legal conceptions. It is but right that no important point of law should be decided without a proper lis between parties properly ranged on either side and a crossing of the swords. We think it is inexpedient for the Supreme Court to delve into problems which do not arise and express opinion thereon.” (Emphasis added)

In *Asian Resurfacing*, there was no lis before this Court arising out of the orders of stay granted in different categories of cases pending before the various High Courts. This Court was dealing with a case under the PC Act. Thus, an attempt was made to delve into an issue which did not arise for consideration.

VII. Clause (3) Of Article 226 of the Constitution

26. In this case, it is unnecessary for this Court to decide whether clause (3) of Article 226 of the Constitution of India is mandatory or directory. Clause (3) of Article 226 reads thus:

“226. Power of High Courts to issue certain writs:

(1)

(2)

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.” On its plain reading, clause (3) is applicable only when an interim relief is granted without furnishing a copy of the writ petition along with supporting documents to the opposite party and without hearing the opposite party. Even assuming that clause (3) is not directory, it provides for an automatic vacation of interim relief only if the aggrieved party makes an application for vacating the interim relief and when the application for vacating stay is not heard within the time specified. Clause (3) will not apply when an interim order in a writ petition under Article 226 is passed after the service of a copy of the writ petition on all concerned parties and after giving them an opportunity of being heard. It applies only to ex-parte ad interim orders.

VIII. Directions issued by the constitutional Courts to decide pending cases in a time-bound manner

27. The net effect of the directions issued in paragraphs 36 and 37 of Asian Resurfacing¹ is that the petition in which the High Court has granted a stay of the

proceedings of the trial, must be decided within a maximum period of six months. If it is not decided within six months, the interim stay will be vacated automatically, virtually making the pending case infructuous. In fact, in paragraph 37, this Court directed that the challenge to the order of framing charge should be entertained in a rare case, and when the stay is granted, the case should be decided by the High Court on a day-to-day basis so that the stay does not operate for an unduly long period.

28. The Constitution Benches of this Court have considered the issue of fixing timelines for the disposal of cases in the cases of **Abdul Rehman Antulay and P. Ramachandra Rao**. In the case of **Abdul Rehman Antulay**, in paragraph 83, this Court held thus:

“83. But then speedy trial or other expressions conveying the said concept — are necessarily relative in nature. One may ask — speedy means, how speedy? How long a delay is too long? We do not think it is possible to lay down any time schedules for conclusion of criminal proceedings. The nature of offence, the number of accused, the number of witnesses, the workload in the particular court, means of communication and several other circumstances have to be kept in mind. For example, take the very case in which Ranjan Dwivedi (petitioner in Writ Petition No. 268 of 1987) is the accused. 151 witnesses have been examined by the prosecution over a period of five years. Examination of some of the witnesses runs into more than 100 typed pages each. The oral evidence adduced by the prosecution so far runs into, we are told, 4000 pages. Even though, it was proposed to go on with the case five days of a week and week after week, it was not possible for various reasons viz., non-availability of the counsel, non-availability of accused, interlocutory proceedings and other systemic delays. A murder case may be a simple one involving say a dozen witnesses which can be concluded in a week while another case may involve a large number of witnesses, and may take several weeks. Some offences by their very nature e.g., conspiracy cases, cases of misappropriation, embezzlement, fraud, forgery, sedition, acquisition of disproportionate assets by public servants, cases of corruption against high public servants and high public officials take longer time for investigation and trial. Then again, the workload in each court, district, region and State varies. This fact is too well known to merit illustration at our hands. In many places, requisite number of courts are not available. In some places, frequent strikes by members of the bar interferes with the work schedules. In short, it is not possible in the very nature of things and present-day circumstances to draw a time-limit beyond which a criminal proceeding will not be allowed to go. Even in the USA, the Supreme Court has refused to draw such a line. Except for the Patna Full Bench decision under appeal, no other decision of any High Court in this country taking such a view has been brought to our notice. Nor, to our knowledge, in United Kingdom. Wherever a complaint of infringement of

right to speedy trial is made the court has to consider all the circumstances of the case including those mentioned above and arrive at a decision whether in fact the proceedings have been pending for an unjustifiably long period. In many cases, the accused may himself have been responsible for the delay. In such cases, he cannot be allowed to take advantage of his own wrong. In some cases, delays may occur for which neither the prosecution nor the accused can be blamed but the system itself. Such delays too cannot be treated as unjustifiable — broadly speaking. Of course, if it is a minor offence — not being an economic offence — and the delay is too long, not caused by the accused, different considerations may arise. Each case must be left to be decided on its own facts having regard to the principles enunciated hereinafter. For all the above reasons, we are of the opinion that it is neither advisable nor feasible to draw or prescribe an outer time-limit for conclusion of all criminal proceedings. It is not necessary to do so for effectuating the right to speedy trial. We are also not satisfied that without such an outer limit, the right becomes illusory.” (Emphasis added) In paragraph 27 of the decision in the case of P. Ramachandra Rao⁴, this Court observed thus:

“27. Prescribing periods of limitation at the end of which the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused, and further, making such directions applicable to all the cases in the present and for the future amounts to legislation, which, in our opinion, cannot be done by judicial directives and within the arena of the judicial law-making power available to constitutional courts, howsoever liberally we may interpret Articles 32, 21, 141 and 142 of the Constitution. The dividing line is fine but perceptible. Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature. Binding directions can be issued for enforcing the law and appropriate directions may issue, including laying down of time-limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated, in a given case or set of cases, depending on facts brought to the notice of the court. This is permissible for the judiciary to do. But it may not, like the legislature, enact a provision akin to or on the lines of Chapter XXXVI of the Code of Criminal Procedure, 1973.” (Emphasis added) The principles laid down in the decision will apply even to civil cases before the trial courts. The same principles will also apply to a direction issued to the High Courts to decide cases on a day-to-day basis or within a specific time. Thus, the directions of the Court that provide for automatic vacation of the order of stay and the disposal of all cases in which a stay has been granted on a day-to-day basis virtually amount to judicial legislation. The jurisdiction of this Court cannot be exercised to make such a judicial legislation. Only the legislature can provide that cases of a particular category should be decided within a specific time. There are many statutes which

incorporate such provisions. However, all such provisions are usually held to be directory.

29. Ideally, the cases in which the stay of proceedings of the civil/criminal trials is granted should be disposed of expeditiously by the High Courts. However, we do not live in an ideal world. A judicial notice will have to be taken of the fact that except High Courts of smaller strength having jurisdiction over smaller States, each High Court is flooded with petitions under Article 227 of the Constitution of India for challenging the interim orders passed in civil and criminal proceedings, the petitions under Section 482 of the Cr.PC for challenging the orders passed in the criminal proceedings and petitions filed in the exercise of revisional jurisdiction under the CPC and the Cr. PC. A judicial notice will have to be taken of the fact that in all the High Courts of larger strength having jurisdiction over larger States, the daily cause lists of individual Benches of the cases of the aforesaid categories are of more than a hundred matters. Therefore, once a case is entertained by the High Court and the stay is granted, the case has a long life.

30. There is a huge filing of regular appeals, both civil and criminal in High Courts. After all, the High Courts deal with many other important matters, such as criminal appeals against acquittal and conviction, bail petitions, writ petitions, and other proceedings that involve the issues of liberty under Article 21 of the Constitution of India. The High Courts deal with matrimonial disputes, old appeals against decrees of civil courts, and appeals against appellate decrees. There are cases where senior citizens or second or third-generation litigants are parties. The High Courts cannot be expected to decide, on a priority basis or a day-to-day basis, only those cases in which a stay of proceedings has been granted while ignoring several other categories of cases that may require more priority to be given.

31. The situation in Trial and district Courts is even worse. In 2002, in the case of **All India Judges' Association & Ors. v. Union of India & Ors. (2002) 4 SCC 247**, this Court passed an order directing that the judge-to-population ratio within twenty years should be 50 per million. Even as of today, we are not able to reach the ratio of even 25 per million. The directions issued in the case of **Imtiyaz Ahmed v. State of Uttar Pradesh & Ors. (2017) 3 SCC 658**, have not been complied with by the States by increasing the Judge strength of the Trial and District Courts. The figures of pendency of cases in our trial Courts are staggering. There are different categories of cases which, by their very nature, are required to be given utmost priority, such as the cases of the accused in jail and the cases of senior citizens. For example, there are many legislations like the Hindu Marriage Act, 1955, the Protection of Women from Domestic Violence Act, 2005, the Negotiable Instruments Act, 1881 etc which prescribe

specific time limits for the disposal of cases. However, due to the huge filing and pendency, our Courts cannot conclude the trials within the time provided by the statutes. There is a provision in the Code of Criminal Procedure, 1973, in the form of Section 309, which requires criminal cases to be heard on a day-to-day basis once the recording of evidence commences. The same Section provides that in case of certain serious offences against women, the cases must be decided within two months of filing the charge sheet. Unfortunately, our Criminal Courts are not in a position to implement the said provision. Apart from dealing with huge arrears, our Trial Courts face the challenge of dealing with a large number of cases made time-bound by our constitutional Courts. Therefore, in the ordinary course, the constitutional Courts should not exercise the power to direct the disposal of a case before any District or Trial Court within a time span. In many cases, while rejecting a bail petition, a time limit is fixed for disposal of trial on the ground that the petitioner has undergone incarceration for a long time without realising that the concerned trial Court may have many pending cases where the accused are in jail for a longer period. The same logic will apply to the cases pending before the High Courts. When we exercise such power of directing High Courts to decide cases in a time-bound manner, we are not aware of the exact position of pendency of old cases in the said Courts, which require priority to be given. Bail petitions remain pending for a long time. There are appeals against conviction pending where the appellants have been denied bail.

32. Therefore, constitutional Courts should not normally fix a time-bound schedule for disposal of cases pending in any Court. The pattern of pendency of various categories of cases pending in every Court, including High Courts, is different. The situation at the grassroots level is better known to the judges of the concerned Courts. Therefore, the issue of giving out-of-turn priority to certain cases should be best left to the concerned Courts. The orders fixing the outer limit for the disposal of cases should be passed only in exceptional circumstances to meet extraordinary situations.

33. There is another important reason for adopting the said approach. Not every litigant can easily afford to file proceedings in the constitutional Courts. Those litigants who can afford to approach the constitutional Courts cannot be allowed to take undue advantage by getting an order directing out-of-turn disposal of their cases while all other litigants patiently wait in the queue for their turn to come. The Courts, superior in the judicial hierarchy, cannot interfere with the day-to-day functioning of the other Courts by directing that only certain cases should be decided out of turn within a time frame. In a sense, no Court of law is inferior to the other. This Court is not superior to the High Courts in the judicial hierarchy. Therefore, the Judges of the High Courts should be allowed to set their priorities on a rational basis. Thus, as far as setting the outer limit is concerned, it should

be best left to the concerned Courts unless there are very extraordinary circumstances.

IX. Procedure to be adopted by High Courts while passing interim order of stay of proceedings and for dealing with the applications for vacating interim stay

34. At the same time, we cannot ignore that once the High Court stays a trial, it takes a very long time for the High Court to decide the main case. To avoid any prejudice to the opposite parties, while granting ex-parte ad-interim relief without hearing the affected parties, the High Courts should normally grant ad-interim relief for a limited duration. After hearing the contesting parties, the Court may or may not confirm the earlier ad-interim order. Ad-interim relief, once granted, can be vacated or affirmed only after application of mind by the concerned Court. Hence, the Courts must give necessary priority to the hearing of the prayer for interim relief where ad- interim relief has been granted. Though the High Court is not expected to record detailed reasons while dealing with the prayer for the grant of stay or interim relief, the order must give sufficient indication of the application of mind to the relevant factors.

35. An interim order passed after hearing the contesting parties cannot be vacated by the High Court without giving sufficient opportunity of being heard to the party whose prayer for interim relief has been granted. Even if interim relief is granted after hearing both sides, as observed earlier, the aggrieved party is not precluded from applying for vacating the same on the available grounds. In such a case, the High Court must give necessary priority to the hearing of applications for vacating the stay, if the main case cannot be immediately taken up for hearing. Applications for vacating interim reliefs cannot be kept pending for an inordinately long time. The High Courts cannot take recourse to the easy option of directing that the same should be heard along with the main case. The same principles will apply where ad-interim relief is granted. If an ad-interim order continues for a long time, the affected party can always apply for vacating ad-interim relief. The High Court is expected to take up even such applications on a priority basis. If an application for vacating ex-parte ad interim relief is filed on the ground of suppression of facts, the same must be taken up at the earliest.

D. CONCLUSIONS

36. Hence, with greatest respect to the Bench which decided the case, we are unable to concur with the directions issued in paragraphs 36 and 37 of the decision in the case of Asian Resurfacing¹. We hold that there cannot be automatic vacation of stay granted by the High Court. We do not approve the direction issued to decide all the cases in which an interim stay has been granted

on a day-to-day basis within a time frame. We hold that such blanket directions cannot be issued in the exercise of the jurisdiction under Article 142 of the Constitution of India. We answer both the questions framed in paragraph 5 above in the negative.

37. Subject to what we have held earlier, we summarise our main conclusions as follows:

a. A direction that all the interim orders of stay of proceedings passed by every High Court automatically expire only by reason of lapse of time cannot be issued in the exercise of the jurisdiction of this Court under Article 142 of the Constitution of India;

b. Important parameters for the exercise of the jurisdiction under Article 142 of the Constitution of India which are relevant for deciding the reference are as follows:

(i) The jurisdiction can be exercised to do complete justice between the parties before the Court. It cannot be exercised to nullify the benefits derived by a large number of litigants based on judicial orders validly passed in their favour who are not parties to the proceedings before this Court;

(ii) Article 142 does not empower this Court to ignore the substantive rights of the litigants;

(iii) While exercising the jurisdiction under Article 142 of the Constitution of India, this Court can always issue procedural directions to the Courts for streamlining procedural aspects and ironing out the creases in the procedural laws to ensure expeditious and timely disposal of cases. However, while doing so, this Court cannot affect the substantive rights of those litigants who are not parties to the case before it. The right to be heard before an adverse order is passed is not a matter of procedure but a substantive right; and

(iv) The power of this Court under Article 142 cannot be exercised to defeat the principles of natural justice, which are an integral part of our jurisprudence.

c. Constitutional Courts, in the ordinary course, should refrain from fixing a time-bound schedule for the disposal of cases pending before any other Courts. Constitutional Courts may issue directions for the time-bound disposal of cases only in exceptional circumstances. The issue of prioritising the disposal of cases should be best left to the decision of the concerned Courts where the cases are pending; and

d. While dealing with the prayers for the grant of interim relief, the High Courts should take into consideration the guidelines incorporated in paragraphs 34 and 35 above.

38. We clarify that in the cases in which trials have been concluded as a result of the automatic vacation of stay based only on the decision in the case of Asian Resurfacing¹, the orders of automatic vacation of stay shall remain valid.

39. The reference is answered accordingly. We direct the Registry to place the pending petitions before the appropriate Benches for expeditious disposal.

.....CJI. [Dr Dhananjaya Y. Chandrachud]

.....J. [Abhay S. Oka]

.....J. [J. B. Pardiwala]

.....J. [Manoj Misra]

New Delhi;

February 29, 2024.

IN THE SUPREME COURT OF INDIA

High Court Bar Association, Allahabad

Vs.

State of U.P. & Ors.

Criminal Appeal No. 3589 of 2023

with

S.L.P. (Crl.) Nos. 13284-13289 of 2023

JUDGMENT

PANKAJ MITHAL, J.

1. Concurring with the opinion expressed by my brother Justice Oka for himself and other puisne Judges, including the Hon'ble Chief Justice, I would like to add that in **Asian Resurfacing of Road Agency Private Limited & Anr. vs. Central Bureau of Investigation (2018) 16 SCC 299**, this Court while deciding the issues arising therein went ahead in observing and directing that where a challenge to an order framing charge is entertained and stay is granted, the matter must be decided on day to day basis so that the stay may not continue for an unduly long time. It was further observed that though no mandatory time limit may be fixed for deciding such a challenge, the stay order may not normally exceed two to three months or a maximum of six months unless it is extended by specific speaking order. Further directions were issued that in all pending matters before the High Court or other Courts relating to Prevention of Corruption Act or all other civil or criminal cases where stay is operating in pending trials, it will automatically lapse after six months unless a speaking order is passed extending the same. The Trial Court may, on expiry of the above period resume the proceedings without waiting for any intimation unless express order extending the stay is produced before the Court.

2. The above directions in Asian Resurfacing issued in exercise of power of doing complete justice under Article 142 of the Constitution of India are analogous to the constitutional provision as contained in clause (3) of Article 226 of the Constitution of India which has been inserted with effect from 1.8.1979 vide the Constitution (Forty-fourth Amendment) Act, 1978. It reads as under:

“(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.”

3. No doubt, the above provision is in respect to petitions filed before the High Court invoking the extraordinary jurisdiction of the Court and is not meant to be applied specifically to other proceedings, nonetheless the principles behind the said provision can always be extended to other proceedings as has been done in Asian Resurfacing. It is worth noting that wherever under a statute any such time limit has been prescribed or is fixed for deciding a particular nature of proceeding, it has been held to be directory in nature rather than mandatory. So appears to be the position with regard to the applicability of Article 226(3) of the Constitution of India.

4. It is well recognised that no one can be made to suffer on account of any mistake or fault of the Court which means that even delay on part of the Court in deciding the proceedings or any application therein would not be detrimental to any of the parties to the litigation much less to the party in whose favour an interim stay order is passed.

5. It is settled in law that grant of interim stay order ought to be ordinarily by a speaking order and therefore as a necessary corollary, a stay order once granted cannot be vacated otherwise than by a speaking order, more so, when its extension also requires reasons to be recorded.

6. It is noticeable that under Article 226(3) of the Constitution of India, the automatic vacation of the stay order envisages making of an application to the High Court for the vacation of the interim stay order. Therefore, filing of an application for vacating the stay order is a sine qua non for triggering the automatic vacation of the stay order under Article 226(3) if such an application is not decided within the time prescribed of two weeks.

7. In other words, applying the above analogy or principle, the stay order granted in any proceedings would not automatically stand vacated on the expiry of a

particular period until and unless an application to that effect has been filed by the other side and is decided following the principles of natural justice by a speaking order.

8. Sometimes, in quest of justice we end up doing injustice.

Asian Resurfacing is a clear example of the same. Such a situation created ought to be avoided in the normal course or if at all it arises be remedied at the earliest. In doing so, we have to adopt a practical and a more pragmatic approach rather than a technical one which may create more problems burdening the courts with superfluous or useless work. It is well said that useless work drives out the useful work. Accordingly, it is expedient in the interest of justice to provide that a reasoned stay order once granted in any civil or criminal proceedings, if not specified to be time bound, would remain in operation till the decision of the main matter or until and unless an application is moved for its vacation and a speaking order is passed adhering to the principles of natural justice either extending, modifying, varying or vacating the same.

9. The reference made to this Court is answered and disposed of accordingly.

.....**J. (PANKAJ MITHAL)**

NEW DELHI

FEBRUARY 29, 2024

IN THE SUPREME COURT OF INDIA

High Court Bar Association Allahabad

Vs.

State of Uttar Pradesh

Criminal Appeal No. 3589 of 202

HEADNOTE – Constitutional courts should refrain from laying down time-bound schedules for cases pending before any other courts. The pattern of pendency of cases in every court including the high court is different and giving out-of-turn priority for certain cases is best left to the concerned judge, who is aware of the grassroots situation of the court.

Overruled Asian Resurfacing of Road Agency Private Limited & Anr. Vs. Central Bureau of Investigation (2018) 16 SCC 299

JUDGMENT

ABHAY S. OKA, J.

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D. CONCLUSIONS

A. FACTUAL BACKGROUND

By the order dated 1st December 2023, a Bench of three Hon'ble Judges of this Court expressed a view that a decision of this Court in the case of **Asian Resurfacing of Road Agency Private Limited & Anr. Vs. Central Bureau of Investigation (2018) 16 SCC 299** requires reconsideration by a larger Bench.

I. Directions in Asian Resurfacing

1. In Asian Resurfacing¹, this Court dealt with the scope of interference by the High Court with an order of framing charge passed by the Special Judge under the provisions of the Prevention of Corruption Act, 1988 (for short, 'the PC Act'). The issue was whether an order of framing charge was an interlocutory order. The High Court held that an order of framing charge under the PC Act was interlocutory. A Bench of two Hon'ble Judges of this Court, by the order dated 9th September 2013, referred the case to a larger Bench to consider the issue of whether the case of Mohan Lal Magan Lal Thacker v. State of Gujarat² was correctly decided. A Bench of three Hon'ble Judges held that the order of framing charge was neither an interlocutory nor a final order. Therefore, it was held that the High Court has jurisdiction in appropriate cases to consider a challenge to an order of framing charge.

Furthermore, the High Court has jurisdiction to grant a stay of the trial proceedings. Thereafter, it proceeded to consider in which cases a stay of the proceedings ought to be granted. The Bench considered the question in the context of a criminal trial, particularly under the PC Act. In paragraphs 30 and 31, the Bench observed thus:

“30. It is well accepted that delay in a criminal trial, particularly in the PC Act cases, has deleterious effect on the administration of justice in which the society has a vital interest. Delay in trials affects the faith in Rule of Law and efficacy of the legal system. It affects social welfare and development. Even in civil or tax cases it has been laid down that power to grant stay has to be exercised with restraint. Mere prima facie case is not enough. Party seeking stay must be put to terms and stay should not be an incentive to delay. The AIR 1968 SC 733 order granting stay must show application of mind. The power to grant stay is coupled with accountability. [Siliguri Municipality v. Amalendu Das, (1984) 2 SCC 436, para 4 : 1984 SCC (Tax) 133; CCE v. Dunlop India Ltd., (1985) 1 SCC 260, para 5 : 1985 SCC (Tax) 75; State (UT of Pondicherry) v. P.V. Suresh, (1994) 2 SCC 70, para 15 and State of W.B. v. Calcutta Hardware Stores, (1986) 2 SCC 203, para 5]

31. Wherever stay is granted, a speaking order must be passed showing that the case was of exceptional nature and delay on account of stay will not prejudice the interest of speedy trial in a corruption case. Once stay is granted, proceedings should not be adjourned, and concluded within two-three months.” (Emphasis added)

2. We have been called upon to decide the correctness of the view taken in paragraphs 36 and 37 of the said decision, which read thus:

“36. In view of the above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalised. The trial court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.

37. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order.

Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 CrPC or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to reappraise the matter. Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day basis so that stay does not operate for an unduly long period. Though no mandatory time-limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated. Mandate of speedy justice applies to the PC Act cases as well as other cases where at trial stage proceedings

are stayed by the higher court i.e. the High Court or a court below the High Court, as the case may be. In all pending matters before the High Courts or other courts relating to the PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on the above parameters. Same course may also be adopted by civil and criminal appellate/Revisional Courts under the jurisdiction of the High Courts. The trial courts may, on expiry of the above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced.” (Emphasis added)

3. A Miscellaneous Application was filed in the decided case, in light of the order passed on 4th December 2019 by the Learned Additional Chief Judicial Magistrate, Pune. When the learned Magistrate was called upon to proceed with the trial on the ground of automatic vacation of stay after the expiry of a period of six months, the learned Magistrate expressed a view that when the jurisdictional High Court had passed an order of stay, a Court subordinate to the High Court cannot pass any order contrary to the order of stay. By the order dated 15th October 2020, this Court held that when the stay granted by the High Court automatically expires, unless an extension is granted for good reasons, the Trial Court, on expiry of a period of six months, must set a date for trial and go ahead with the same. Later, an attempt was made to seek clarification of the law laid down in the case of Asian Resurfacing¹. This Court, by the order dated 25th April 2022, did not apply the direction issued in Asian Resurfacing¹ to the facts of the case before it. An attempt was made to apply the directions to an order of stay of the order of the learned Single Judge of the High Court passed by a Division Bench in a Letters Patent Appeal.

II. Order of reference to Larger Bench

4. In the order of reference dated 1st December 2023, in paragraph 10, this Court observed thus:

“10. We have reservations in regard to the correctness of the broad formulations of principle in the above terms. There can be no gainsaying the fact that a stay of an indefinite nature results in prolonging civil or criminal proceedings, as the case may be, unduly. At the same time, it needs to be factored in that the delay is not always on account of conduct of the parties involved. The delay may also be occasioned by the inability of the Court to take up proceedings expeditiously.

The principle which has been laid down in the above decision to the effect that the stay shall automatically stand vacated (which would mean an automatic vacation of stay without application of judicial mind to whether the stay should or should not be extended further) is liable to result in a serious miscarriage of justice.” (Emphasis added)

5. We are called upon to decide the following questions: -

(a) Whether this Court, in the exercise of its jurisdiction under Article 142 of the Constitution of India, can order automatic vacation of all interim orders of the High Courts of staying proceedings of Civil and Criminal cases on the expiry of a certain period?

(b) Whether this Court, in the exercise of its jurisdiction under Article 142 of the Constitution of India, can direct the High Courts to decide pending cases in which interim orders of stay of proceedings has been granted on a day-to-day basis and within a fixed period?

B. SUBMISSIONS

6. The main submissions were canvassed by Shri Rakesh Dwivedi, the learned senior counsel appearing on behalf of the appellant in Criminal Appeal no.3589 of 2023. We are summarising the submissions of Shri Rakesh Dwivedi as follows:

a. Automatic Vacation of the interim order is in the nature of judicial legislation. This Court cannot engage in judicial legislation;

b. Article 226 is a part of the basic structure of the Constitution of India, and it can neither be shut out nor whittled down by the exercise of powers under Articles 141 and 142;

c. The High Court is also a constitutional Court which is not judicially subordinate to this Court;

d. An order granting interim relief cannot be passed without an application of judicial mind. Application of mind is a pre-requisite of judicial decision making. The absence of application of mind would render a decision arbitrary. Similarly, an order vacating interim relief cannot be passed without the application of judicial mind;

e. If an interim order is to be passed, it should be initially for a short period so that there is an effective opportunity for the respondent to contest the same;

f. Two Constitution Benches in the cases of **Abdul Rehman Antulay & Ors. v. R.S. Nayak & Anr. (1992) 1 SCC 225** and **P. Ramachandra Rao v. State of Karnataka (2002) 4 SCC 578** held that it is not permissible for this Court to fix the time limit for completion of a trial;

g. No such directions could have been issued in the exercise of the jurisdiction of this Court under Article 142 of the Constitution of India;

h. Even under Article 226 (3) of the Constitution, an interim order cannot be automatically vacated unless a specific application is made for vacating the interim order;

i. A provision of automatic vacation of the Appellate Tribunal's stay order was incorporated in Section 254 (2A) of the Income Tax Act, 1961 (for short, 'the IT Act'). It provided that if an appeal preferred before the Appellate Tribunal was not disposed of within 365 days, the stay shall stand vacated even if the delay in disposing of the appeal is not attributable to the assessee. This court struck down the provision in the case of **Deputy Commissioner of Income Tax & Anr. v. Pepsi Foods Limited (2021) 7 SCC 413** on the ground that it was manifestly arbitrary; and j. The automatic vacation of interim relief is unjust, unfair and unreasonable.

7. Shri Tushar Mehta, the learned Solicitor General appearing for the State of Uttar Pradesh, supported the submissions of Shri Dwivedi. In addition, he submitted that:

a. As held by the Constitution Bench in the case of **Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur AIR 1965 SC 895**, laws of procedure are grounded in principles of natural justice, which require that no decision can be reached behind the back of a person and in his absence;

b. If the condition imposed by a provision of law to do a certain thing within a time frame is upon the institution and the consequences of that institution failing to comply with the condition are to fall upon someone who has no control over the institution, the provision of law will have to be construed as directory;

c. An interim relief order is always granted after considering the three factors: prima facie case, the balance of convenience and irreparable injury to the aggrieved party. Once a finding is recorded regarding the entitlement of the appellant/applicant to get the order of stay, the order does not become automatically bad on the ground that it has lived for six months; and

d. In the decision of this Court in **Kailash v. Nanhku & Ors. (2005) 4 SCC 480**, it has been held that the process of justice may be speeded up and hurried, but fairness, which is the basic element of justice, cannot be permitted to be buried. The discretion conferred upon the High Court cannot be taken away by exercising power under Article 142 of the Constitution of India.

8. Shri Gaurav Mehrotra, the learned counsel appearing for the applicant in I.A. no.252872 of 2023 in Criminal Appeal no.3589 of 2023, in addition to the aforesaid submissions, relied upon a decision of the Constitution Bench in the case of **Sanjeev Coke Manufacturing Company v. M/s. Bharat Coking Coal**

Ltd. & Anr.,(1983) 1 SCC 147, to contend that the Court should not decide any important question without there being a proper lis.

9. Shri Vijay Hansaria, the learned senior counsel appearing for the Gauhati High Court Bar Association, made the following submissions:

a. As regards the interpretation of clause (3) of Article 226 of the Constitution of India, various High Courts have taken different views on the issue of whether the provision for automatic vacation of stay is mandatory or directory. He urged that the provision will have to be held as a directory;

b. In *Asian Resurfacing*¹, the Court was dealing with a petition filed in the High Court arising from a prosecution under the PC Act. The cases of other categories were not the subject matter of challenge before this Court;

c. The power under Article 142 of the Constitution of India can be exercised for doing complete justice in any case or matter pending before it. The issue of the duration of the order of stay did not arise in the case of *Asian Resurfacing*¹; and

d. A successful litigant whose application for stay is allowed by the High Court cannot be prejudiced only on the ground that the High Court does not hear the main case within six months for reasons beyond the control of the said litigant.

10. Shri Amit Pai, the learned counsel appearing for the appellant in one of the appeals, while adopting the submissions, relied upon a decision of this Court in the case of **Deoraj v. State of Maharashtra & Ors. (2004) 4 SCC 697** and contended that recourse is taken to the order of grant of interim relief as the conclusion of hearing on merits is likely to take some time. He submitted that the said object has not been considered in *Asian Resurfacing*¹. He urged that passing an interim order of stay is a judicial act. Therefore, such an order must be vacated only by a judicial act.

11. Prof (Dr) Pankaj K Phadnis, representing the intervenor – Abhinav Bharat Congress, has filed written submissions. He has contended that he was not permitted to join the hearing through video conferencing. He has come out with the draft of Supreme Court Rules, 2024. His submissions, based on the draft, are entirely irrelevant.

C. ANALYSIS

12. We have no manner of doubt that the direction issued in paragraph 36 of *Asian Resurfacing*¹ regarding automatic vacation of stay has been issued in the exercise of the jurisdiction of this Court under Article 142 of the Constitution of India. Even the direction in paragraph 37 of conducting day- to-day hearing has been issued in exercise of the same jurisdiction. The effect of the direction issued

in paragraph 36 is that the interim order of stay granted in favour of a litigant stands vacated without even giving him an opportunity of being heard, though there may not be any default on his part.

I. Object of passing interim orders

13. Before we examine the questions, we need to advert to the object of passing orders of interim relief pending the final disposal of the main case. The reason is that the object of passing interim order has not been considered while deciding **Asian Resurfacing**. An order of interim relief is usually granted in the aid of the final relief sought in the case. An occasion for passing an order of stay of the proceedings normally arises when the High Court is dealing with a challenge to an interim or interlocutory order passed during the pendency of the main case before a trial or appellate Court. The High Court can grant relief of the stay of hearing of the main

proceedings on being satisfied that a prima facie case is made out and that the failure to stay the proceedings before the concerned Court in all probability may render the remedy adopted infructuous. When the High Court passes an interim order of stay, though the interim order may not expressly say so, the three factors, viz; prima facie case, irreparable loss, and balance of convenience, are always in the back of the judges' minds. Though interim orders of stay of proceedings cannot be routinely passed as a matter of course, it cannot be said that such orders can be passed only in exceptional cases. Nevertheless, the High Courts, while passing orders of stay in serious cases like the offences under the PC Act or serious offences against women and children, must be more cautious and circumspect. An occasion for passing an order of stay of proceeding arises as it is not possible for the High Court to take up the case for final hearing immediately. While entertaining a challenge to an order passed in a pending case, if the pending case is not stayed, the trial or the appellate Court may decide the pending case, rendering the remedy before the High Court ineffective. Such a situation often leads to the passing of an order of remand. In our legal system, which is facing a docket explosion, an order of remand should be made only as a last resort. The orders of remand not only result in more delays but also increase the cost of litigation. Therefore, to avoid the possibility of passing an order of remand, the grant of stay of proceedings is called for in many cases.

II. High Court's power to vacate or modify interim relief

14. When a High Court grants a stay of the proceedings while issuing notice without giving an opportunity of being heard to the contesting parties, it is not an interim order, but it is an ad-interim order of stay. It can be converted into an interim order of stay only after an opportunity of being heard is granted on the

prayer for interim relief to all the parties to the proceedings. Ad-interim orders, by their very nature, should be of a limited duration. Therefore, such orders do not pose any problem.

15. The High Courts are always empowered to vacate or modify an order of interim relief passed after hearing the parties on the following, amongst other grounds: -

(a) If a litigant, after getting an order of stay, deliberately prolongs the proceedings either by seeking adjournments on unwarranted grounds or by remaining absent when the main case in which interim relief is granted is called out for hearing before the High Court with the object of taking undue advantage of the order of stay;

(b) The High Court finds that the order of interim relief is granted as a result of either suppression or misrepresentation of material facts by the party in whose favour the interim order of stay has been made; and

(c) The High Court finds that there is a material change in circumstances requiring interference with the interim order passed earlier. In a given case, a long passage of time may bring about a material change in circumstances.

These grounds are not exhaustive. There can be other valid grounds for vacating an order of stay.

III. Whether an Interim Order can come to an end automatically only due to the lapse of time

16. Interim order of stay can come to an end: -

(a) By disposal of the main case by the High Court, in which the interim order has been passed. The disposal can be either on merits or for default or other reasons such as the abatement of the case; or

(b) by a judicial order vacating interim relief, passed after hearing the contesting parties on the available grounds, some of which we have already referred to by way of illustration.

Elementary principles of natural justice, which are well recognised in our jurisprudence, mandate that an order of vacating interim relief or modification of the interim relief is passed only after hearing all the affected parties. An order of vacating interim relief passed without hearing the beneficiary of the order is against the basic tenets of justice. Application of mind is an essential part of any decision-making process. Therefore, without application of mind, an order of interim stay cannot be vacated only on the ground of lapse of time when the

litigant is not responsible for the delay. An interim order lawfully passed by a Court after hearing all contesting parties is not rendered illegal only due to the long passage of time.

Moreover, the directions issued in *Asian Resurfacing*¹ regarding automatic vacation of interim orders of stay passed by all High Courts are applicable, irrespective of the merits of individual cases. If a High Court concludes after hearing all the concerned parties that a case was made out for the grant of stay of proceedings of a civil or criminal case, the order of stay cannot stand automatically set aside on expiry of the period of six months only on the ground that the High Court could not hear the main case. If such an approach is adopted, it will be completely contrary to the concept of fairness. If an interim order is automatically vacated without any fault on the part of the litigant only because the High Court cannot hear the main case, the maxim “*actus curiae neminem gravabit*” will apply. No litigant should be allowed to suffer due to the fault of the Court. If that happens, it is the bounden duty of the Court to rectify its mistake.

17. In the subsequent clarification in the case of *Asian Resurfacing*¹, a direction has been issued to the Trial Courts to immediately fix a date for hearing after the expiry of the period of six months without waiting for any formal order of vacating stay passed by the High Court. This gives an unfair advantage to the respondent in the case before the High Court. Moreover, it adversely affects a litigant's right to the remedies under Articles 226 and 227 of the Constitution of India. Such orders virtually defeat the right of a litigant to seek and avail of statutory remedies such as revisions, appeals, and applications under Section 482 of the Code of Criminal Procedure, 1973 (for short, ‘Cr. PC’) as well as the remedies under the Code of Civil Procedure, 1908 (for short, ‘CPC’). All interim orders of stay passed by all High Courts cannot be set at naught by a stroke of pen only on the ground of lapse of time.

18. The legislature attempted to provide for an automatic vacation of stay granted by the Income Tax Appellate Tribunal by introducing the third proviso to Section 254 (2A) of the IT Act. It provided that if an appeal in which the stay was granted was not heard within a period of 365 days, it would amount to the automatic vacation of stay. In the case of *Pepsi Foods Limited*⁵, this Court held that a provision automatically vacating a stay was manifestly arbitrary and, therefore, violative of Article 14 of the Constitution of India. Paragraphs 20 and 22 of the said decision read thus:

“20. Judged by both these parameters, there can be no doubt that the third proviso to Section 254(2-A) of the Income Tax Act, introduced by the Finance Act, 2008, would be both arbitrary and discriminatory and, therefore, liable to be struck down as offending Article 14 of the Constitution of India. First and foremost, as

has correctly been held in the impugned judgment, unequals are treated equally in that no differentiation is made by the third proviso between the assesseees who are responsible for delaying the proceedings and assesseees who are not so responsible. This is a little peculiar in that the legislature itself has made the aforesaid differentiation in the second proviso to Section 254(2-A) of the Income Tax Act, making it clear that a stay order may be extended up to a period of 365 days upon satisfaction that the delay in disposing of the appeal is not attributable to the assessee. We have already seen as to how, as correctly held by **Narang Overseas [Narang Overseas (P) Ltd. v. Income Tax Appellate Tribunal, 2007 SCC OnLine Bom 671 : (2007) 295 ITR 22]** , the second proviso was introduced by the Finance Act, 2007 to mitigate the rigour of the first proviso to Section 254(2-A) of the Income Tax Act in its previous avatar. Ordinarily, the Appellate Tribunal, where possible, is to hear and decide appeals within a period of four years from the end of the financial year in which such appeal is filed. It is only when a stay of the impugned order before the Appellate Tribunal is granted, that the appeal is required to be disposed of within 365 days. So far as the disposal of an appeal by the Appellate Tribunal is concerned, this is a directory provision. However, so far as vacation of stay on expiry of the said period is concerned, this condition becomes mandatory so far as the assessee is concerned.”

21.

22. Since the object of the third proviso to Section 254(2-A) of the Income Tax Act is the automatic vacation of a stay that has been granted on the completion of 365 days, whether or not the assessee is responsible for the delay caused in hearing the appeal, such object being itself discriminatory, in the sense pointed out above, is liable to be struck down as violating Article 14 of the Constitution of India. Also, the said proviso would result in the automatic vacation of a stay upon the expiry of 365 days even if the Appellate Tribunal could not take up the appeal in time for no fault of the assessee. Further, the vacation of stay in favour of the Revenue would ensue even if the Revenue is itself responsible for the delay in hearing the appeal. In this sense, the said proviso is also manifestly arbitrary being a provision which is capricious, irrational and disproportionate so far as the assessee is concerned.” (Emphasis added) Therefore, even if the legislature were to come out with such a provision for automatic vacation of stay, the same may not stand judicial scrutiny as it may suffer from manifest arbitrariness.

IV. Scope of exercise of powers under Article 142 of the Constitution

19. The directions issued in Asian Resurfacing¹ are obviously issued in the exercise of jurisdiction of this Court under Article 142 of the Constitution, which

confers jurisdiction on this Court to pass such a decree or make such order necessary for doing complete justice in any case or matter pending before it. In *Asian Resurfacing*¹, the first issue was, whether an order framing of charge in a case under the PC Act was in the nature of an interlocutory order. The second question was of the scope of powers of the High Court to stay proceedings of the trial under the PC Act while entertaining a challenge to an order of framing charge. The question regarding the duration of the interim orders passed by the High Courts in various other proceedings did not specifically arise for consideration in the case of *Asian Resurfacing*¹. The provisions of Article 142 of the Constitution of India are meant to further the cause of justice and to secure complete justice. The directions in the exercise of power under Article 142 cannot be issued to defeat justice. The jurisdiction under Article 142 cannot be invoked to pass blanket orders setting at naught a very large number of interim orders lawfully passed by all the High Courts, and that too, without hearing the contesting parties. The jurisdiction under Article 142 can be invoked only to deal with extraordinary situations for doing complete justice between the parties before the Court.

20. While dealing with the scope of power under Article 142, a Constitution Bench of this Court in the case of **Prem Chand Garg & Anr. v. The Excise Commissioner, U.P. and Ors., 1962 SCC Online SC 37** in paragraphs 12 and 13 held thus:

“12. Basing himself on this decision, the Solicitor-General argues that the power conferred on this Court under Article 142(1) is comparable to the privileges claimed by the members of the State Legislatures under the latter part of Article 194(3), and so, there can be no question of striking down an order passed by this Court under Article 142(1) on the ground that it is inconsistent with Article 32. It would be noticed that this argument proceeds on the basis that the order for security infringes the fundamental right guaranteed by Article 32 and it suggests that under Article 142(1) this Court has jurisdiction to pass such an order. In our opinion, the argument thus presented is misconceived. In this connection, it is necessary to appreciate the actual decision in the case of *Sharma* [(1959) 1 SCR 806 at 859-860] and its effect. The actual decision was that the rights claimable under the latter part of Article 194(3) were not subject to Article 19(1)(a), because the said rights had been expressly provided for by a constitutional provision viz. Article 194(3), and it would be impossible to hold that one part of the Constitution is inconsistent with another part. The position would, however, be entirely different if the State Legislature was to pass a law in regard to the privileges of its members. Such a law would obviously have to be consistent with Article 19(1)(a). If any of the provisions of such a law were to contravene any of

the fundamental rights guaranteed by Part III, they would be struck down as being unconstitutional.

Similarly, there can be no doubt that if in respect of petitions under Article 32 a law is made by Parliament as contemplated by Article 145(1), and such a law, in substance, corresponds to the provisions of Order 25 Rule 1 or Order 41 Rule 10, it would be struck down on the ground that it purports to restrict the fundamental right guaranteed by Article 32. The position of an order made either under the rules framed by this Court or under the jurisdiction of this Court under Article 142(1) can be no different. If this aspect of the matter is borne in mind, there would be no difficulty in rejecting the Solicitor-General's argument based on Article 142(1). The powers of this Court are no doubt very wide and they are intended to be and will always be exercised in the interest of justice. But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. An order which this Court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws. Therefore, we do not think it would be possible to hold that Article 142(1) confers upon this Court powers which can contravene the provisions of Article 32.

13. In this connection, it may be pertinent to point out that the wide powers which are given to this Court for doing complete justice between the parties, can be used by this Court, for instance, in adding parties to the proceedings pending before it, or in admitting additional evidence, or in remanding the case, or in allowing a new point to be taken for the first time. It is plain that in exercising these and similar other powers, this Court would not be bound by the relevant provisions of procedure if it is satisfied that a departure from the said procedure is necessary to do complete justice between the parties.” (Emphasis added)

21. Another Constitution Bench in the case of **Supreme Court Bar Association v. Union of India & Anr., (1998) 4 SCC 409**, in paragraphs 47 and 48, held thus:

“47. The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide

amplitude and are in the nature of supplementary powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties. This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law. There is no doubt that it is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Court to prevent “clogging or obstruction of the stream of justice”. It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to “supplant” substantive law applicable to the case or cause under consideration of the Court.

Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, a power otherwise statutorily available only to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142. The construction of Article 142 must be functionally informed by the salutary purposes of the article, viz., to do complete justice between the parties. It cannot be otherwise. As already noticed in a case of contempt of court, the contemner and the court cannot be said to be litigating parties.

48. The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is necessary for doing complete justice “between the parties in any cause or matter pending before it”.

The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by “ironing out the creases” in a cause or matter before it. Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. It is well recognised and established that this Court has always been a law-maker and its role travels beyond merely dispute- settling. It is a “problem-solver in the nebulous areas” (see **K. Veeraswami v. Union of**

India [(1991) 3 SCC 655 : 1991 SCC (Cri) 734] but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject.” (Emphasis added)

22. It is very difficult to exhaustively lay down the parameters for the exercise of powers under Article 142 of the Constitution of India due to the very nature of such powers.

However, a few important parameters which are relevant to the issues involved in the reference are as follows:-

(i) The jurisdiction can be exercised to do complete justice between the parties before the Court. It cannot be exercised to nullify the benefits derived by a large number of litigants based on judicial orders validly passed in their favour who are not parties to the proceedings before this Court;

(ii) Article 142 does not empower this Court to ignore the substantive rights of the litigants; and

(iii) While exercising the jurisdiction under Article 142 of the Constitution of India, this Court can always issue procedural directions to the Courts for streamlining procedural aspects and ironing out the creases in the procedural laws to ensure expeditious and timely disposal of cases. This is because, while exercising the jurisdiction under Article 142, this Court may not be bound by procedural requirements of law.

However, while doing so, this Court cannot affect the substantive rights of those litigants who are not parties to the case before it. The right to be heard before an adverse order is passed is not a matter of procedure but a substantive right.

(iv) The power of this Court under Article 142 cannot be exercised to defeat the principles of natural justice, which are an integral part of our jurisprudence.

V. Position of the High Courts and its power of superintendence

23. A High Court is also a constitutional Court. It is well settled that it is not judicially subordinate to this Court. In the case of **Tirupati Balaji Developers (P) Ltd. & Ors. v. State of Bihar & Ors. (2004) 5 SCC 1**, this Court has explained the position of the High Courts vis-à-vis this Court. In paragraph 8, this Court observed thus:

“8. Under the constitutional scheme as framed for the judiciary, the Supreme Court and the High Courts, both are courts of record. The High Court is not a court “subordinate” to the Supreme Court. In a way the canvas of judicial powers vesting in the High Court is wider inasmuch as it has jurisdiction to issue all prerogative writs conferred by Article 226 of the Constitution for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose while the original jurisdiction of the Supreme Court to issue prerogative writs remains confined to the enforcement of fundamental rights and to deal with some such matters, such as Presidential elections or inter-State disputes which the Constitution does not envisage being heard and determined by High Courts. The High Court exercises power of superintendence under Article 227 of the Constitution over all subordinate courts and tribunals; the Supreme Court has not been conferred with any power of superintendence. If the Supreme Court and the High Courts both were to be thought of as brothers in the administration of justice, the High Court has larger jurisdiction but the Supreme Court still remains the elder brother. There are a few provisions which give an edge, and assign a superior place in the hierarchy, to the Supreme Court over High Courts. So far as the appellate jurisdiction is concerned, in all civil and criminal matters, the Supreme Court is the highest and the ultimate court of appeal.

It is the final interpreter of the law.

Under Article 139-A, the Supreme Court may transfer any case pending before one High Court to another High Court or may withdraw the case to itself. Under Article 141 the law declared by the Supreme Court shall be binding on all courts, including High Courts, within the territory of India. Under Article 144 all authorities, civil and judicial, in the territory of India — and that would include High Courts as well — shall act in aid of the Supreme Court.” (Emphasis added) A High Court is constitutionally independent of the Supreme Court of India and is not subordinate to this Court. This Court has dealt with the issue of jurisdiction of the High Courts in the case of **L. Chandra Kumar v. Union of India & Ors., (1997) 3 SCC 261**. The relevant part of paragraph 78 and paragraph 79 read thus:

“78. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their

respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided.” (Emphasis added)

24. The power of the High Court under Article 227 of the Constitution to have judicial superintendence over all the Courts within its jurisdiction will include the power to stay the proceedings before such Courts. By a blanket direction in the exercise of power under Article 142 of the Constitution of India, this Court cannot interfere with the jurisdiction conferred on the High Court of granting interim relief by limiting its jurisdiction to pass interim orders valid only for six months at a time. Putting such constraints on the power of the High Court will also amount to making a dent on the jurisdiction of the High Courts under Article 226 of the Constitution, which is an essential feature that forms part of the basic structure of the Constitution.

VI. Whether the Court should deal with an issue not arising for consideration

25. In the case of **Sanjeev Coke Manufacturing Company**, a Constitution Bench of this Court in paragraph 11 held thus:

“11.We have serious reservations on the question whether it is open to a court to answer academic or hypothetical questions on such considerations, particularly so when serious constitutional issues are involved. We (Judges) are not authorised to make disembodied pronouncements on serious and cloudy issues of constitutional policy without battle lines being properly drawn. Judicial pronouncements cannot be immaculate legal conceptions. It is but right that no important point of law should be decided without a proper lis between parties properly ranged on either side and a crossing of the swords. We think it is inexpedient for the Supreme Court to delve into problems which do not arise and express opinion thereon.” (Emphasis added)

In *Asian Resurfacing*, there was no lis before this Court arising out of the orders of stay granted in different categories of cases pending before the various High Courts. This Court was dealing with a case under the PC Act. Thus, an attempt was made to delve into an issue which did not arise for consideration.

VII. Clause (3) Of Article 226 of the Constitution

26. In this case, it is unnecessary for this Court to decide whether clause (3) of Article 226 of the Constitution of India is mandatory or directory. Clause (3) of Article 226 reads thus:

“226. Power of High Courts to issue certain writs:

(1)

(2)

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.” On its plain reading, clause (3) is applicable only when an interim relief is granted without furnishing a copy of the writ petition along with supporting documents to the opposite party and without hearing the opposite party. Even assuming that clause (3) is not directory, it provides for an automatic vacation of interim relief only if the aggrieved party makes an application for vacating the interim relief and when the application for vacating stay is not heard within the time specified. Clause (3) will not apply when an interim order in a writ petition under Article 226 is passed after the service of a copy of the writ petition on all concerned parties and after giving them an opportunity of being heard. It applies only to ex-parte ad interim orders.

VIII. Directions issued by the constitutional Courts to decide pending cases in a time-bound manner

27. The net effect of the directions issued in paragraphs 36 and 37 of Asian Resurfacing¹ is that the petition in which the High Court has granted a stay of the proceedings of the trial, must be decided within a maximum period of six months. If it is not decided within six months, the interim stay will be vacated automatically, virtually making the pending case infructuous. In fact, in paragraph 37, this Court directed that the challenge to the order of framing charge should be entertained in a rare case, and when the stay is granted, the case should

be decided by the High Court on a day-to-day basis so that the stay does not operate for an unduly long period.

28. The Constitution Benches of this Court have considered the issue of fixing timelines for the disposal of cases in the cases of **Abdul Rehman Antulay and P. Ramachandra Rao**. In the case of **Abdul Rehman Antulay**, in paragraph 83, this Court held thus:

“83. But then speedy trial or other expressions conveying the said concept — are necessarily relative in nature. One may ask — speedy means, how speedy? How long a delay is too long? We do not think it is possible to lay down any time schedules for conclusion of criminal proceedings. The nature of offence, the number of accused, the number of witnesses, the workload in the particular court, means of communication and several other circumstances have to be kept in mind. For example, take the very case in which Ranjan Dwivedi (petitioner in Writ Petition No. 268 of 1987) is the accused. 151 witnesses have been examined by the prosecution over a period of five years. Examination of some of the witnesses runs into more than 100 typed pages each. The oral evidence adduced by the prosecution so far runs into, we are told, 4000 pages. Even though, it was proposed to go on with the case five days of a week and week after week, it was not possible for various reasons viz., non-availability of the counsel, non-availability of accused, interlocutory proceedings and other systemic delays. A murder case may be a simple one involving say a dozen witnesses which can be concluded in a week while another case may involve a large number of witnesses, and may take several weeks. Some offences by their very nature e.g., conspiracy cases, cases of misappropriation, embezzlement, fraud, forgery, sedition, acquisition of disproportionate assets by public servants, cases of corruption against high public servants and high public officials take longer time for investigation and trial. Then again, the workload in each court, district, region and State varies. This fact is too well known to merit illustration at our hands. In many places, requisite number of courts are not available. In some places, frequent strikes by members of the bar interferes with the work schedules. In short, it is not possible in the very nature of things and present-day circumstances to draw a time-limit beyond which a criminal proceeding will not be allowed to go. Even in the USA, the Supreme Court has refused to draw such a line. Except for the Patna Full Bench decision under appeal, no other decision of any High Court in this country taking such a view has been brought to our notice. Nor, to our knowledge, in United Kingdom. Wherever a complaint of infringement of right to speedy trial is made the court has to consider all the circumstances of the case including those mentioned above and arrive at a decision whether in fact the proceedings have been pending for an unjustifiably long period. In many cases, the accused may himself have been responsible for the delay. In such cases, he cannot be allowed to take advantage of his own wrong. In some cases, delays

may occur for which neither the prosecution nor the accused can be blamed but the system itself. Such delays too cannot be treated as unjustifiable — broadly speaking. Of course, if it is a minor offence — not being an economic offence — and the delay is too long, not caused by the accused, different considerations may arise. Each case must be left to be decided on its own facts having regard to the principles enunciated hereinafter. For all the above reasons, we are of the opinion that it is neither advisable nor feasible to draw or prescribe an outer time-limit for conclusion of all criminal proceedings. It is not necessary to do so for effectuating the right to speedy trial. We are also not satisfied that without such an outer limit, the right becomes illusory.” (Emphasis added) In paragraph 27 of the decision in the case of P. Ramachandra Rao⁴, this Court observed thus:

“27. Prescribing periods of limitation at the end of which the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused, and further, making such directions applicable to all the cases in the present and for the future amounts to legislation, which, in our opinion, cannot be done by judicial directives and within the arena of the judicial law-making power available to constitutional courts, howsoever liberally we may interpret Articles 32, 21, 141 and 142 of the Constitution. The dividing line is fine but perceptible. Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature. Binding directions can be issued for enforcing the law and appropriate directions may issue, including laying down of time-limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated, in a given case or set of cases, depending on facts brought to the notice of the court. This is permissible for the judiciary to do. But it may not, like the legislature, enact a provision akin to or on the lines of Chapter XXXVI of the Code of Criminal Procedure, 1973.” (Emphasis added) The principles laid down in the decision will apply even to civil cases before the trial courts. The same principles will also apply to a direction issued to the High Courts to decide cases on a day-to-day basis or within a specific time. Thus, the directions of the Court that provide for automatic vacation of the order of stay and the disposal of all cases in which a stay has been granted on a day-to-day basis virtually amount to judicial legislation. The jurisdiction of this Court cannot be exercised to make such a judicial legislation. Only the legislature can provide that cases of a particular category should be decided within a specific time. There are many statutes which incorporate such provisions. However, all such provisions are usually held to be directory.

29. Ideally, the cases in which the stay of proceedings of the civil/criminal trials is granted should be disposed of expeditiously by the High Courts. However, we do not live in an ideal world. A judicial notice will have to be taken of the fact

that except High Courts of smaller strength having jurisdiction over smaller States, each High Court is flooded with petitions under Article 227 of the Constitution of India for challenging the interim orders passed in civil and criminal proceedings, the petitions under Section 482 of the Cr.PC for challenging the orders passed in the criminal proceedings and petitions filed in the exercise of revisional jurisdiction under the CPC and the Cr. PC. A judicial notice will have to be taken of the fact that in all the High Courts of larger strength having jurisdiction over larger States, the daily cause lists of individual Benches of the cases of the aforesaid categories are of more than a hundred matters. Therefore, once a case is entertained by the High Court and the stay is granted, the case has a long life.

30. There is a huge filing of regular appeals, both civil and criminal in High Courts. After all, the High Courts deal with many other important matters, such as criminal appeals against acquittal and conviction, bail petitions, writ petitions, and other proceedings that involve the issues of liberty under Article 21 of the Constitution of India. The High Courts deal with matrimonial disputes, old appeals against decrees of civil courts, and appeals against appellate decrees. There are cases where senior citizens or second or third-generation litigants are parties. The High Courts cannot be expected to decide, on a priority basis or a day-to-day basis, only those cases in which a stay of proceedings has been granted while ignoring several other categories of cases that may require more priority to be given.

31. The situation in Trial and district Courts is even worse. In 2002, in the case of **All India Judges' Association & Ors. v. Union of India & Ors. (2002) 4 SCC 247**, this Court passed an order directing that the judge-to-population ratio within twenty years should be 50 per million. Even as of today, we are not able to reach the ratio of even 25 per million. The directions issued in the case of **Imtiyaz Ahmed v. State of Uttar Pradesh & Ors. (2017) 3 SCC 658**, have not been complied with by the States by increasing the Judge strength of the Trial and District Courts. The figures of pendency of cases in our trial Courts are staggering. There are different categories of cases which, by their very nature, are required to be given utmost priority, such as the cases of the accused in jail and the cases of senior citizens. For example, there are many legislations like the Hindu Marriage Act, 1955, the Protection of Women from Domestic Violence Act, 2005, the Negotiable Instruments Act, 1881 etc which prescribe specific time limits for the disposal of cases. However, due to the huge filing and pendency, our Courts cannot conclude the trials within the time provided by the statutes. There is a provision in the Code of Criminal Procedure, 1973, in the form of Section 309, which requires criminal cases to be heard on a day-to-day basis once the recording of evidence commences. The same Section provides that in case of certain serious offences against women, the cases must be decided

within two months of filing the charge sheet. Unfortunately, our Criminal Courts are not in a position to implement the said provision. Apart from dealing with huge arrears, our Trial Courts face the challenge of dealing with a large number of cases made time-bound by our constitutional Courts. Therefore, in the ordinary course, the constitutional Courts should not exercise the power to direct the disposal of a case before any District or Trial Court within a time span. In many cases, while rejecting a bail petition, a time limit is fixed for disposal of trial on the ground that the petitioner has undergone incarceration for a long time without realising that the concerned trial Court may have many pending cases where the accused are in jail for a longer period. The same logic will apply to the cases pending before the High Courts. When we exercise such power of directing High Courts to decide cases in a time-bound manner, we are not aware of the exact position of pendency of old cases in the said Courts, which require priority to be given. Bail petitions remain pending for a long time. There are appeals against conviction pending where the appellants have been denied bail.

32. Therefore, constitutional Courts should not normally fix a time-bound schedule for disposal of cases pending in any Court. The pattern of pendency of various categories of cases pending in every Court, including High Courts, is different. The situation at the grassroots level is better known to the judges of the concerned Courts. Therefore, the issue of giving out-of- turn priority to certain cases should be best left to the concerned Courts. The orders fixing the outer limit for the disposal of cases should be passed only in exceptional circumstances to meet extraordinary situations.

33. There is another important reason for adopting the said approach. Not every litigant can easily afford to file proceedings in the constitutional Courts. Those litigants who can afford to approach the constitutional Courts cannot be allowed to take undue advantage by getting an order directing out-of-turn disposal of their cases while all other litigants patiently wait in the queue for their turn to come. The Courts, superior in the judicial hierarchy, cannot interfere with the day-to-day functioning of the other Courts by directing that only certain cases should be decided out of turn within a time frame. In a sense, no Court of law is inferior to the other. This Court is not superior to the High Courts in the judicial hierarchy. Therefore, the Judges of the High Courts should be allowed to set their priorities on a rational basis. Thus, as far as setting the outer limit is concerned, it should be best left to the concerned Courts unless there are very extraordinary circumstances.

IX. Procedure to be adopted by High Courts while passing interim order of stay of proceedings and for dealing with the applications for vacating interim stay

34. At the same time, we cannot ignore that once the High Court stays a trial, it takes a very long time for the High Court to decide the main case. To avoid any prejudice to the opposite parties, while granting ex-parte ad-interim relief without hearing the affected parties, the High Courts should normally grant ad-interim relief for a limited duration. After hearing the contesting parties, the Court may or may not confirm the earlier ad-interim order. Ad-interim relief, once granted, can be vacated or affirmed only after application of mind by the concerned Court. Hence, the Courts must give necessary priority to the hearing of the prayer for interim relief where ad- interim relief has been granted. Though the High Court is not expected to record detailed reasons while dealing with the prayer for the grant of stay or interim relief, the order must give sufficient indication of the application of mind to the relevant factors.

35. An interim order passed after hearing the contesting parties cannot be vacated by the High Court without giving sufficient opportunity of being heard to the party whose prayer for interim relief has been granted. Even if interim relief is granted after hearing both sides, as observed earlier, the aggrieved party is not precluded from applying for vacating the same on the available grounds. In such a case, the High Court must give necessary priority to the hearing of applications for vacating the stay, if the main case cannot be immediately taken up for hearing. Applications for vacating interim reliefs cannot be kept pending for an inordinately long time. The High Courts cannot take recourse to the easy option of directing that the same should be heard along with the main case. The same principles will apply where ad-interim relief is granted. If an ad-interim order continues for a long time, the affected party can always apply for vacating ad-interim relief. The High Court is expected to take up even such applications on a priority basis. If an application for vacating ex-parte ad interim relief is filed on the ground of suppression of facts, the same must be taken up at the earliest.

D. CONCLUSIONS

36. Hence, with greatest respect to the Bench which decided the case, we are unable to concur with the directions issued in paragraphs 36 and 37 of the decision in the case of Asian Resurfacing¹. We hold that there cannot be automatic vacation of stay granted by the High Court. We do not approve the direction issued to decide all the cases in which an interim stay has been granted on a day-to-day basis within a time frame. We hold that such blanket directions cannot be issued in the exercise of the jurisdiction under Article 142 of the Constitution of India. We answer both the questions framed in paragraph 5 above in the negative.

37. Subject to what we have held earlier, we summarise our main conclusions as follows:

a. A direction that all the interim orders of stay of proceedings passed by every High Court automatically expire only by reason of lapse of time cannot be issued in the exercise of the jurisdiction of this Court under Article 142 of the Constitution of India;

b. Important parameters for the exercise of the jurisdiction under Article 142 of the Constitution of India which are relevant for deciding the reference are as follows:

(i) The jurisdiction can be exercised to do complete justice between the parties before the Court. It cannot be exercised to nullify the benefits derived by a large number of litigants based on judicial orders validly passed in their favour who are not parties to the proceedings before this Court;

(ii) Article 142 does not empower this Court to ignore the substantive rights of the litigants;

(iii) While exercising the jurisdiction under Article 142 of the Constitution of India, this Court can always issue procedural directions to the Courts for streamlining procedural aspects and ironing out the creases in the procedural laws to ensure expeditious and timely disposal of cases. However, while doing so, this Court cannot affect the substantive rights of those litigants who are not parties to the case before it. The right to be heard before an adverse order is passed is not a matter of procedure but a substantive right; and

(iv) The power of this Court under Article 142 cannot be exercised to defeat the principles of natural justice, which are an integral part of our jurisprudence.

c. Constitutional Courts, in the ordinary course, should refrain from fixing a time-bound schedule for the disposal of cases pending before any other Courts. Constitutional Courts may issue directions for the time-bound disposal of cases only in exceptional circumstances. The issue of prioritising the disposal of cases should be best left to the decision of the concerned Courts where the cases are pending; and

d. While dealing with the prayers for the grant of interim relief, the High Courts should take into consideration the guidelines incorporated in paragraphs 34 and 35 above.

38. We clarify that in the cases in which trials have been concluded as a result of the automatic vacation of stay based only on the decision in the case of Asian Resurfacing¹, the orders of automatic vacation of stay shall remain valid.

39. The reference is answered accordingly. We direct the Registry to place the pending petitions before the appropriate Benches for expeditious disposal.

.....CJI. [Dr Dhananjaya Y. Chandrachud]

.....J. [Abhay S. Oka]

.....J. [J. B. Pardiwala]

.....J. [Manoj Misra]

New Delhi;

February 29, 2024.

IN THE SUPREME COURT OF INDIA

High Court Bar Association, Allahabad

Vs.

State of U.P. & Ors.

Criminal Appeal No. 3589 of 2023

with

S.L.P. (Crl.) Nos. 13284-13289 of 2023

JUDGMENT

PANKAJ MITHAL, J.

1. Concurring with the opinion expressed by my brother Justice Oka for himself and other puisne Judges, including the Hon'ble Chief Justice, I would like to add that in **Asian Resurfacing of Road Agency Private Limited & Anr. vs. Central Bureau of Investigation (2018) 16 SCC 299**, this Court while deciding the issues arising therein went ahead in observing and directing that where a challenge to an order framing charge is entertained and stay is granted, the matter must be decided on day to day basis so that the stay may not continue for an unduly long time. It was further observed that though no mandatory time limit may be fixed for deciding such a challenge, the stay order may not normally exceed two to three months or a maximum of six months unless it is extended by specific speaking order. Further directions were issued that in all pending matters before the High Court or other Courts relating to Prevention of Corruption Act or all other civil or criminal cases where stay is operating in pending trials, it will automatically lapse after six months unless a speaking order is passed extending the same. The Trial Court may, on expiry of the above period resume the proceedings without waiting for any intimation unless express order extending the stay is produced before the Court.

2. The above directions in Asian Resurfacing issued in exercise of power of doing complete justice under Article 142 of the Constitution of India are analogous to the constitutional provision as contained in clause (3) of Article 226 of the Constitution of India which has been inserted with effect from 1.8.1979 vide the Constitution (Forty-fourth Amendment) Act, 1978. It reads as under:

“(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.”

3. No doubt, the above provision is in respect to petitions filed before the High Court invoking the extraordinary jurisdiction of the Court and is not meant to be applied specifically to other proceedings, nonetheless the principles behind the said provision can always be extended to other proceedings as has been done in Asian Resurfacing. It is worth noting that wherever under a statute any such time limit has been prescribed or is fixed for deciding a particular nature of proceeding, it has been held to be directory in nature rather than mandatory. So appears to be the position with regard to the applicability of Article 226(3) of the Constitution of India.

4. It is well recognised that no one can be made to suffer on account of any mistake or fault of the Court which means that even delay on part of the Court in deciding the proceedings or any application therein would not be detrimental to any of the parties to the litigation much less to the party in whose favour an interim stay order is passed.

5. It is settled in law that grant of interim stay order ought to be ordinarily by a speaking order and therefore as a necessary corollary, a stay order once granted cannot be vacated otherwise than by a speaking order, more so, when its extension also requires reasons to be recorded.

6. It is noticeable that under Article 226(3) of the Constitution of India, the automatic vacation of the stay order envisages making of an application to the High Court for the vacation of the interim stay order. Therefore, filing of an application for vacating the stay order is a sine qua non for triggering the automatic vacation of the stay order under Article 226(3) if such an application is not decided within the time prescribed of two weeks.

7. In other words, applying the above analogy or principle, the stay order granted in any proceedings would not automatically stand vacated on the expiry of a

particular period until and unless an application to that effect has been filed by the other side and is decided following the principles of natural justice by a speaking order.

8. Sometimes, in quest of justice we end up doing injustice.

Asian Resurfacing is a clear example of the same. Such a situation created ought to be avoided in the normal course or if at all it arises be remedied at the earliest. In doing so, we have to adopt a practical and a more pragmatic approach rather than a technical one which may create more problems burdening the courts with superfluous or useless work. It is well said that useless work drives out the useful work. Accordingly, it is expedient in the interest of justice to provide that a reasoned stay order once granted in any civil or criminal proceedings, if not specified to be time bound, would remain in operation till the decision of the main matter or until and unless an application is moved for its vacation and a speaking order is passed adhering to the principles of natural justice either extending, modifying, varying or vacating the same.

9. The reference made to this Court is answered and disposed of accordingly.

.....**J. (PANKAJ MITHAL)**

NEW DELHI

FEBRUARY 29, 2024

2. Study Material-G.K.

Rivers in India

The majority of rivers in India flow towards the Bay of Bengal, while only a few travel westward and empty into the Arabian Sea. Moreover, there are areas in India, such as the northern parts of the Aravalli range, certain regions in Ladakh, and the arid lands of the Thar Desert, where the water drainage happens within the land itself. Origination of most of the major rivers of India is one of the three main watersheds given below –

- **The Himalaya and the Karakoram range**
- **The Chota Nagpur plateau and Vindhya and Satpura range**
- **The Western Ghats**

Indus River System

- The Indus originates in the northern slopes of the Kailash range in Tibet near Lake Mansarovar.
- It follows a north-westerly course through Tibet.
- It has a large number of tributaries in both India and Pakistan and has a total length of about 2897 km from the source to the point near Karachi where it falls into the Arabian Sea out of which approx 700km lies in India.
- It enters the Indian Territory in Jammu and Kashmir where it forms a picturesque gorge.
- In the Kashmir region, it joins with many tributaries – the Zaskar, the Shyok, the Nubra and the Hunza.
- It flows through the regions of Ladakh, Baltistan and Gilgit and runs between the Ladakh Range and the Zaskar Range at Leh.
- It crosses the Himalayas through a 5181 m deep gorge near Attock, which is lying north of Nanga Parbat.
- The major tributaries of the Indus River in India are Jhelum, Ravi, Chenab, Beas, and Sutlej.

Brahmaputra River System

- The Brahmaputra originates from Mansarovar Lake, which is also a source of the Indus and Sutlej.
- It is 3848 km long, a little longer than the Indus River.
- Most of its course lies outside India.

- It flows parallel to the Himalayas in the eastward direction. When it reaches Namcha Barwa, it takes a U-turn around it and enters India in the state of Arunachal Pradesh.
- The undercutting done by this river is of the order of 5500 metres.
- Here it is known as the Dihang River. In India, it flows through the states of Arunachal Pradesh and Assam and is connected by several tributaries.
- The Brahmaputra has a braided channel throughout most of its length in Assam.
- The river is known as the Tsangpo in Tibet. It receives less volume of water and has less silt in the Tibet region. But in India, the river passes through a region of heavy precipitation, and as such, the river carries large amounts of water during rainfall and a significant amount of silt. It is considered one of the largest rivers in India in terms of volume. It is known for creating calamities in Assam and Bangladesh.

Ganga River System

- The Ganga originates as the Bhagirathi from the Gangotri glacier.
- Before it reaches Devprayag in the Garhwal Division, the Mandakini, Pindar, Dhauliganga and Bishenganga rivers merge into the Alaknanda and the Bheling drain into the Bhagirathi.
- The Pindar River rises from East Trishul and Nanda Devi unites with the Alaknanda at Karan Prayag. The Mandakini meets at Rudraprayag.
- The water from both Bhagirathi and the Alaknanda flows in the name of the Ganga at Devprayag.

The concept of Panch Prayag

Vishnuprayag: where the river Alaknanda meets river Dhauli Ganga

Nandprayag: where river Alaknanda meets river Nandakini

Karnaprayag: where river Alaknanda meets river Pinder

Rudraprayag: where river Alaknanda meets river Mandakini

Devprayag: where river Alaknanda meets river Bhagirathi -GANGA

The principal tributaries of the Ganga are Yamuna, Damodar, Sapta Kosi, Ram Ganga, Gomati, Ghaghara, and Son. The river after travelling a distance of 2525 km from its source meets the Bay of Bengal.

Yamuna River System

- The Yamuna River is the largest tributary of the Ganga River.

- It originates from the Yamunotri glacier, at the Bandarpoonch peak in Uttarakhand.
- The main tributaries joining the river include the Sin, Hindon, Betwa Ken, and Chambal.
- The Tons is the largest tributary of the Yamuna.
- The catchment of the river extends to the states of Delhi, Himachal Pradesh, Uttar Pradesh, Haryana, Rajasthan, and Madhya Pradesh.

Narmada River System

- The Narmada is a river located in central India.
- It rises to the summit of the Amarkantak Hill in Madhya Pradesh state.
- It outlines the traditional frontier between North India and South India.
- It is one of the major rivers of peninsular India. Only the Narmada, the Tapti, and the Mahi rivers run from east to west.
- The river flows through the states of Madhya Pradesh, Gujarat, and Maharashtra.
- It drains into the Arabian Sea in the Bharuch district of Gujarat.

Tapi River System

- Tapi River is a central Indian river. It is one of the most important rivers of peninsular India with the run from east to west.
- It originates in the Eastern Satpura Range of southern Madhya Pradesh state.
- It flows in a westward direction, draining some important historic places like Madhya Pradesh's Nimar region, East Vidarbha region and Maharashtra's Khandesh in the northwest corner of the Deccan Plateau and South Gujarat before draining into the Gulf of Cambay of the Arabian Sea.
- The River Basin of Tapi River lies mostly in eastern and northern districts Maharashtra state.
- The river also covers some districts of Madhya Pradesh and Gujarat as well.
- The principal tributaries of Tapi River are Waghur River, Aner River, Girna River, Purna River, Panzara River and Bori River.

Godavari River System

- The Godavari River is the second-longest course in India with brownish water which is about 1,450 km (900 miles) in length.
- The river is often referred to as the Dakshin (South) Ganga or Vriddh (Old) Ganga.

- It is a seasonal river, dried during the summers, and widens during the monsoons.
- This river originates from Trimbakeshwar, near Nasik in Maharashtra.
- It flows southeast across south-central India through the states of Madhya Pradesh, Telangana, Andhra Pradesh, and Orissa, and drains into the Bay of Bengal.
- The river splits into two streams thus forming a very fertile delta at Rajahmundry.
- The banks of this river have many pilgrimage sites, Nasik(MH), Bhadrachalam(TS), and Trimbak.
- Some of its tributaries include Pranahita (A combination of Penuganga and Warda), Indravati River, Bindusara, Sabari, and Manjira.
- Asia's largest rail-cum-road bridge which is an engineering feat, links Kovvur and Rajahmundry is located on the river Godavari.

Krishna River System

- Krishna is one of the longest rivers in India which is about 1300 km in length.
- It originates from Mahabaleshwar in Maharashtra.
- It flows through Sangli and meets the sea in the Bay of Bengal.
- The river flows through the states of Maharashtra, Karnataka, Telangana and Andhra Pradesh.
- Tungabhadra River is the main tributary which itself is formed by the Tunga and Bhadra rivers that originate in the Western Ghats.
- Dudhganga Rivers, Koyna, Bhima, Mallaprabha, Dindi, Ghataprabha, Warna, Yerla, and Musi are some of the other tributaries.

Cauvery River System

- The Kaveri (also spelt Cauvery or Kavery) is one of the great rivers of India and is considered sacred by the Hindus.
- It originates from Talakaveri of Tamil Nadu, located in the Western Ghats about 5,000 feet (1,500 m) above sea level.
- The Kaveri is also known as Dakshin Ganga.
- It is a famous pilgrimage and tourist place in the Kodagu district of Karnataka.
- The headwaters of the river are in the Western Ghats range of Karnataka state, and from Karnataka through Tamil Nadu.
- The river drains into the Bay of Bengal. The river supports irrigation for agriculture and is considered as a means of support of the ancient kingdoms and modern cities of South India.

- The river has many tributaries called Arkavathy, Shimsha, Hemavati, Kapila, Shimsha, Honnuhole, Amaravati, Lakshmana Kabini, Lokapavani, Bhavani, Noyyal, and Tirtha.

Mahanadi River System

- The Mahanadi is a river in eastern India. The Mahanadi rises in the Satpura Range of central India and flows east to the Bay of Bengal.
- The Mahanadi drains most of the state of Chhattisgarh and much of Orissa and also Jharkhand and Maharashtra
- Near the city of Sambalpur, a large dam – the Hirakud Dam – is built on the river.
- The Mahanadi rises in the Satpura Range of central India and It has a length of around 860 km.
- It flows east to the Bay of Bengal. The river drains in the state of Maharashtra, Chhattisgarh, Jharkhand, and Orissa.
- The largest dam, the Hirakud Dam is built on the river.

3. Study Material-Language

Synonyms

Synonyms are words or phrases which have the same or nearly the same meaning as other words or phrases in the same language:

Amazing	incredible, unbelievable, improbable, fabulous, wonderful, fantastic, astonishing, astounding, extraordinary
Anger	enrage, infuriate, arouse, nettle, exasperate, inflame, madden
Angry	mad, furious, enraged, excited, wrathful, indignant, exasperated, aroused, inflamed
Answer	reply, respond, retort, acknowledge
Ask	question, inquire of, seek information from, put a question to, demand, request, expect, inquire, query, interrogate, examine, quiz
Awful	dreadful, terrible, abominable, bad, poor, unpleasant
Bad	evil, immoral, wicked, corrupt, sinful, depraved, rotten, contaminated, spoiled, tainted, harmful, injurious, unfavorable, defective, inferior, imperfect, substandard, faulty, improper, inappropriate, unsuitable, disagreeable, unpleasant, cross, nasty, unfriendly, irascible, horrible, atrocious, outrageous, scandalous, infamous, wrong, noxious, sinister, putrid, snide, deplorable, dismal, gross, heinous, nefarious, base, obnoxious, detestable, despicable, contemptible, foul, rank, ghastly, execrable
Beautiful	pretty, lovely, handsome, attractive, gorgeous, dazzling, splendid, magnificent, comely, fair, ravishing, graceful, elegant, fine, exquisite, aesthetic, pleasing, shapely, delicate, stunning, glorious, heavenly, resplendent, radiant, glowing, blooming, sparkling
Begin	start, open, launch, initiate, commence, inaugurate, originate
Big	enormous, huge, immense, gigantic, vast, colossal, gargantuan, large, sizable, grand, great, tall, substantial, mammoth, astronomical, ample, broad, expansive, spacious, stout, tremendous, titanic, mountainous
Brave	courageous, fearless, dauntless, intrepid, plucky, daring, heroic, valorous, audacious, bold, gallant, valiant, doughty, mettlesome
Break	fracture, rupture, shatter, smash, wreck, crash, demolish, atomize
Bright	shining, shiny, gleaming, brilliant, sparkling, shimmering, radiant, vivid, colorful, lustrous, luminous, incandescent, intelligent, knowing, quick-witted, smart, intellectual
Calm	quiet, peaceful, still, tranquil, mild, serene, smooth, composed,

	collected, unruffled, level-headed, unexcited, detached, aloof
Come	approach, advance, near, arrive, reach
Cool	chilly, cold, frosty, wintry, icy, frigid
Crooked—	bent, twisted, curved, hooked, zigzag
Cry	shout, yell, wowl, scream, roar, bellow, weep, wail, sob, bawl
Cut	gash, slash, prick, nick, sever, slice, carve, cleave, slit, chop, crop, lop, reduce
Dangerous	perilous, hazardous, risky, uncertain, unsafe
Dark	shadowy, unlit, murky, gloomy, dim, dusky, shaded, sunless, black, dismal, sad
Decide	determine, settle, choose, resolve
Definite	certain, sure, positive, determined, clear, distinct, obvious
Delicious	savory, delectable, appetizing, luscious, scrumptious, palatable, delightful, enjoyable, toothsome, exquisite
Describe	portray, characterize, picture, narrate, relate, recount, represent, report, record
Destroy	ruin, demolish, raze, waste, kill, slay, end, extinguish
Difference	disagreement, inequity, contrast, dissimilarity, incompatibility
Do	execute, enact, carry out, finish, conclude, effect, accomplish, achieve, attain
Dull	boring, tiring,, tiresome, uninteresting, slow, dumb, stupid, unimaginative, lifeless, dead, insensible, tedious, wearisome, listless, expressionless, plain, monotonous, humdrum, dreary
Eager	keen, fervent, enthusiastic, involved, interested, alive to
End	stop, finish, terminate, conclude, close, halt, cessation, discontinuance
Enjoy	appreciate, delight in, be pleased, indulge in, luxuriate in, bask in, relish, devour, savor, like
Explain	elaborate, clarify, define, interpret, justify, account for
Fair	just, impartial, unbiased, objective, unprejudiced, honest
Fall	drop, descend, plunge, topple, tumble
False	fake, fraudulent, counterfeit, spurious, untrue, unfounded, erroneous, deceptive, groundless, fallacious
Famous	well-known, renowned, celebrated, famed, eminent, illustrious, distinguished, noted, notorious
Fast	quick, rapid, speedy, fleet, hasty, snappy, mercurial, swiftly, rapidly, quickly, snappily, speedily, lickety-split, posthaste, hastily, expeditiously, like a flash
Fat	stout, corpulent, fleshy, beefy, paunchy, plump, full, rotund, tubby, pudgy, chubby, chunky, burly, bulky, elephantine
Fear	fright, dread, terror, alarm, dismay, anxiety, scare, awe, horror,

	panic, apprehension
Fly	soar, hover, flit, wing, flee, waft, glide, coast, skim, sail, cruise
Funny	humorous, amusing, droll, comic, comical, laughable, silly
Get	acquire, obtain, secure, procure, gain, fetch, find, score, accumulate, win, earn, rep, catch, net, bag, derive, collect, gather, glean, pick up, accept, come by, regain, salvage
Go	recede, depart, fade, disappear, move, travel, proceed
Good	excellent, fine, superior, wonderful, marvelous, qualified, suited, suitable, apt, proper, capable, generous, kindly, friendly, gracious, obliging, pleasant, agreeable, pleasurable, satisfactory, well-behaved, obedient, honorable, reliable, trustworthy, safe, favorable, profitable, advantageous, righteous, expedient, helpful, valid, genuine, ample, salubrious, estimable, beneficial, splendid, great, noble, worthy, first-rate, top-notch, grand, sterling, superb, respectable, edifying
Great	noteworthy, worthy, distinguished, remarkable, grand, considerable, powerful, much, mighty
Gross	improper, rude, coarse, indecent, crude, vulgar, outrageous, extreme, grievous, shameful, uncouth, obscene, low
Happy	pleased, contented, satisfied, delighted, elated, joyful, cheerful, ecstatic, jubilant, gay, tickled, gratified, glad, blissful, overjoyed
Hate	despise, loathe, detest, abhor, disfavor, dislike, disapprove, abominate
Have	hold, possess, own, contain, acquire, gain, maintain, believe, bear, beget, occupy, absorb, fill, enjoy
Help	aid, assist, support, encourage, back, wait on, attend, serve, relieve, succor, benefit, befriend, abet
Hide	— conceal, cover, mask, cloak, camouflage, screen, shroud, veil
Hurry	rush, run, speed, race, hasten, urge, accelerate, bustle
Hurt	damage, harm, injure, wound, distress, afflict, pain
Idea	thought, concept, conception, notion, understanding, opinion, plan, view, belief
Important	necessary, vital, critical, indispensable, valuable, essential, significant, primary, principal, considerable, famous, distinguished, notable, well-known
Interesting	fascinating, engaging, sharp, keen, bright, intelligent, animated, spirited, attractive, inviting, intriguing, provocative, thought-provoking, challenging, inspiring, involving, moving, titillating, tantalizing, exciting, entertaining, piquant, lively, racy, spicy, engrossing, absorbing, consuming, gripping, arresting, enthralling, spellbinding, curious, captivating, enchanting, bewitching, appealing

Keep	hold, retain, withhold, preserve, maintain, sustain, support
Kill	slay, execute, assassinate, murder, destroy, cancel, abolish
Lazy	indolent, slothful, idle, inactive, sluggish
Little	tiny, small, diminutive, shrimp, runt, miniature, puny, exiguous, dinky, cramped, limited, itzy-bitsy, microscopic, slight, petite, minute
Look	gaze, see, glance, watch, survey, study, seek, search for, peek, peep, glimpse, stare, contemplate, examine, gape, ogle, scrutinize, inspect, leer, behold, observe, view, witness, perceive, spy, sight, discover, notice, recognize, peer, eye, gawk, peruse, explore
Love	like, admire, esteem, fancy, care for, cherish, adore, treasure, worship, appreciate, savor
Make	create, originate, invent, beget, form, construct, design, fabricate, manufacture, produce, build, develop, do, effect, execute, compose, perform, accomplish, earn, gain, obtain, acquire, get
Mark	label, tag, price, ticket, impress, effect, trace, imprint, stamp, brand, sign, note, heed, notice, designate
Mischievous	prankish, playful, naughty, roguish, waggish, impish, sportive
Move	plod, go, creep, crawl, inch, poke, drag, toddle, shuffle, trot, dawdle, walk, traipse, mosey, jog, plug, trudge, slump, lumber, trail, lag, run, sprint, trip, bound, hotfoot, high-tail, streak, stride, tear, breeze, whisk, rush, dash, dart, bolt, fling, scamper, scurry, skedaddle, scoot, scuttle, scramble, race, chase, hasten, hurry, hump, gallop, lope, accelerate, stir, budge, travel, wander, roam, journey, trek, ride, spin, slip, glide, slide, slither, coast, flow, sail, saunter, hobble, amble, stagger, paddle, slouch, prance, straggle, meander, perambulate, waddle, wobble, pace, swagger, promenade, lunge
Moody	temperamental, changeable, short-tempered, glum, morose, sullen, mopish, irritable, testy, peevish, fretful, spiteful, sulky, touchy
Neat	clean, orderly, tidy, trim, dapper, natty, smart, elegant, well-organized, super, desirable, spruce, shipshape, well-kept, shapely
New	fresh, unique, original, unusual, novel, modern, current, recent
Old	feeble, frail, ancient, weak, aged, used, worn, dilapidated, ragged, faded, broken-down, former, old-fashioned, outmoded, passe, veteran, mature, venerable, primitive, traditional, archaic, conventional, customary, stale, musty, obsolete, extinct
Part	portion, share, piece, allotment, section, fraction, fragment
Place	space, area, spot, plot, region, location, situation, position,

	residence, dwelling, set, site, station, status, state
Plan	plot, scheme, design, draw, map, diagram, procedure, arrangement, intention, device, contrivance, method, way, blueprint
Popular	well-liked, approved, accepted, favorite, celebrated, common, current
Predicament	quandary, dilemma, pickle, problem, plight, spot, scrape, jam
Put	— place, set, attach, establish, assign, keep, save, set aside, effect, achieve, do, build
Quiet	silent, still, soundless, mute, tranquil, peaceful, calm, restful
Right	correct, accurate, factual, true, good, just, honest, upright, lawful, moral, proper, suitable, apt, legal, fair
Run	race, speed, hurry, hasten, sprint, dash, rush, escape, elope, flee
Say/Tell	inform, notify, advise, relate, recount, narrate, explain, reveal, disclose, divulge, declare, command, order, bid, enlighten, instruct, insist, teach, train, direct, issue, remark, converse, speak, affirm, suppose, utter, negate, express, verbalize, voice, articulate, pronounce, deliver, convey, impart, assert, state, allege, mutter, mumble, whisper, sigh, exclaim, yell, sing, yelp, snarl, hiss, grunt, snort, roar, bellow, thunder, boom, scream, shriek, screech, squawk, whine, philosophize, stammer, stutter, lisp, drawl, jabber, protest, announce, swear, vow, content, assure, deny, dispute
Scared	afraid, frightened, alarmed, terrified, panicked, fearful, unnerved, insecure, timid, shy, skittish, jumpy, disquieted, worried, vexed, troubled, disturbed, horrified, terrorized, shocked, petrified, haunted, timorous, shrinking, tremulous, stupefied, paralyzed, stunned, apprehensive
Show	display, exhibit, present, note, point to, indicate, explain, reveal, prove, demonstrate, expose
Slow	unhurried, gradual, leisurely, late, behind, tedious, slack
Stop	— cease, halt, stay, pause, discontinue, conclude, end, finish, quit
Story	tale, myth, legend, fable, yarn, account, narrative, chronicle, epic, sage, anecdote, record, memoir
Strange	odd, peculiar, unusual, unfamiliar, uncommon, queer, weird, outlandish, curious, unique, exclusive, irregular
Take	hold, catch, seize, grasp, win, capture, acquire, pick, choose, select, prefer, remove, steal, lift, rob, engage, bewitch, purchase, buy, retract, recall, assume, occupy, consume
Tell	disclose, reveal, show, expose, uncover, relate, narrate, inform,

	advise, explain, divulge, declare, command, order, bid, recount, repeat
Think	judge, deem, assume, believe, consider, contemplate, reflect, mediate
Trouble —	distress, anguish, anxiety, worry, wretchedness, pain, danger, peril, disaster, grief, misfortune, difficulty, concern, pains, inconvenience, exertion, effort
Ugly	hideous, frightful, frightening, shocking, horrible, unpleasant, monstrous, terrifying, gross, grisly, ghastly, horrid, unsightly, plain, homely, evil, repulsive, repugnant, gruesome
Unhappy	miserable, uncomfortable, wretched, heart-broken, unfortunate, poor, downhearted, sorrowful, depressed, dejected, melancholy, glum, gloomy, dismal, discouraged, sad
Use	employ, utilize, exhaust, spend, expend, consume, exercise
Wrong	incorrect, inaccurate, mistaken, erroneous, improper, unsuitable

4. Current Affairs

FEBRUARY 2024

1. Which ministry was allocated the highest budget in the Interim Budget 2024 – **Ministry of Defense (Rs. 6.1 lakh crore)**
2. How many crores of rupees were allocated to the Ministry of Road Transport and Highways in the Interim Budget 2024 – **Rs. 2.78 lakh crore**
3. Which state government has decided to launch a mass drug administration campaign to eliminate filariasis- **Uttar Pradesh**
4. When is Indian Coast Guard Day celebrated every year – **01 February**
5. RBI has recently announced to impose new restrictions on which payment bank - **Paytm Payment Bank**
6. Who has been re-appointed as the President of Asian Cricket Council- **Jay Shah**
7. How many budgets has Finance Minister Nirmala Sitharaman presented so far during her tenure - **6**
8. Which airport has recently been given the status of International Airport by the Government of India - **Surat Airport**
9. Who has taken oath as the new Chief Minister of Jharkhand- **Champai Soren**
10. In which city will the 67th All India Police Duty Meet be organized – **Lucknow**
11. Who is the Chairman of Uttarakhand Uniform Civil Code Committee- **Ranjana Prakash Desai**
12. The Central Government has increased the target of 'Lakhpati Didi Yojana' to how much - **3 crores**
13. Where will Exercise 'Vayu Shakti'-24 be organized by the Indian Air Force - **Jaisalmer**
14. Against whom did Indian cricketer Yashasvi Jaiswal score his first Test century – **West Indies**
15. In which state self-balancing electric scooter was launched under smart policing – **Uttarakhand**
16. Who was appointed as the new Advocate General of Rajasthan- **Rajendra Prasad**
17. Who has recently made the record of spending maximum time in space – **Oleg Kononenko**
18. Who has become the first country in the European Union to issue 'Digital Schengen Visa' - **France**

19. Who won the 'Best Global Music Album' award at the Grammy Awards 2024 - **'This Moment'**
20. Who has become the first European country to accept Unified Payment Interface (UPI) – **France**
21. Who was given the 'Best Green Bond-Corporate' award at The Asset Triple A Awards for Sustainable Finance 2024 - **REC Limited**
22. Who was awarded the Best Album Award at the 66th Annual Grammy Awards 2024 - **Midnights (Taylor Swift)**
23. Who has taken oath as the first woman Chief Justice of Uttarakhand High Court- **Ritu Bahri**
24. Who inaugurated the two-day 'Ullas Mela' at National Bal Bhawan, New Delhi - **Anurag Thakur**
25. In which city is the first BIMSTEC Aquatics Championship being organized – **New Delhi**
26. 'Mera Gaon, Meri Dharohar' program is an initiative of which ministry - **Ministry of Culture**
27. Where was the foundation stone of the India's First Digital National Museum of Epigraphy laid - **Hyderabad**
28. Recently in which state assembly the Uniform Civil Code Bill was introduced – **Uttarakhand**
29. How many air routes are currently being operated in the country under the RCS Udan Scheme – **519**
30. In which state is India Energy Week 2024 being organized – **Goa**
31. The draft of Uttarakhand Uniform Civil Code has been prepared on the basis of the report of which committee – **Justice Ranjana Desai Committee**
32. Which country has recently announced visa-free travel for Indian citizens- **Iran**
33. Which Indian celebrity was recently granted UAE's 'Golden Visa' - **Anand Kumar**
34. Who has been appointed as the new director of Asian Development Bank in India- **Mio Oka**
35. Who has taken oath as the Chief Justice of Gauhati High Court – **Justice Vijay Bishnoi**
36. In which state is Deenbandhu Chhotu Ram Thermal Power Plant located – **Haryana**
37. Where is 'Divya Kala Mela' 2024 being organized - **Agartala**
38. With whom has South Eastern Railways joined hands for the development of basic rail infrastructure- **Tata Steel**
39. Which state's assembly passed a bill to create two new districts in the state- **Arunachal Pradesh**
40. For the sixth consecutive time, RBI has kept the repo rate unchanged at what percentage - **6.5%**

41. 'Olzas Bektenov' has been appointed as the new Prime Minister of which country - **Kazakhstan**
42. At what percentage has RBI maintained the real GDP growth estimate for FY24 - **6.5%**
43. Who recently launched Vidyanjali Scholarship Program – **Piyush Goyal**
44. Who has been appointed as the new CEO and MD of Tata Digital, the e-commerce unit of Tata Group- **Naveen Tahilyani**
45. Which is the first state in the country to implement 'Uniform Civil Code' - **Uttarakhand**
46. In which country will the 7th 'Indian Ocean Conference' be organized - **Australia**
47. Which portal has recently been launched by Union Agriculture Minister Arjun Munda - '**Sarathi**' Portal
48. Which two former Prime Ministers has the government recently announced to award Bharat Ratna - **PV Narasimha Rao and Chaudhary Charan Singh**
49. Dr. MS Swaminathan will be awarded Bharat Ratna, he was a famous person in which field - **Agriculture**
50. With whom has Chennai Super Kings signed an official sponsor contract – **Etihad Airways**
51. Who is the Chairman of 'One Nation One Election' Committee- **Ram Nath Kovind**
52. With whom has the Maharashtra government signed an agreement for the use of AI in areas like health and education- **Google**
53. Who was declared joint winner of SAFF Women's Under-19 Championship with India- **Bangladesh**
54. Where will the World Government Summit 2024 be organized – **Dubai**
55. In which two countries has UPI payment system been launched recently – **Sri Lanka and Mauritius**
56. Who is the first Sri Lankan cricketer to score a double century in ODI – **Pathum Nissanka**
57. Who will be the next President of Finland- **Alexander Stubb**
58. Which country won the title of ICC Under-19 World Cup 2024 – **Australia**
59. With whom has 'IREDA' signed an agreement for innovation and research in renewable energy sector - **IIT Bhubaneswar**
60. In which city was 'South India Cultural Centre' established - **Hyderabad**
61. Who recently won the singles title of Chennai Open Tennis Tournament- **Sumit Nagal**

62. Who has equaled Rohit Sharma's most centuries (5 centuries) in T20I - **Glenn Maxwell (Australia)**
63. Who launched 'Surya Ghar Muft Bijli Yojana' - **PM Narendra Modi**
64. When is National Productivity Day celebrated every year in India – **12 February**
65. Recently Dattajiro Krishnarao Gaekwad passed away, he was related to which sport – **Cricket**
66. Where was the statue of India's first Chief of Defense Staff, late General Bipin Rawat, unveiled - **Dehradun**
67. With whom did the Education Ministry sign an agreement to promote football in the country? - **FIFA**
68. When is National Women's Day celebrated every year - **13 February**
69. How many crores of rupees will be spent under 'PM Surya Ghar Muft Bijli Yojana' - **more than 75000 crores**
70. How many units of free electricity is there under 'PM Surya Ghar Muft Bijli Yojana' - **Up to 300 units**
71. In which state is Gupteshwar Forest, which has been designated as the State Biodiversity Heritage Site – **Odisha**
72. With whom has the Uttar Pradesh government decided to enter into an agreement for better disaster management- **IIT Roorkee**
73. On which island group is India going to establish a new naval base – **Minicoy and Agatti**
74. United World Wrestling has recently canceled the suspension of which country's Wrestling Federation - **India**
75. Recently 'Kazi Nemu' has been recognized as the state fruit of which state - **Assam**
76. Which state government has recently launched 'Swayam' scheme - **Odisha**
77. Who won the ICC Men's 'Player of the Month' award for the month of January - **Shamar Joseph (West Indies)**
78. Who won the ICC Women's 'Player of the Month' award for the month of January- **Amy Hunter (Ireland)**
79. With whom has Cochin International Airport Limited signed an agreement for Green Hydrogen Project – **BPCL**
80. Who has assumed the charge of President of Institute of Chartered Accountants of India- **Ranjit Kumar Aggarwal**
81. Indian hammer thrower Rachna Kumari has been banned for how many years on doping charges - **12**
82. Who has taken charge as the new Managing Director of IRCTC- **Sanjay Kumar Jain**
83. Where is the first Digital India FutureSkills Summit being organized – **Guwahati**

84. Who has been elected as the new Speaker of Bihar Assembly – **Nand Kishore Yadav**
85. After whom has the name of Saurashtra Cricket Association Stadium been changed? - **Niranjan Shah**
86. Who has assumed the charge of Vice President of the Institute of Chartered Accountants of India- **Charanjot Singh Nanda**
87. Who has become the second Indian bowler to take 500 wickets in Test cricket- **Ravichandran Ashwin**
88. Sikkim Government has started 'Sikkim Inspire' initiative with whose support - **World Bank**
89. In which state will PM Modi unveil the 125 feet tall statue of Bir Lachit Barphukan – **Assam**
90. Which Union Minister inaugurated 'BSE Expo-2024'- **Anurag Singh Thakur**
91. Who is the Indian captain who has hit most sixes in international cricket - **Rohit Sharma**
92. Sound technology based anti-drone system was developed by which IIT- **IIT Jammu**
93. Under 'Mukhyamantri Kanya Sumangala Yojana' in Uttar Pradesh, the annual grant was increased to how much - **Rs 25,000**
94. Recently in which state the foundation stone of 'Komuraveli Railway Station' was laid – **Telangana**
95. In which state did Prime Minister Narendra Modi lay the foundation stone of 'Shri Kalki Dham Temple' - **Sambhal (Uttar Pradesh)**
96. 'PM Vishwakarma Yojana' has been launched by which ministry - **Ministry of Micro, Small and Medium Enterprises**
97. Who has been nominated for the 58th Jnanpith Award- **Gulzar and Jagadguru Rambhadracharya**
98. With whom has IREDA signed an agreement for co-financing renewable energy projects – **Punjab National Bank**
99. Famous Jain saint Acharya Vidyasagar Maharaj passed away, in which state was he born – **Karnataka**
100. Which country's women's team won the gold medal in the Badminton Asia Team Championship - **India**
101. Against which country did the Indian team register the biggest win in Test cricket? – **England**
102. Who has been named as the 'State Icon' of Punjab under the voter awareness campaign- **Shubman Gill**
103. Which countries jointly top the Henley Passport Index 2024 – **France, Germany, Italy, Spain, Japan and Singapore**
104. With whom has 'Investor Education and Protection Fund Authority' signed an agreement to increase awareness - **DBS Bank**
105. Who inaugurated 'AIIMS Jammu' recently- **PM Narendra Modi**

106. In which state 'Himalayan Basket' has been started recently - **Uttarakhand**
107. Where is the 11th International Puppet Festival being organized – **Chandigarh**
108. What is India's rank in Henley Passport Index 2024 - **85th**
109. Who was the eminent jurist and senior advocate who passed away recently- **Fali S Nariman**
110. Where is the naval exercise 'Milan' 2024 being organized - **Visakhapatnam**
111. In which country is the multinational military exercise 'Shanti Prayas IV' being organized - **Nepal**
112. Where was India's first Skill India Center inaugurated - **Sambalpur, Odisha**
113. How many medals did India win in the Asian Indoor Athletics Championship - **4**
114. Which country has recently become the new member of the International Solar Alliance – **Malta**
115. Union Minister Ashini Vaishnav has been elected Rajya Sabha member from which state – **Odisha**
116. Ministry of Tribal Affairs has launched a joint initiative on the health of tribal students with – **Ministry of AYUSH**
117. Goa State Government has joined hands with whom for Climate Finance Facility – **World Bank**
118. Where is the 4th Khelo India Winter Games being organized – **Gulmarg**
119. Where is 'International Tourism Expo' being organized in Uttar Pradesh - **Greater Noida**
120. Who has been appointed as part-time non-official director of Bank of India- **M R Kumar**
121. Where will India's largest green hydrogen production plant be established- **Visakhapatnam**
122. Where did Chief Justice of India DY Chandrachud inaugurate the Ayush Holistic Wellness Center - **Supreme Court Complex**
123. Who was appointed as part-time non-official director of the board of Indian Overseas Bank (IOB)- **Srinivasan Sridhar**
124. Who was appointed as part-time non-official director of the board of UCO Bank- **Aravamudan Krishna Kumar**
125. Who has been appointed as the new Vigilance Commissioner in the Central Vigilance Commission- **A S Rajeev**
126. Fast bowler Mohammed Shami is out of IPL 2024, which team does he play for – **Gujarat Titans**
127. Where will the three-day International Geeta Mahotsav be organized – **Colombo**

128. Former Speaker of Lok Sabha Manohar Joshi passed away, he was also the former Chief Minister of which state – **Maharashtra**
129. Who has become the first Indian bowler to take 100 wickets against England in Test cricket – **Ravichandran Ashwin**
130. Which IIT has launched India's largest drone pilot training facility - **IIT Guwahati**
131. How many railway stations will be redeveloped under Amrit Bharat Station Scheme – **553**
132. Which is India's longest cable-stayed bridge, which was inaugurated by PM Modi - **Sudarshan Setu (Gujarat)**
133. Who inaugurated the global textile event 'Bharat Tex 2024' - **PM Narendra Modi**
134. Joint military exercise 'Dharma Guardian' is being organized between India and which country - **Japan**
135. Who won the Best Male Actor Award at the Screen Actors Guild Awards- **Cillian Murphy**
136. In which country will the SAFF Under-16 Women's Championship be organized - **Nepal**
137. Where is the global textile event 'Bharat Tex 2024' being organized - **New Delhi**
138. With whom has the Bihar state government signed an agreement to promote the startup ecosystem? - **SIDBI**
139. Who laid the foundation stone of the first railway station of Sikkim state- **PM Narendra Modi**
140. How many astronauts have been nominated for Gaganyaan mission- **4**
141. When is World NGO Day celebrated every year – **27 February**
142. Where will a new regional office of the Central Board of Film Certification be established- **Chandigarh**
143. In which Indian state has the world's first Vedic clock been established - **Madhya Pradesh**
144. Which player made the record of fastest century in T20 International cricket history- **Jan Nicol Lofty-Eaton**
145. In which country is Mobile World Congress 2024 being organized – **Spain**
146. When is National Science Day celebrated every year – **28 February**
147. In which state was the foundation stone of ISRO's second spaceport laid - **Tamil Nadu**
148. Who has been appointed by the World Gold Council as its new CEO for India – **Sachin Jain**
149. When and when is 'Annual Financial Literacy' week being organized by RBI - **26 February to 1 March**

150. Whom did President Draupadi Murmu recently appoint as the Chairman of Lokpal - **Ajay Manikrao Khanvilkar**
151. Ministry of AYUSH has signed an agreement with which country to promote Ayurveda – **Thailand**
152. With whom has the Election Commission started the 'Mera Pehla Vote Desh Ke Liye' campaign - **Ministry of Education**
153. New Lokpal of India – **Justice A.M. Khanwilkar**
154. What is the theme of National Science Day 2024- '**Indigenous Technology for Developed India**'
155. India's first indigenous green hydrogen inland waterway ship was launched in which state - **Tamil Nadu**
156. Which country has recently declared a health emergency due to the rapidly increasing cases of dengue fever – **Peru**
157. Which Indian was awarded honorary knighthood by King Charles III of Britain- **Sunil Bharti Mittal**
158. Who inaugurated Swaminarayan Institute of Medical Science and Research in Gujarat- **Union Home Minister Amit Shah**
159. Who has recently assumed the charge of Director (Operation) of NTPC- **Ravindra Kumar**
160. Jana Small Finance Bank has joined hands with whom for digital banking- **Dwar Money**
161. Who has Lucknow Super Giants appointed as their vice-captain before IPL 2024 – **Nicholas Pooran**
162. How many crores of rupees have been approved for 'PM-Surya Ghar Muft Bijli Yojana' - **75,000 crores**
163. Who has been appointed Chairman and Independent Director of PayU Payments Private Limited – **Renu Sood Karnad**

5. Prelims and Mains Notes Preparation Scheme

V.S. DREAM COACHING FOR HJS, PCS (J.) AND CLAT

Prelims and Mains Notes Preparation Scheme is going on. Prepare your own excellent study notes to crack HJS, PCS (J) and CLAT on the subjects mentioned below under the able guidance of Hon'ble Mr. Justice Vedpal (Former Judge), High Court of Judicature at Allahabad, Ex-Director of Judicial Training and Research Institute, U.P., Lucknow and resource person of various legal academies and institutions. Seek prior appointment to avoid despair. Subjects;-

1.General Knowledge	2.Law
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<ol style="list-style-type: none"> 1. Current Affairs 2. G.K.MCQs 3. History of India and Indian Culture 4. Geography of India 5. Indian Polity 6. Current National Issues 7. Topic of Social Relevance with special reference to newly added 9 Social Acts 8. India and the World 9. Indian Economy 10. International Affairs and Institutions 11. Development in the field of: <ol style="list-style-type: none"> (a) Science and Technology (b) Communications and Space 	<ol style="list-style-type: none"> 1. Constitutional Law 2. Law of Evidence 3. Criminal Procedure Code 4. Code of Civil Procedure, 5. Indian Panel Code 6. Law of Contract 7. Partnership Act 8. Easements Act 9. Law of Torts 10. Transfer of Property Act 11. Principles of Equity , 12. Law of Trust 13. Specific Relief Act 14. Hindu Law 15. Muslim Law 16. U.P. Revenue Code. 17. U.P. Municipalities Act 1916 18. U.P. Panchayat Raj Act 1947 19. U.P. Consolidation of Holdings Act, 1953 20. U.P. Urban (Planning and Development) Act, 1973
<p>3. CLAT</p> <ol style="list-style-type: none"> 1. General Knowledge 2. A Guide for CLAT 	

6. About Coaching

V.S. Dream coaching is one of the premiere law institute that offers coaching for Judicial Services Examinations at all the three levels – Preliminary Test, Main Examination and Personality Test.

We started our journey the month of Sept. 2022 with a vision driven by the socialist ideology. Since its inception, the coaching is successfully conducting courses for Judicial Services Exams and has always worked by aligning itself to the best interest of its students. The coaching Institute is focused on providing comprehensive and reliable training and support to all its students, who plan to appear for the Judicial Services Exam and are in the search of highly qualified targeted and dedicated faculty to crack examinations successfully.

The teaching faculty of the Institute has been drawn from highly qualified persons having experience. We also guide the aspirant in preparing his own notes and quality study Material

Teaching pedagogy

Our faculty uses a teaching pedagogy which is easily understandable and is aspirant friendly. Our patron Hon'ble Mr. Justice Vedpal former Judge High Court Allahabad had been a Trainer of Trainers. Director of Judicial Training and Research institute U.P., Resource person of several Judicial Institutes and member of Law commission U.P. The faculty of the coaching Institutes consists of those who have several decade experience in teaching in the field of law.

7. About Director and faculty

Ms. Anshu Singh B.A., LL.B is the director of the coaching who remained associated with the law for more than two decades. The director of the coaching possess self-awareness, garner credibility, focus on relationship-building, exhibit humility, empower others, stay authentic, present themselves as constant and consistent, become role models and are fully present

The director aims to improve performance and focuses on the 'here and now' rather than on the distant past or future. The director is subject expert. And focuse on helping the individual to unlock their own potential

Regular Faculty

1. Ms. Anshu Singh, B.A. (English Literature) LL.B. The Director, herself

2. Shri Shantanu Baliyan, B.A. LL.B who is a Law graduate from C.C.S. University Campus. He has also received Certificate of Excellency from the University. He has started teaching at a very young age and now with his teaching experience, he has developed innovative ways of teaching Law and general knowledge, which suites to the need of a law student, as well as an Judicial service aspirant. He has conducted many online and offline Courses. His notes on Law subjects as well as on general knowledge are masterly work

8. Resource persons/Guest Speakers

1. Hon'ble Mr. Justice Vedpal, Former Judge, High Court Allahabad -Mentor
2. Shri Soraj Singh, Ex-Director (Ag.), U.P. Government- Guest Speakers
3. Mrs. Kalpana Malik, B.Sc., LL.B., LL.M. (P) - Guest Speakers
4. Dr. Venu Agarwal M.A.(English), M.Com. M.Ed., PhD - Guest Speakers

9. Library with Research wing

V.S. Dream Coaching has an excellent Library containing **about five thousand books, Journals, brochures, notes and guides**. The library in a coaching institute plays an important role in the life of students by serving as the store house of knowledge. It facilitates the work of the resource person and faculty also. The students have also access to library, after coaching hours. Our library changes as technology changes and remains updated in Course subjects. The coaching itself prepares study excellent and qualitative reading material.

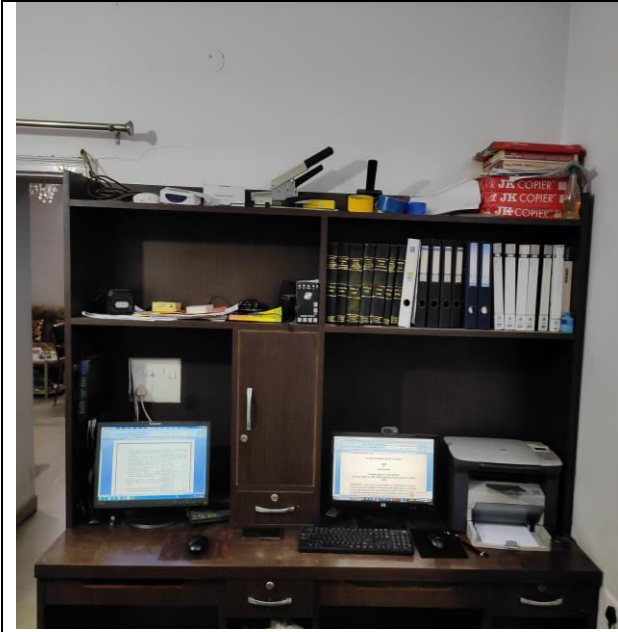
Preparing a study material on a subject on Law and General Knowledge, is a herculean task. There is always a debatable question to be asked regarding what, and what not to include and how to differentiate the books and brochures from the ones already available in the market.

There should be a system for the verification of facts, data, etc. While preparing study material, we always keep in the mind the quality, so we hope that the book, brochures prove beneficial to all the aspirants taking examinations with law and General Knowledge..

A coaching should provide students with the fundamental knowledge base or foundation needed in order to be successful in their exam. Aspirants were surveyed to determine how they should be taught. The survey was developed based on course content. We encourage accredited programs to regularly evaluate current curricula for and develop new curricula that reflect changing construction technologies and management trends.



Library



Research wing