

V.S. DREAM COACHING

Indirapuram Ghaziabad

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

Year – 2025



**Secret of success is to
know something
nobody else knows**

NO. 4 OF 2025

NEWSLETTER

April 2025

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V.S. DREAM COACHING

1. Study Material-Law

Judicial Legislation, Its Limitations

The Judgment of the Hon'ble Supreme Court in **State of Tamil Nadu Vs. Governor of Tamil Nadu** has not only posed the issue of propriety in issuing directions to the President and the Governors who are none other than his nominees for the state, but also many questions relating to the separation of powers envisaged in our Constitution.

The judgment contemplates timelines for the actions to be taken by the Governors and the President of India while acting under Articles 200 and 201 of the Constitution of India.

This has resulted in a situation where there is a cry about judicial overreach and overshadowing in the field of legislation as well. Though the Constitution of our country contemplates separation of powers, an overlapping of different powers is unavoidable. But, when the overlap turns to overreach or overshadowing, especially in the sphere of legislation, it needs to be analysed and rectified.

Judicial Pronouncements and Legislation

When judges, by judicial decisions, lay down a new principle of general application of the nature specifically reserved for the legislature, they may be said to have legislated, and not merely declared the law. The legislators legislate not in respect of any actual dispute pending before it, whereas the courts state law to find a solution to the dispute placed before them.

In India, the Supreme Court did not favour legislation through Judicial pronouncements. A classic case is that of the interpretation of Article 21 to include right to speedy trial for the accused. It was held by the court that the right to speedy trial flows from the right to life enshrined in the Constitution itself.

“No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair or just’ and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21”, is the law laid down by the Hon'ble Supreme Court in **Hussainara Khatoon Vs. State of Bihar [(1980) 1**

SCC 81], by expanding the import of Article 21, laid through **Maneka Gandhi Vs. Union of India[(1978) 1 SCC 248]**.

In **Abdul Rahiman Antulay & Ors. Vs. R S Nayak & Ors. [(1992) 1 SCC 225]**, it was contended that the exposition of Article 21 as above mentioned would remain a mere illusion and platitude unless the Apex Court fixes a time limit beyond which the prosecution cannot be proceeded further.

The proponents of the above contention wanted the Apex court to exercise its constitutional jurisdiction and to lay down a mathematical formula fixing limitation for prosecution. But the Apex Court did not fix any such limitation.

During the following years, the directions issued by the Apex Court in Common Causes and Raj Deo Sharma [**Common Cause v. Union of India, (1996) 4 SCC 33, Common Cause v. Union of India (1996) 6 SCC 775, Raj Deo Sharma Vs. State of Bihar (1998) 7 SCC 507 and Raj DeoSharma (II) Vs. State of Bihar (1999) 7 SCC 604**]], fixing limitations led to the constitution of a seven judges' bench to hear **P. Ramachandra Rao Vs. State of Karnataka [(2002) 4 SCC 578]**.

The seven-judge bench did not find favour with Courts imposing limitations in the matter.

Holding that imposing such timelines and limitations amounts to judicial legislation, the court held that the directions issued by the Apex Court in Common Causes and Raj Deo Sharma are bad. Such type of legislations are not to be favoured, was the finding of the Hon'ble Supreme Court.

“Judicial law-making is incidental to the solving of legal disputes; legislative law-making is the central function of the legislator” says Salmond on Principles of Jurisprudence. Quoting the above, the Apex Court disapproved the timelines and limitations imposed in the judgments subsequent to that in A R Antulay. While doing so, the Court held that imposition of such a limitation tantamounts to impermissible legislation - an activity beyond the power which the Constitution confers on the judiciary.

The Apex Court is also of the view that the constitutional courts need not direct criminal courts to act within any time frame. It is well settled that the reasons for the delay can be different, and the courts are to consider the same and take a call. [**High Court Bar Association, Allahabad Vs. State of U.P. and Ors., (2024) 6 SCC 267**]

Article 142 and Judicial Law-Making

Article 142 of the Constitution arms the Supreme Court to pass such decree or make such orders as are necessary for doing complete justice in any cause or

matter pending before it. A closer look at the provision contemplates the passing of such orders in a matter or cause pending before it.

In High Court Bar Association, Allahabad Vs. State of U.P. and Ors. (2024) 6 SCC 267, the Supreme Court considered the questions framed were:-

(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?

The Constitution bench finally answered both the questions in the negative and held that blanket orders cannot be issued invoking Article 142 of the Constitution.

In the light of the declaration made by the seven-judge bench in P Ramachandra Rao to effect that adding a timeline to the Criminal Procedure Code, even to protect a fundamental right through a judicial pronouncement, tantamounts to impermissible legislation, the addition of timelines in Articles 200 and 201 needs a closer analysis.

Paragraphs 22 to 27 of P Ramachandra Rao case, deals with legislation through judicial pronouncements or judicial legislation. Their Lordships have come to the conclusion that the legislature has to legislate, and the courts cannot, even using all the constitutional authorities under their command, do the duties of the legislature.

The Apex Court says,

“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.”

The Judgment in P Ramachandra Rao is also an answer to the question whether the Court can legislate, invoking Article 142 of the Constitution of India. The Apex Court, speaking through a bench of seven judges, ruled that making directions to all cases of the present and future amounts to law-making and the same cannot be done through judicial pronouncements.

Judgment in P. Ramachandra Rao Vs. State of Karnataka- It's Relevance

P Ramachandra Rao discussed the incorporation of a timeline for criminal prosecution. The court negated the same, as it amounts to legislation. In fact, fixing of time limits or limitation would have amounted to amending the Criminal Procedure Code.

In **State of Tamil Nadu Vs. The Governor of Tamil Nadu**, the Apex Court imposed timelines for the Governors and the President of the Country to act under Articles 200 and 201. This, having a general nature and amounting to incorporating something which is not available in the Constitution, necessarily amounts to an amendment to the Constitution.

When an amendment to the Criminal Procedure Code through a judicial pronouncement is not favoured by a constitution bench of the Apex Court, the question is whether an amendment to the Constitution is possible through the directions issued by the Apex Court, rendering Article 368 otiose.

Ultimately, an answer has to come from the Supreme Court itself.

B. Important Cases April 2025

Important Supreme Court Cases **April 2025**

S.N.	Subject	Case Reference
1.	Additional accused can be summoned under Sec. 319 Cr.P.C. based on witness's statement without cross-examination	Satbir Singh Vs. Rajesh Kumar and Ors., decided on 01.04.2025
2.	The Courts have the authority to determine the appropriate rate of interest to be awarded for decree amounts. The Court also have the discretion to decide from which date the interest is payable-whether from the date of the filing of the suit, from any date prior to it, or the date of decree. In the absence of an agreement between the parties regarding the rate of interest on delayed payment of amount in a commercial transaction, the interest may exceed 6% p.a. as per Section 34 CPC after taking into account the totality of facts and circumstances in accordance with law.	I.K. Merchants Pvt. Ltd. and Ors. Vs. State of Rajasthan and Ors., decided on 01.04.2025
3.	Quasi-judicial bodies are bound by the principles of res-judicata to prevent re-litigation on the same issue.	M/s. Faime Makers Pvt. Ltd. Vs. District Deputy Registrar, Co-Operative Societies (3), Mumbai & Ors., decided on 01.04.2025
4.	If the initial appointment is illegal, then the candidate cannot claim equitable relief to secure the post invoking the special powers under Article 142 of the Constitution. If a candidate gained entry through a process which was not legal and valid, then the Court cannot come to his rescue in the exercise of powers under Article 142.	Jomon K.K. Vs. Shajimon P. & Ors. Etc., decided on 02.04.2025
5.	Results of 25000 teaching and non-teaching staff struck down of which appointments were made by the West	State of West Bengal Vs. Baishakhi Bhattacharyya (Chatterjee) and Ors., decided

	Bengal School Selection Commission (SSC) in 2016. When an in-depth factual inquiry reveals systemic irregularities, such as malaise or fraud, that undermine the integrity of the entire selection process, the result should be cancelled in its entirety. If deep manipulation in process is proven, purity of the process has to be given precedence over inconvenience to untainted candidates.	on 03.04.2025
6.	The three-month limitation period under Section 34(3) of the Arbitration & Conciliation Act, 1996 for challenging an arbitral award should not be rigidly interpreted as exactly 90 days, rather it should be interpreted as three calendar months.	M/s. R. K. Transport Company Vs. M/s. Bharat Aluminum Company Ltd. (BALCO), decided on 03.04.2025
7.	Section 18 of Limitation Act applies to Public Premises Eviction of Unauthorised Occupants) Act, 1971	New Mangalore Port Trust & Anr. Vs. Clifford D Souza Etc., decided on 03.04.2025
8.	Mere excess or overreach in the discharge of official duties does not, by itself, deprive a public servant of the statutory protection granted under Section 197 Cr.P.C. This protection extends even to acts carried out in excess of official duties, as long as there is a reasonable nexus between the alleged act and the discharge of official functions.	G.C. Manjunath & Ors. Vs. Seetaram, decided on 03.04.2025
9.	A suit for the specific performance of an agreement to sell, filed after its cancellation, is not maintainable unless it includes a prayer for declaratory relief under Section 34 of the Specific Relief Act challenging the validity of the cancellation. Declaratory relief challenging the validity of the cancellation was essential when seeking specific performance of the agreement to sell, as the suit could not be sustained without a valid and subsisting agreement.	Sangita Sinha Vs. Bhawana Bhardwaj and Ors., decided on 04.04.2025

10.	Set time limits for the decisions by the Governors under Article 200 of the Constitution on the bills sent to them by the State Legislative Assemblies. The Constitution does not permit the Governor to exercise "absolute veto" or "pocket veto" by not taking any action on the bills indefinitely. Declared the actions of the Tamil Nadu Governor, Dr RN Ravi, for sitting over the 10 Bills for months after it was re-enacted by the Tamil Nadu State Legislature and subsequently reserving it for the President's assent as illegal and erroneous in law, thus, Article 200 cannot be read in a manner which allows the Governor to indefinitely sit over bills.	State of Tamil Nadu Vs. The Governor of Tamil Nadu & Anr., decided on 08.04.2025
11.	Exclusive jurisdiction clauses in employment contracts, which confers exclusive jurisdiction on the courts of a particular location to decide disputes relating to the contract, are not barred by Section 28 of the Contract Act. Section 28 declares void any agreement that restricts a party from enforcing their rights under a contract through legal proceedings, or limits the time within which they can do so, except in cases of arbitration agreements. For an exclusive jurisdiction clause to be valid, it should be : (a) In consonance with Section 28, i.e., it should not absolutely restrict any party from initiating legal proceedings pertaining to the contract, (b) The Court that has been given exclusive jurisdiction must be competent to have such jurisdiction in the first place, i.e., a Court not having jurisdiction as per the statutory regime cannot be bestowed jurisdiction by means of a contract and, finally, (c) The parties must either impliedly or	Rakesh Kumar Verma Vs. HDFC Bank Ltd, HDFC Bank Vs. Deepti Bhatia, decided on 08.04.2025

	explicitly confer jurisdiction on a specific set of courts.	
12.	The limitation period starts from the date when the cause of action first accrued to the plaintiff, and not when he acquired 'full knowledge' about the same under Article 58 of Limitation Act, 1963.	Nikhila Divyang Mehta & Anr. Vs. Hitesh P. Sanghvi & Ors., decided on 15.04.2025
13.	The principle of res judicata is applicable to criminal proceedings, and hence, the findings of fact recorded by a criminal court would be binding on both parties in any subsequent proceedings involving the same issue.	S.C. Garg Vs. State of Uttar Pradesh & Anr., decided on 15.04.2025
14.	The power under Section 216 Cr.P.C./Sec. 239 BNSS cannot be invoked to delete charges already framed against an accused, as it can only be used to add or alter the existing charges.	Directorate of Revenue Intelligence Vs. Raj Kumar Arora and Ors., decided on 17.04.2025
15.	The absence of motive will not be fatal to the prosecution's case if there exists strong circumstantial evidence proving the guilt of the accused beyond a cavil of doubt. When the circumstances are very convincing and provide an unbroken chain leading only to the conclusion of guilt of the accused and not to any other hypothesis; the total absence of a motive will be of no consequence.	Subhash Aggarwal Vs. State of NCT of Delhi, decided on 22.04.2025
16.	The dismissal of a suit or application for default under Rules 2 or 3 of Order IX of the CPC does not prevent the filing of a fresh suit, as such dismissal does not constitute a judgment or decree, and therefore, the principle of res judicata does not apply.	Amruddin Ansari (D) through LRS. & Ors. Vs. Afajal Ali & Ors., decided on 22.04.2025
17.	After the joint family property has been distributed in accordance with law, it ceases to be joint family properties and the shares of the respective parties become their self-acquired properties.	Angadi Chandranna Vs. Shankar & Ors., decided on 22.04.2025
18.	The eviction is not restricted to the bona fide need of the landlord, even the landlord's family requirement would	Murlidhar Aggarwal (D.) through his LRS. Atul Kumar Aggarwal Vs. Mahendra Pratap

	qualify as bona fide need for eviction of the tenant. The bona fide requirement for occupation of the landlord has to be liberally construed and, as such, even the requirement of the family members would be covered.	Kakan (D.) through LRS. and Ors., decided on 24.04.2025
19.	Evidence of hostile witness cross-examined by prosecution can't be discarded fully. Court must assess what can be accepted. Just because a witness has supported some, though not all, aspects of a case, it would not automatically mean that the witness has to be declared as 'hostile'. When a witness contradicts the story of the side for which he/she is a witness, it is ultimately for the Court to decide whether the statement has to be accepted or not.	K.P. Tamilmaran Vs. The State by Deputy Superintendent of Police, decided on 28.04.2025
20.	Courts cannot go beyond the scope of Section 34 of the Arbitration & Conciliation Act, 1996 while deciding an application for setting aside of an award. The role of the court under Section 34 is clearly demarcated. It is a restrictive jurisdiction and has to be invoked in a conservative manner. The reason is that arbitral autonomy must be respected and judicial interference should remain minimal otherwise it will defeat the very object of the Arbitration Act of 1996.	Consolidated Construction Consortium Ltd. Vs. Software Technology Parks of India, decided on 28.04.2025
21.	By 4:1 Majority Courts can modify arbitral awards in certain circumstances under Sec. 34 or Sec. 37 of Arbitration and Conciliation Act, 2025. Courts have a limited power under Section 34 or 37 to modify arbitral awards. This limited power can be exercised in the following circumstances:- 1. When the award is severable by separating the invalid portion from the	Gayatri Balasamy Vs. M/S ISG Novasoft Technologies Limited, decided on 30.04.2025 [Constitution Bench]

valid portion of the award.

2. To correct any clerical, computation or typographical errors which appear erroneous on the face of the record.
3. To modify post-award interest in some circumstances.
4. The special powers of the Supreme Court under Article 142 of the Constitution can be applied to modify awards. But this power must be exercised with great caution within the limits of the Constitution.

Justice Viswanathan dissents

Under Section 34, Court cannot modify the award unless expressly authorised by the law, since it tantamounts to exercising a merits review.

If there is any need for modification of interest, the matter has to be remitted back to the Tribunal. Also, this can lead to uncertainties and difficulties in enforcing foreign awards.

Disagreed with the view that Article 142 of the Constitution can be used to modify awards. If such a power is recognised, it will lead to uncertainties in the arbitration litigation, he opined. However, Justice Viswanathan agreed that clerical or typographical mistakes can be corrected under Section 34.

IN THE SUPREME COURT OF INDIA

Satbir Singh
Vs.
Rajesh Kumar and Ors.

[Criminal Appeal No. 1487 of 2025]

HEADNOTE – Additional accused can be summoned under Sec. 319 Cr.P.C. based on witness's statement without cross-examination.

Followed the principles laid down in **Hardeep Singh Vs. State of Punjab, (2014) 3 SCC 92.**

JUDGMENT

Dipankar Datta, J.

1. This criminal appeal arises out of Special Leave Petition (Criminal) No. 10653 of 2024, which is at the instance of Satbir Singh¹. Under challenge therein is the judgment and order dated 7th March, 2024² passed by a learned Judge of the High Court of Punjab and Haryana at Chandigarh. Vide the impugned order, while allowing a revisional application³ filed by Rajesh Kumar, Sagar @ Bittoo, Niraj and Ankit (respondents in the said special leave petition), the High Court set aside an order dated 13th September, 2021 passed by the Additional Sessions Judge, Karnal⁴.

The Sessions Judge, by the order impugned in the revisional application, had allowed an application under Section 319 of the Code of Criminal Procedure, 1973⁵ filed by the appellant, seeking to summon Rajesh Kumar, Sagar @ Bittoo, Niraj and Ankit as additional accused for facing trial along with the principal accused⁶, for commission of offences punishable under Sections 323, 324, 307 and 506 of the Indian Penal Code, 1860⁷ read with Section 34 thereof as well as Section 25 of the Arms Act.

2. Notice on the said special leave petition was issued on 13th August, 2024, limited to the respondents 1 and 3 (Rajesh Kumar and Neeraj, respectively). For the reasons recorded in such order, the special leave petition against the respondents 2 and 4 (Sagar @ Bittoo and Ankit, respectively) stood dismissed.

3. The appellant has since obtained special leave to appeal. He questions the legality and correctness of the impugned order.

4. Service of notice on Rajesh Kumar and Neeraj having been effected, they entered appearance and are represented by Mr Gagan Gupta, senior learned counsel. The appellant is represented by Mr. Neeraj Kumar Jain, learned senior counsel. We have heard both of them and perused the materials on record.

5. We have also heard learned counsel appearing for the respondent no. 5- State of Haryana and perused the counter affidavit filed on its behalf.

6. Briefly put, the facts of the case are that on 09.02.2020 an information was received in P.S. Sadar, Karnal that accused Mukesh and the appellant, residents of village Rasulpur Khurd, District Karnal, were admitted in Civil Hospital, Karnal and Ram Chander Memorial Hospital, Karnal, respectively, due to injuries received in an assault. The police officials of P.S. Sadar, Karnal made abortive attempts to record the statements of the injured on 09.02.2020 and 10.02.2020, since the injured were not in a position to give statements. On 12.02.2020, Mukesh stood discharged, whereas the appellant continued to be unfit.

The Investigating Officer recorded the statement of Mukesh. Based on Mukesh's statement, a First Information Report came to be registered. During the course of investigation, X-Ray report relating to injuries of Mukesh was obtained, in which a fracture was reported. Medical opinion was also obtained, which did not rule out the possibility of such injuries being self-suffered. The Investigating Officer reached a conclusion that the allegations of Mukesh against the appellant were not substantiated and, ultimately, submitted a closure report.

7. The appellant having regained consciousness on 14.02.2020 and certified by the attending doctor to be fit, his statement was recorded. The appellant disclosed that he was serving in the Indian Army and had come to his village on leave. On 09.02.2020 at about 2.30 p.m., while playing volleyball, an altercation had taken place with Mukesh who was playing for the opposite team. Mukesh started slapping the appellant. Team members pacified and separated them. However, Mukesh left threatening that the appellant would be taught a lesson.

After 15 minutes, Mukesh came armed with a knife, accompanied by Neeraj, Sagar @ Bittoo, and Ankit armed with lathi, danda, etc. Neeraj caught hold of the appellant and Mukesh gave a knife blow in the waist of the appellant followed by another knife blow near his heart, which penetrated up to the lungs. Sagar and Ankit had beaten the appellant with lathi and danda. The appellant further alleged that he was threatened by Rajesh who exhorted that although the appellant had been taught a lesson, he would be killed if he came back to the village again.

Further, in his statement, the appellant alleged that due to bleeding, he became unconscious and came to know that he was brought to the hospital by Amarjeet

and Jai Singh. As per MLR of the appellant, he had two injuries caused with sharp weapons. The Investigating Officer obtained the discharge summary of the appellant on 20.02.2020 as well as medical opinion, vide which injury no.1 pertaining to chest was reported as dangerous to life. As such, a cross-case under Section 323, 324, 307, 506/34 IPC was registered against Mukesh and Rajesh, Neeraj, Sagar @ Bittoo, and Ankit. On 28.02.2020, the knife used in the crime by Mukesh was recovered in pursuance of his disclosure statement.

8. Further, during the course of investigation, the Investigating Officer did not find the involvement of Rajesh and Ankit and the same was verified by the Station House Officer, P.S. Sadar, Karnal⁸. Subsequent separate enquiries conducted by the Deputy Superintendent of Police, Karnal, Deputy Superintendent of Police, HQ, Karnal, and Deputy Superintendent of Police, Karnal-II led to filing of reports where, too, involvement of Rajesh, Neeraj, Sagar @ Bittoo and Ankit was found lacking.

9. Mukesh was arrested in the present case on 28.02.2020 and after completion of investigation, the SHO submitted report under section 173(2), Cr. PC under Sections 307, 323, 324, 506/34 IPC against Mukesh before the Illaqa Magistrate. Thereafter, the case was committed to the court of the Sessions Judge for trial.

10. Charges under Section 324, 307 and 506, IPC and Section 25 of the Arms Act were framed against Mukesh vide order dated 04.03.2021, whereafter trial commenced. It is proposed by the prosecution to examine 14 (fourteen) witnesses in support of its case, of whom the appellant as PW-1 was examined on 27.04.2021. He reiterated the allegations against Mukesh as also against Rajesh, Neeraj, Sagar @ Bittoo, and Ankit in his examination-in-chief. He also submitted an application under Section 319, Cr. PC for summoning Rajesh, Neeraj, Sagar @ Bittoo, and Ankit to face trial.

11. It is this application that succeeded before the Sessions Judge, whereupon Rajesh, Sagar @ Bittoo, Neeraj and Ankit approached the High Court. The impugned order dated 13.09.2021 of the Sessions Judge was thereafter set aside on contest.

12. The High Court proceeded to record as follows:

"12. From a perusal of the aforementioned both injuries, it is apparent that Satbir had suffered only two injuries in the present case and both injuries were caused with a knife by Mukesh Kumar. The complainant in his testimony (Annexure PW-4) stated that all the accused were carrying dandas and handles of spade in their hands. Neeraj had caught hold of him, whereas, Sagar @ Bittoo, petitioner No. 2 and Ankit, petitioner No. 4 gave blows with handles of spade on his back and on his legs. However, the injuries caused by the petitioners No. 2 and 4 are

clearly missing in the medical reports. In fact, as per PW-1, Satbir Singh, all the petitioners had come prepared and were duly armed to cause injuries to him, but the injuries, which were allegedly caused by them were not corroborated by medical evidence.

13. Apart from that, it is apparent from the record that repeated applications were moved by both the sides to the local police and the matter was investigated by 03 different DSPs of Karnal police and the facts were finally verified by SP, Karnal at his own level. However, during all the investigations, it was found that all the petitioners had not participated in the present case and their presence at the place of occurrence could not be established.

No doubt, the Court is obliged to look into the evidence only, at this stage, however, the conclusions recorded by the police and the supporting material collected during the course of investigation also cannot be overlooked by the Court, while deciding the application under Section 319 Cr. P.C, even though the evidence led by the prosecution is the main basis for disposal of the application. Still further, from the evidence led by the prosecution, it appears that the fight in the present case had taken place at the spur of the moment over a minor issue of counting the points in a Volley Ball game.

Even otherwise, admittedly, there was no enmity between the parties and the petitioners had no reason to participate in the present occurrence. Still further, it is also apparent that Mukesh Kumar and Satbir Singh were members of opposite teams, while playing the Volley Ball and the occurrence had taken place at the spur of the moment and injuries were caused by both the sides. Apart from that, in the present case, this Court has no hesitation to hold that there was not sufficient material on record, which could serve as a ground for summoning the petitioners to face trial along with Mukesh Kumar, who had already been arrayed as an accused in the present case."

13. The law on the point of summoning additional accused in exercise of power conferred by Section 319, Cr. PC is well settled. One may profitably refer to and rely on the Constitution Bench decision of this Court in Hardeep Singh v. State of Punjab⁹, where law has been authoritatively declared. We consider it proper to quote the conclusions reached by this Court qua the questions arising for decision, hereunder:

"117. We accordingly sum up our conclusions as follows:

Questions (i) and (iii)

- What is the stage at which power under Section 319 CrPC can be exercised? AND
- Whether the word "evidence" used in Section 319(1) CrPC has been used

in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

Answer

117.1. In Dharam Pal case [(2014) 3 SCC 306], the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of the investigation. Such cognizance can be taken under Section 193 CrPC and the Sessions Judge need not wait till "evidence" under Section 319 CrPC becomes available for summoning an additional accused.

117.2. Section 319 CrPC, significantly, uses two expressions that have to be taken note of i.e. (1) inquiry (2) trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 CrPC, and under Section 398 CrPC are species of the inquiry contemplated by Section 319 CrPC. Materials coming before the court in course of such inquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 CrPC, and also to add an accused whose name has been shown in Column 2 of the charge-sheet.

117.3. In view of the above position the word "evidence" in Section 319 CrPC has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question (ii)-Whether the word "evidence" used in Section 319(1) CrPC could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

Answer

117.4. Considering the fact that under Section 319 CrPC a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) CrPC the proceeding against such person is to commence from the stage of taking of cognizance, the court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question (iv)-What is the nature of the satisfaction required to invoke the power under Section 319 CrPC to arraign an accused? Whether the power under Section 319(1) CrPC can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

Answer

117.5. Though under Section 319(4)(b) CrPC the accused subsequently impleaded is to be treated as if he had been an accused when the court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 CrPC would be the same as for framing a charge¹⁰. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question (v)-Does the power under Section 319 CrPC extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

Answer

117.6. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, insofar as an accused who has been discharged is concerned the requirement of Sections 300 and 398 CrPC has to be complied with before he can be summoned afresh."

14. Quite recently, a coordinate Bench of this Court in **Jitendra Nath Mishra v. State of Uttar Pradesh & Another**¹¹, upon considering Hardeep Singh (supra), had the occasion to observe as follows:

"10. Section 319 CrPC, which envisages a discretionary power, empowers the court holding a trial to proceed against any person not shown or mentioned as an accused if it appears from the evidence that such person has committed a crime for which he ought to be tried together with the accused who is facing trial. Such power can be exercised by the court qua a person who is not named in the FIR, or named in the FIR but not shown as an accused in the charge-sheet.

Therefore, what is essential for exercise of the power under Section 319 CrPC is that the evidence on record must show the involvement of a person in the commission of a crime and that the said person, who has not been arraigned as an accused, should face trial together with the accused already arraigned. However, the court holding a trial, if it intends to exercise power conferred by Section 319 CrPC, must not act mechanically merely on the ground that some evidence has come on record implicating the person sought to be summoned; its satisfaction

preceding the order thereunder must be more than prima facie as formed at the stage of a charge being framed and short of satisfaction to an extent that the evidence, if unrebutted, would lead to conviction."

15. It is in the light of such settled law that we need to examine the impugned order of the High Court. However, we must exercise caution lest any observation has the effect of influencing the trial.

16. Neeraj happens to be the sibling of Mukesh. The initial statement of the appellant referred to the fact that Neeraj had held him facilitating stabbing by Mukesh, who gave a knife blow in the waist followed by another blow near his heart which penetrated up to his lungs. Insofar as Rajesh is concerned, it was alleged that he had threatened the appellant by saying "Chaaku maar ke tassali kar di, agar dobara zinda gaon me ayega to mai goli se uda dunga". Although, the Sessions Judge formed the requisite satisfaction bearing in mind the decision in Hardeep Singh (supra) and held that the tests laid down therein were squarely met, reading the impugned order in its entirety, we are of the considered opinion that the High Court failed to consider the matter from the proper perspective and arrived at an entirely wrong conclusion.

17. Mr. Gupta has assiduously attempted to impress upon us that involvement of Rajesh and Neeraj were not found in the several reports of the Deputy Superintendents of Police, attached to Karnal district, and such reports should be given credence. We are, however, of the opinion that no conclusive finding can be given that Rajesh and Neeraj were not involved merely on the basis of such reports. Having regard to the version of the appellant in course of examination-in-chief, the Sessions Judge formed a satisfaction higher than a prima facie satisfaction of the alleged involvement of Rajesh and Neeraj and that their complicity in the crime has to be examined and tested on evidence being led at the trial.

To ascertain whether the Sessions Judge in allowing the application under Section 319, Cr. PC had acted mechanically or in a manner not authorised by law or in derogation of the law declared in Hardeep Singh (supra), the High Court was well within its competence to adopt an 'eyes on' approach, considering the nature of power conferred on the High Court by the Cr. PC as the revisional court, but regard being had to the facts and circumstances, a 'hands off' approach would have been advisable and the correct approach.

18. We have no hesitation to hold that the conclusion of the Sessions Judge was a plausible conclusion and not an absurd one so as to warrant interference by the High Court in the exercise of its revisional jurisdiction.

19. For the foregoing reasons, the impugned order of the High Court stands set aside and that of the Sessions Judge is restored. The appeal is, accordingly, allowed.

20. We clarify, no observation made hereinbefore shall be construed as an expression of opinion as regards the involvement of Rajesh and Neeraj in the crime and whatever we have said is solely for the purpose of disposal of this appeal.

21. The Sessions Judge is encouraged to take the trial to its logical conclusion, in accordance with law, as expeditiously as possible.

22. Pending applications, if any, shall stand disposed of.

.....J. (Dipankar Datta)

.....J. (Manmohan)

New Delhi;

April 01, 2025.

1 the appellant

2 impugned order

3 CRR-1357-2021 (O&M)

4 Sessions Judge

5 Cr. PC

6 Mukesh

7 IPC

8 SHO

9 (2014) 3 SCC 92

10 In paragraph 106, the Court held "Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC."

11 (2023) 7 SCC 344

IN THE SUPREME COURT OF INDIA

I.K. Merchants Pvt. Ltd. & Ors.

Vs.

State of Rajasthan & Ors.

**[Civil Appeal Nos. 4560-4563 of 2025
arising out of SLP (C) Nos. 11779-11782 of 2022]**

HEADNOTE – The Courts have the authority to determine the appropriate rate of interest to be awarded for decree amounts. The Court also have the discretion to decide from which date the interest is payable- whether from the date of the filing of the suit, from any date prior to it, or the date of decree.

In the absence of an agreement between the parties regarding the rate of interest on delayed payment of amount in a commercial transaction, the interest may exceed 6% p.a. as per Section 34 CPC after taking into account the totality of facts and circumstances in accordance with law.

JUDGMENT

R. Mahadevan, J.

1. Leave granted.

2. These appeals are filed against the judgments and orders dated 26.04.2022 and 02.05.2022 both passed by the Division Bench of Calcutta High Court¹ in G.A.No.6 of 2020 and A.P.D.No.63 of 2013 in C.S.No.467 of 1978. Vide order dated 26.04.2022, the High Court, while upholding and reaffirming the valuation of shares done by M/s. Ray & Ray at Rs.640/- per share, granted simple interest at 6% per annum on the enhanced valuation of shares, however, rejected the prayer of the appellants for enhancement of interest rates, costs and damages, and accordingly, disposed of the said cases. Subsequently, vide order dated 02.05.2022, the High Court corrected the rate of interest from 6% to 5% per annum. Both the orders are assailed in these appeals, at the instance of the appellants herein.

3. On 25.07.2022, when the appeals were taken up for consideration by this Court, the learned counsel for the appellants confined the prayer made herein to the grant of an appropriate rate of interest, which was also recorded in the proceedings. In view of the same, we proceed to deal with these appeals only to the limited extent of grant of rate of interest for the difference in valuation of shares of Respondent No.2 viz., Rajasthan State Mines and Mineral Ltd., formerly known as Bikaner Gypsums Ltd.², which shares were sold by the appellants to Respondent No.1 viz., State of Rajasthan, in 1973.

4. The relevant facts giving rise to the controversy involved herein are as follows:

4.1. Originally, the appellants preferred a suit being C.S.No.467 of 1978 before the High Court of Calcutta, and the same was subsequently amended, praying for a decree for Rs.4,34,21,553.00 against the Respondent No.1; in the alternative a decree for reasonable price of the shares of the appellants, after determination of such price by the High Court; in the further alternative, cancellation of the transfer of shares belonging to the appellants to the Respondent No.1 and restitution of the original status and retransfer of those shares to the appellants on such terms to be determined by the High Court, and also interest and costs. On 14.08.2012, the learned Single Judge of the High Court, while rejecting the valuation reports produced by the parties, passed a preliminary decree, the operative portion of which reads as follows:

"There shall be a preliminary decree directing the defendants in particular the first defendant to appoint anyone of the following firms of Chartered Accountants, namely Price Water House, Ray & Ray, Lodha and Company of its choice as the valuer for the purpose of conducting an enquiry for ascertaining the fair and proper value of the said shares of the plaintiffs at the time when such shares were transferred to the first defendant by the plaintiffs and upon conclusion of such enquiry the plaintiffs shall be entitled to apply in this suit for obtaining a final decree for the amount, if found, due upon such enquiry.

However, the remuneration of the valuer shall be borne entirely by the defendants or rather the first defendant herein and the first defendant shall pay the remuneration of the valuer as and when such remuneration is payable or rather is agreed to be paid by the first defendant and accepted by the valuer. The plaintiffs shall be entitled to all the costs, charges and expenses of the enquiry proceedings before the valuer, certified for two counsel. Let the report of the valuer be made and published within a period of four months from the date of commencement of the enquiry.

There will also be a decree for costs of the suit assessed at Rs.1,50,000/- and the plaintiffs will be entitled to the costs over and above the court fees that the plaintiffs had to pay at the time of institution of the suit. Needless to mention that the plaintiffs will also be entitled to interests on the final decree to be passed on the valuation to be made by the valuer appointed by the preliminary decree, if such valuation, however, goes in favour of the plaintiffs."

4.2. Aggrieved by the aforesaid preliminary decree, the respondents herein preferred A.P.D.No.63 of 2013, in which, the appellants filed their Cross Objection. During the pendency of the appeal, the High Court, vide order dated 20.08.2019, noted that the dispute essentially was with regard to the valuation of shares, and in order to arrive at a settlement, appointed M/s. Ray & Ray Co. as

valuer for the purpose of conducting an enquiry and ascertaining the proper value of the shares of the appellants as on the date, when such shares were transferred to the State Government.

It was further directed that such valuation would be uninfluenced by previous valuation reports. Accordingly, the valuer M/s. Ray & Ray valued the shares at Rs.640/- per share and filed its report. However, the respondents refused to accept the said valuation. As a result of the same, the High Court proceeded to hear the matter on merits and passed a final judgment and order on 28.04.2021. The operative portion of the same reads as under:

"In those circumstances, this appeal and cross-objection are disposed of by declaring that the respondents/plaintiffs are entitled to Rs.640/- per share sold by them to the appellant and directing that each of the respondents/plaintiffs be paid by the appellant no.1 Rs.640/- per share of Bikaner Gypsums Ltd. (subsequently Rajasthan State Mines and Minerals Ltd.) sold by him to the appellant no.1 as valued by M/s. Ray and Ray less Rs.11.50/- per share already received by him/her within eight weeks of communication of this order.

Considering the appellant is the government of Rajasthan, the respondents/plaintiffs shall only be entitled to interest at the rate of 5% simple interest per annum without yearly rests on the said amount from 8th July, 1975 till the date of payment. The impugned preliminary judgment and decree dated 14th August, 2012 is modified to the above extent. In the facts and circumstances, the modified preliminary judgment and decree shall be treated as the final decree. The suit is decreed accordingly. The application (GA 6 of 2020) is also disposed of by this order."

4.3. Being dissatisfied with the aforesaid judgment and order dated 28.04.2021, both Respondent Nos.1 & 2 filed two separate appeals viz., CA.Nos.6145 and 6144 of 2021 [SLP (Civil) Nos.13905/2021 and 13606/2021] respectively, and the appellants filed C.A.No.6146 of 2021 [SLP (Civil) No.14330/2021]. By a common order dated 01.10.2021, this Court allowed all the appeals by setting aside the order dated 28.04.2021 and remanding the matter to the High Court to deal with the objections and cross objections on the issue of valuation alone, as per the report of M/s. Ray & Ray and to take a view on the same. Pursuant to the clarification application viz., M.A.No.1840 of 2021 in C.A. No.6146 of 2021 filed by the appellants, this Court vide order dated 26.11.2021 inter alia observed as follows:

"On hearing learned counsel for parties, we are not inclined to open a pandora's box once again and are clear that we have remitted on the issue of the valuation report. However, the consequences of the same would be that the applicant(s) before us would naturally have a right to agitate the issue of interest and costs

which is a sequitur arising from the delay in the finalization of the amount payable to the respondent(s)."

4.4. In light of the aforesaid orders, the matter was reheard by the High Court and the impugned judgment and order came to be passed on 26.04.2022, the operative portion of which, reads as under:

"I am of the view that the valuer has given a very reasonable opinion. I uphold and reaffirm the valuation. With regard to the claim of the respondents for interest, because of the long pendency on the matter, the interest burden on the Government of Rajasthan is for a period of about 50 years on the above valuation. Taking this length of time and the total interest burden on the appellant No.1, in my view, 6% per annum simple interest on the enhanced valuation of the shares will more than adequately compensate the respondents. We reject the prayer for enhancement of the interest rate. The appeal is disposed of accordingly. The judgment and decree of this Court dated 28th April 2021 is reaffirmed."

Subsequently, the interest portion was corrected from 6% to 5% per annum, by order dated 02.05.2022.

4.5. With the above background, the appellants have come up with these appeals before us.

5. According to the learned counsel for the appellants, payment of interest owing to the delay in remittance of the fair value of the shares to the appellants is a right recognized in law. Further, the principle underlying the award of interest on the monies entitled to be recovered by a party is simply compensation for the time value of money i.e., compensation for interdicting the investment of that sum at the time when it was due to be paid. In support of the same, the learned counsel relied on the following decisions of this court:

(i) Union of India v. Tata Chemicals Ltd³, wherein it was held that the obligation to refund money received and retained without right implies and carried with it the right to interest.

(ii) Fertilizer Corporation of India Ltd and others v. Coromandal Sacks Private Ltd⁴, in which, it was held that 'neither a penalty nor a punishment but the normal accretion on capital, due to the wilful withholding of the payment towards the claim, resulting in continuous injury until such payment is made or in other words, until the claim is realized'; and

(iii) Civil Appeal No.17 of 2025 in SLP(C) No.10338 of 2023 titled as 'Bernard Francis Joseph Vaz and others v. Government of Karnataka and others', it was observed as follows:

"it cannot be gainsaid that the appellants have been deprived of their legitimate dues for almost 22 years ago. It can also not be controverted that money is what money buys. The value of money is based on the idea that money can be invested to earn a return, and that the purchasing power of money decreases over time due to inflation. What the appellants herein could have bought with the compensation in 2003 cannot do in 2025. It is, therefore, of utmost importance that the determination of the award and disbursal of compensation in case of acquisition of land should be made with promptitude".

5.1. It is further submitted that the appellants were deprived of the fair value of their shares, which were compulsorily acquired by the State Government for a period of more than 50 years due to the faulty valuation commissioned by it. Therefore, payment of interest on the valuation which has been upheld till this Court, follows as a matter of course.

5.2. The learned counsel also submitted that Section 34(1) of the Civil Procedure Code explicitly provides that a rate higher than 6% can be granted in case of a money decree arising out of commercial transactions. Explanation I to section 34(1) defines a "commercial transaction" as one connected with industry, trade or business of the party incurring the liability.

In the present case, the liability has arisen on account of compulsory acquisition by the state Government of the shares of the appellants in Bikaner Gypsums, which was renamed as Respondent No.2 and has consistently earned revenues for the State Government being a profit-making company between 1974 till 2020. However, without any justification, the High Court awarded only simple interest at the rate of 5% per annum, which will not compensate the appellants for the time value of the cost of shares, and is hence, whimsical and arbitrary.

5.3. It is further submitted that despite giving assurance to the appellants that they will be allowed to make a representation before the valuer by letters dated 27.04.1973 and 06.08.1973, the Respondent No.1 rescinded on this assurance vide letter dated 03.07.1974 and that, a copy of the valuation report dated 28.08.1974 was not supplied to the appellants and their objections thereto were not invited. Though appellant no.1 requested to return the shares if a fair valuation was not possible vide letter dated 10.04.1975, the respondents neither conducted a fair valuation nor returned the shares.

Further, the respondents failed to comply with the order dated 20.08.2019 of this Court, as a result of which, the time granted by this court for submission of the report had to be extended on two occasions. Even after dismissal of the appeals of the respondents by this Court, the appellants have not been paid the principal sum, till date. Thus, the respondents have not only breached the contract, but also

caused delay at every stage of proceedings in making payment of sums legally due to the appellants.

5.4. It is also submitted that had the money payable by the Respondent No. 1 been invested in any other shares, gold, fixed deposit or land in the year 1973, the said money would have been enhanced manifold. Since 1973-74 till 2020, the Respondent No. 2, which is a profit-making company, earned several thousand rupees as gross profit and hence, they are not entitled to any sympathy on the ground of being State. Thus, according to the learned counsel, there is no justification for award of a rate of interest lower than commercial rates for the fair value of the share of the appellants.

5.5. Referring to the decision of this court in *Alok Shanker Pandey v. Union of India*⁵, it is submitted that during the relevant point of time, the rate of interest was 15% and hence, the appellants are entitled to receive interest at least @ 15%.

5.6. Thus, the learned counsel submitted that the appellants are entitled to receive the principal of Rs.3,46,79,373/- with interest @ 15% on monthly rest basis; and interest @ 15% on monthly rest basis on the aforesaid amount till the date of realization of the claim. In case, the respondents fail to pay the principal amount and interest @ 15% on monthly rest basis, the Respondent No.1 may be directed to pay a further interest at the rate of 15% as penal interest over and above the amounts to be paid in terms of the above till the payment is made.

6. On the other hand, the learned counsel for the Respondent No. 1 / State of Rajasthan, submitted that the facts would clearly indicate that the amount was neither in debt nor for any damages, which normally entails interest. Due to gross mismanagement, the Respondent No. 2 (company) was going down, and it ultimately got merged with the State Government. The shareholders, who were responsible for the mismanagement of the Company, are now going to get a very handsome amount in terms of the valuation on 31.03.1973 at a huge sum of Rs.640/- per share for a subscribed share price of Rs.10/- per share against the original claim of Rs.70.50 per share.

6.1. Adding further, it is submitted that in the suit, the appellants initially claimed only for Rs.70.50 per share, in 1978. Subsequently, they sought amendment with regard to enhancement of valuation of share, which was ordered in 2001, i.e., 23 years later. Thus, the exorbitant interest sought in 2001 cannot be said to be computed from the year 1973. It is also submitted that the appellants / shareholders, who did not subscribe at Rs.10/- per share for fresh infusion of capital, have now got the valuation of Rs.640/- per share, on the same date and therefore, they have not been prejudiced in any manner.

6.2. Denying the allegation that the shares of the appellants had been compulsorily acquired by the State Government, the learned counsel submitted that the events as unfolded during 1969 to 1973 would amply demonstrate that it is owing to mismanagement of the Company that the State had to intervene and infuse further capital in the Company. The State had infused sufficient funds, but still the company could not be revived or sustained by the then management. It is in this context that the shares were acquired by the State. Therefore, it is not a case of compulsory acquisition of shares, but a case of infusion of capital, and getting equity in return just to keep the company afloat; and the rate of interest has to be determined in the said background only.

6.3. It is submitted that the second part of Section 34 states that the interest from the date of decree till the date of payment cannot exceed 6%. The Explanation states that the rate of interest may exceed 6% p.a. if it is a 'Commercial transaction'. According to the learned counsel, the State was not engaged in any industry, trade or business and there was complete absence of motive of profit in the action taken by them. In fact, it was incurring losses, and the investment made to keep the loss-making Company unit afloat cannot be termed as a 'Commercial transaction'. Therefore, the interest rate should not exceed @ 5% as determined by the High Court.

6.4. Referring to the decision of this Court in *Manalal Prabhudayal v. Oriental Insurance Co. Ltd.*⁶, it is submitted that Appellate Courts should not interfere with the discretion exercised by the lower Courts to award interest unless the same is arbitrary and capricious. Hence, the High Court correctly exercised its jurisdiction to award simple interest at 5% per annum, which does not suffer from any infirmity.

6.5. It is also submitted that the High Court has reaffirmed the judgment and decree dated 28.04.2021 which was set aside by this court by order dated 01.10.2021, without any modification and the same does not have any legal sanctity. Thus, the High Court has not passed any specific order with regard to the interest from the date of the institution of the suit till the date of decree, and from the date of decree till the date of the payment. It has merely stated that 5% p.a. shall be calculated. Therefore, the order of the High Court relating to rate of interest is reasonable and the same need not be interfered with by this court.

7. In addition to the above submissions made on the side of the Respondent No.1, the learned counsel for the Respondent No.2 / Rajasthan State Mines and Minerals Ltd., submitted that the transfer of shares to the State by the company in the year 1973 was for the reason as the company was facing financial difficulties to run its business and further, the shareholders were not possessing faith in the company and therefore, the company decided to bring the public issue at Rs.10/-

per equity share, but the appellants were not ready to purchase the shares even at such rate.

Thereafter, the litigation to decide the fair price of the share was initiated by the appellants in 1978 by demanding a sum of Rs.70.50 per equity share, but later, on the basis of valuation by a private valuer M/s. Naresh Lakhotia & Company, amended their plaint and claimed Rs.874/- per share. It is worth mentioning that the valuer M/s.Naresh Lakhotia & company and M/s.Ray and Ray are not the valuer appointed by the ICAI. Thus, the appellants are only entitled to the fair price of the share as on April 1973 and not the interest thereon.

7.1. It is further submitted that there was no contract in respect of payment of interest between the parties. In such circumstances, section 34 of the Civil Procedure Code would govern the field, which does not provide for any compound interest of any kind. That apart, Section 34 clearly mandates interest @6% per annum for the principal sum adjudged (both during pendency and till date of payment). Therefore, the question of compound interest does not arise.

7.2. It is ultimately submitted that the appellants have already got the price of their share at Rs.11.50 per equity share and they are only entitled for the difference of amount as upheld by this Court and therefore, the appellants are not entitled to higher rate of interest than 5% awarded by the High Court.

8. As a riposte, the learned counsel for the appellants submitted that the Respondent No. 1 has attempted to make out a new case for the first time through their reply, alleging that there was mismanagement by the shareholders of the Respondent No. 2; that, the appellants after a period of 23 years, claimed an exorbitant sum towards value of shares, Respondent No. 2 was a loss-making company, etc.

8.1. The learned counsel further submitted that the respondents never challenged the order dated 15.09.2001 granting leave to the appellants to amend their plaint in CS No.467 of 1978, but sought to urge that the proceedings were delayed due to amendment. That apart, the contention that the Respondent No. 2 was a loss making one, is utterly false and contrary to the record; and the appellants have placed on record the profit made by Respondent No.2 between 1974 till 2000, which comes to Rs.40,165,790,819.

It is also an incorrect statement that the Government infused lots of fund during management of the company by the shareholders including the appellants. According to the appellants, other than giving one or two bank guarantees, the Respondent No.1 had never funded the company. Thus, according to the learned counsel, such new allegations are not maintainable. All the issues between the

parties had attained finality except the issue of interest payable to the appellants, which has been raised in the present appeals.

8.2. It is also submitted that the High Court vide order dated 28.04.2021 specifically directed that interest will be paid from 08.07.1975 till the date of payment. Therefore, the learned counsel prayed this court to allow these appeals and grant appropriate rate of interest to the appellants.

9. We have considered the submissions made by the learned counsel appearing for the parties and perused the records carefully and meticulously.

10. The genesis of the case arises from a five-decade long litigation concerning the valuation of shares of Respondent No. 2 which were sold by the appellants to Respondent No.1. The issue relating to valuation of shares has become final in view of dismissal of SLP (C) Diary Nos. 27115/2022 and 24887/2022 filed by Respondent Nos. 1 and 2 respectively, vide orders dated 05.12.2022 and 12.12.2022 passed by this court.

11. As already stated, the only issue remains to be considered by us in the present round of litigation is the rate of interest on the enhanced valuation of shares as determined by the High Court and affirmed by this court.

12. Taking note of the interest burden on the State for 50 years on the valuation of shares, the High Court had granted simple interest @ 5% per annum, by judgments and orders dated 26.04.2022 and 02.05.2022 which are impugned herein. According to the appellants, the transactions viz., transfer of shares were commercial in nature. Whereas, the respondents stated that they were not engaged in any industry, trade or business for profit purposes and the investment made was only to keep the loss-making Company unit afloat, and hence, the transactions cannot be treated as commercial transactions.

Here, it cannot be disputed that there has been a transaction of trade, viz. sale and purchase of goods, which clearly implies a commercial transaction between the parties. The term "Public Interest" denotes a wider concept with its genus rooted to the welfare of the public at large, with different species attributable to individual and specific impact, depending upon the concept and the subject under consideration. It deals with the impact of a policy decision on the society. Generally, public interest is anathema to commercial transactions.

However, by exception, when the terms are oppressive or one-sided, they are to be termed as unconscionable, arbitrary and by application of externalities, public interest will have to lean towards the individual who has been wronged, as such contracts are deemed to take away the fairness, affecting the free consent required to culminate into a valid contract. The constitutional courts, under such circumstances will be armed with Article 14 to strike down such contracts or to

pass appropriate decrees or orders. It will be useful to refer to the judgment of this court in Central Inland Water Transport Corporation Limited and another v. Brojo Nath Ganguly and another⁷, wherein, it was held as follows:

"82. The position under the American Law is stated in "Reinstatement of the Law- Second" as adopted and promulgated by the American Law Institute, Volume II xx which deals with the law of contracts, in Section 208 at page 107, as follows:

"Section 208. Unconscionable Contract or Term If a contract or term thereof is unconscionable at the time the contract is made a court may refuse to enforce the contract, or may enforce the remainder of the contract without the unconscionable term, or may so limit the application of any unconscionable term as to avoid any unconscionable result."

In the Comments given under that section it is stated at page 107:

"Like the obligation of good faith and fair dealing (S 205), the policy against unconscionable contracts or terms applies to a wide variety of types of conduct. The determination that a contract or term is or is not unconscionable is made in the light of its setting, purpose and effect. Relevant factors include weaknesses in the contracting process like those involved in more specific rules as to contractual capacity, fraud and other invalidating causes; the policy also overlaps with rules which render particular bargains or terms unenforceable on grounds of public policy. Policing against unconscionable contracts or terms has sometimes been accomplished by adverse construction of language, by manipulation of the rules of offer and acceptance or by determinations that the clause is contrary to public policy or to the dominant purpose of the contract'.

Uniform Commercial Code § 2-302 Comment 1. A bargain is not unconscionable merely because the parties to it are unequal in bargaining position, nor even because the inequality results in an allocation of risks to the weaker party. But gross inequality of bargaining power, together with terms unreasonably favourable to the stronger party, may confirm indications that the transaction involved elements of deception or compulsion, or may show that the weaker party had no meaningful choice, no real alternative, or did not in fact assent or appear to assent to the unfair terms."

There is a statute in the United States called the Universal Commercial Code which is applicable to contracts relating to sales of goods. Though this statute is inapplicable to contracts not involving sales of goods, it has proved very influential in, what are called in the United States, "non-sales" cases. It has many times been used either by analogy or because it was felt to embody a general

accepted social attitude of fairness going beyond its statutory application to sales of goods. In the Reporter's Note to the said Section 208, it is stated at page 112:

"It is to be emphasized that a contract of adhesion is not unconscionable per se, and that all unconscionable contracts are not contracts of adhesion. Nonetheless, the more standardized the agreement and the less a party may bargain meaningfully, the more susceptible the contract or a term will be to a claim of unconscionability."

The position has been thus summed up by John R. Pedan in "The Law of Unjust Contracts" published by Butterworths in 1982, at pages 28-29:

"Unconscionability represents the end of a cycle commencing with the Aristotelian concept of justice and the Roman law *laesio enormis*, which in turn formed the basis for the medieval church's concept of a just price and condemnation of usury. These philosophies permeated the exercise, during the seventeenth and eighteenth centuries, of the Chancery court's discretionary powers under which it upset all kinds of unfair transactions. Subsequently the movement towards economic individualism in the nineteenth century hardened the exercise of these powers by emphasizing the freedom of the parties to make their own contract.

While the principle of *pacta sunt servanda* held dominance, the consensual theory still recognized exceptions where one party was overborne by a fiduciary, or entered a contract under duress or as the result of fraud. However, these exceptions were limited and had to be strictly proved. It is suggested that the judicial and legislative trend during the last 30 years in both civil and common law jurisdictions has almost brought the wheel full circle. Both courts and parliaments have provided greater protection for weaker parties from harsh contracts.

In several jurisdictions this included a general power to grant relief from unconscionable contracts, thereby providing a launching point from which the courts have the opportunity to develop a modern doctrine of unconscionability. American decisions on Article 2. 302 of the UCC have already gone some distance into this new arena. The expression "*laesio enormis*" used in the above passage refers to "*laesio ultra dimidium vel enormis*" which in Roman law meant the injury sustained by one of the parties to an onerous contract when he had been overreached by the other to the extent of more than one-half of the value of the subject-matter, as for example, when a vendor had not received half the value of property sold, or the purchaser had paid more than double value. The maxim "*pacta sunt servanda*" referred to in the above passage means "contracts are to be kept".

83. It would appear from certain recent English cases that the courts in that country have also begun to recognize the possibility of an unconscionable bargain which could be brought about by economic duress even between parties who may not in economic terms be situate differently (see, for instance, Occidental Worldwide Investment Corpn. v. Skibs A/S Avanti 1976 (1) L Rep. 293, North Ocean Shipping Co. Ltd. v. Hyundai Construction Co. Ltd. 1979 Q.B. 705, Pao On v. Lau Yin Long 1980 A.C. 614 and Universe Tankships of Monrovia v. International Transport Workers Federation 1981 (1) C.R. 129, reversed in 1981 (2) W.L.R. 803 and the commentary on these cases in Chitty on Contracts, Twentyfifth Edition, Volume I, paragraph 486).

84. Another jurisprudential concept of comparatively modern origin which has affected the law of contracts is the theory of "distributive justice". According to this doctrine, distributive fairness and justice in the possession of wealth and property can be achieved not only by taxation but also by regulatory control of private and contractual transactions even though this might involve some sacrifice of individual liberty. In Lingappa Pochanna Appelwar v. State of Maharashtra and Anr. MANU/SC/0236/1984 : [1985]2 SCR 224 this Court, while upholding the constitutionality of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, said (at page 493):

"The present legislation is a typical illustration of the concept of distributive justice, as modern jurisprudence know it. Legislators, Judges and administrators are now familiar with the concept of distributive justice. Our Constitution permits and even directs the State to administer what may be termed 'distributive justice'. The concept of distributive justice in the sphere of law-making connotes, inter alia, the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in society. Law should be used as an instrument of distributive justice to achieve a fair division of wealth among the members of society based upon the principle:

'From each according to his capacity, to each according to his needs'. Distributive justice comprehends more than achieving lessening of inequalities by differential taxation, giving debt relief or distribution of property owned by one to many who have none by imposing ceiling on holdings, both agricultural and urban, or by direct regulation of contractual transactions by forbidding certain transactions and, perhaps, by requiring others. It also means that those who have been deprived of their properties by unconscionable bargains should be restored their property. All such laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the members of society or there may be legislative control of unfair agreements."

85. When our Constitution states that it is being enacted in order to give to all the citizens of India "JUSTICE, social, economic and political", when Clause (1) of

Article 38 of the Constitution directs the State to strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which social, economic and political justice shall inform all the institutions of the national life, when Clause (2) of Article 38 directs the State, in particular, to minimize the inequalities in income, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations, and when Article 39 directs the State that it shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment and that there should be equal pay for equal work for both men and women, it is the doctrine of distributive justice which is speaking through these words of the Constitution.

86. Yet another theory which has made its emergence in recent years in the sphere of the law of contracts is the test of reasonableness or fairness of a clause in a contract where there is inequality of bargaining power. Lord Denning, M.R., appears to have been the propounder, and perhaps the originator - at least in England, of this theory. In *Gillespie Brothers & Co. Ltd. v. Roy Bowles Transport Ltd.* 1973 (1) Q.B. 400 where the question was whether an indemnity clause in a contract, on its true construction, relieved the indemnifier from liability arising to the indemnified from his own negligence, Lord Denning said (at pages 415-6):

"The time may come when this process of 'construing' the contract can be pursued no further. The words are too clear to permit of it. Are the courts then powerless? Are they to permit the party to enforce his unreasonable clause, even when it is so unreasonable, or applied so unreasonably, as to be unconscionable? When it gets to this point, I would say, as I said many years ago: there is the vigilance of the common law which, while allowing freedom of contract, watches to see that it is not abused': *John Lee & Son (Grantham) Ltd. v. Railway Executive* 1949 (2) All. E.R. 581, 584. It will not allow a party to exempt himself from his liability at common law when it would be quite unconscionable for him to do so."

In the above case the Court of Appeal negated the defence of the indemnifier that the indemnity clause did not cover the negligence of the indemnified. It was in *Lloyds Bank Ltd. v. Bundy* 1974 (3) All E.R. 757 that Lord Denning first clearly enunciated his theory of "inequality of bargaining power". He began his discussion on this part of the case by stating (at page 763):

"There are cases in our books in which the courts will set aside a contract, or a transfer of property, when the parties have not met on equal terms, when the one is so strong in bargaining power and the other so weak that, as a matter of

common fairness, it is not right that the strong should be allowed to push the weak to the wall. Hitherto those exceptional cases have been treated each as a separate category in itself. But I think the time has come when we should seek to find a principle to unite them. I put on one side contracts or transactions which are voidable for fraud or misrepresentation or mistake. All those are governed by settled principles. I go only to those where there has been inequality of bargaining power, such as to merit and intervention of the court."

He then referred to various categories of cases and ultimately deduced therefrom a general principle in these words (at page 765):

"Gathering all together, I would suggest that through all these instances there runs a single thread. They rest on 'inequality of bargaining power'. By virtue of it, the English law gives relief to one who, without independent advice, enters into a contract on terms which are very unfair or transfers property for a consideration which is grossly inadequate, when his bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or infirmity, coupled with undue influences or pressures brought- to bear on him by or for the benefit of the other.

When I use the word 'undue' I do not mean to suggest that the principle depends on proof of any wrongdoing. The one who stipulates for an unfair advantage may be moved solely by his own selfinterest, unconscious of the distress he is bringing to the other. I have also avoided any reference to the will of the one being 'dominated' or 'overcome' by the other. One who is in extreme need may knowingly consent to a most improvident bargain, solely to relieve the straits in which he finds himself. Again, I do not mean to suggest that every transaction is saved by independent advice. But the absence of it may be fatal. With these explanations, I hope this principle will be found to reconcile the cases."

87. Though the House of Lords does not yet appear to have unanimously accepted this theory, the observations of Lord Diplock in *A. Schroeder Music Publishing Co. Ltd. v. Macaulay* (Formerly *Instone*) 1974 (1) W.L.R. 1308 are a clear pointer towards this direction. In that case a song writer had entered into an agreement with a music publisher in the standard form whereby the publishers engaged the song writer's exclusive services during the term of the agreement, which was five years. Under the said agreement, the song writer assigned to the publisher the full copyright for the whole world in his musical compositions during the said term.

By another term of the said agreement, if the total royalties during the term of the agreement exceeded 5,000 the agreement was to stand automatically extended by a further period of five years. Under the said agreement, the publisher could determine the agreement at any time by one month's written notice but no

corresponding right was given to the song writer. Further, while the publisher had the right to assign the agreement, the song writer agreed not to assign his rights without the publisher's prior written consent.

The song writer brought an action claiming, inter alia, a declaration that the agreement was contrary to public policy and void. Plowman, J., who heard the action granted the declaration which was sought and the Court of Appeal affirmed his judgment. An appeal filed by the publishers against the judgment of the Court of Appeal was dismissed by the House of Lords. The Law Lords held that the said agreement was void as it was in restraint of trade and thus contrary to public policy. In his speech Lord Diplock however, outlined the theory of reasonableness or fairness of a bargain. The following observations of his on this part of the case require to be reproduced in extenso (at pages 1315-16):

"My Lords, the contract under consideration in this appeal is one whereby the respondent accepted restrictions upon the way in which he would exploit his earning power as a song writer for the next ten years. Because this can be classified as a contract in restraint of trade the restrictions that the respondent accepted fell within one of those limited categories of contractual promises in respect of which the courts still retain the power to relieve the promisor of his legal duty to fulfil them. In order to determine whether this case is one in which that power ought to be exercised, what your Lordships have in fact been doing has been to assess the relative bargaining power of the publisher and the song writer at the time the contract was made and to decide whether the publisher had used his superior bargaining power to exact from the song writer promises that were unfairly onerous to him.

Your Lordships have not been concerned to inquire whether the public have in fact been deprived of the fruit of the song writer's talents by reason of the restrictions, nor to assess the likelihood that they would be so deprived in the future if the contract were permitted to run its full course. It is, in my view, salutary to acknowledge that in refusing to enforce provisions of a contract whereby one party agrees for the benefit of the other party to exploit or to refrain from exploiting his own earning power, the public policy which the court is implementing is not some 19th-century economic theory about the benefit to the general public of freedom of trade, but the protection of those whose bargaining power is weak against being forced by those whose bargaining power is stronger to enter into bargains that are unconscionable.

Under the influence of Bentham and of laissez-faire the courts in the 19th century abandoned the practice of applying the public policy against unconscionable bargains to contracts generally, as they had Formerly done to any contract considered to be usurious; but the policy survived in its application to penalty clauses and to relief against forfeiture and also to the special category of

contracts in restraint of trade. If one looks at the reasoning of 19th-century judges in cases about contracts in restraint of trade one finds lip service paid to current economic theories, but if one looks at what they said in the light of what they did, one finds that they struck down a bargain if they thought it was unconscionable as between the parties to it and upheld it if they thought that it was not. So I would hold that the question to be answered as respects a contract in restraint of trade of the kind with which this appeal is concerned is:

"Was the bargain fair?" The test of fairness is, no doubt, whether the restrictions are both reasonably necessary for the protection of the legitimate interests of the promisee and commensurate with the benefits secured to the promisor under the contract. For the purpose of this test all the provisions of the contract must be taken into consideration." Lord Diplock then proceeded to point out that there are two kinds of standard forms of contracts.

The first is of contracts which contain standard clauses which "have been settled over the years by negotiation by representatives of the commercial interests involved and have been widely adopted because experience has shown that they facilitate the conduct of trade". He then proceeded to state, "If fairness or reasonableness were relevant to their enforceability the fact that they are widely used by parties whose bargaining power is fairly matched would raise a strong presumption that their terms are fair and reasonable."

Referring to the other kind of standard form of contract Lord Diplock said (at page 1316):

"The same presumption, however, does not apply to the other kind of standard form of contract. This is of comparatively modern origin. It is the result of the concentration of particular kinds of business in relatively few hands. The ticket cases in the 19th century provide what are probably the first examples. The terms of this kind of standard form of contract have not been the subject of negotiation between the parties to it, or approved by any organisation representing the interests of the weaker party. They have been dictated by that party whose bargaining power, either exercised alone or in conjunction with others providing similar goods or services, enables him to say:

'If you want these goods or services at all, these are the only terms on which they are obtainable. Take it or leave it'. To be in a position to adopt this attitude towards a party desirous of entering into a contract to obtain goods or services provides a classic instance of superior bargaining power."

88. The observations of Lord Denning, M.R., in *Levison and Anr. v. Patent Steam Carpet Co. Ltd.* 1978 (1) Q.B. 69 are also useful and require to be quoted. These observations are as follows (at page 79):

"In such circumstances as here the Law Commission in 1975 recommended that a term which exempts the stronger party from his ordinary common law liability should not be given effect except when it is reasonable: see The Law Commission and the Scottish Law Commission Report, Exemption Clauses, Second Report (1975) (August 5, 1975), Law Com. No. 69 (H.C. 605), pp. 62, 174; and there is a bill now before Parliament which gives effect to the test of reasonableness. This is a gratifying piece of law reform: but I do not think we need wait for that bill to be passed into law.

You never know what may happen to a bill. Meanwhile the common law has its own principles ready to hand. In *Gillespie Bros. & Co. Ltd. v. Roy Bowles Transport Ltd.* 1973 Q.B. 400, I suggested that an exemption or limitation clause should not be given effect if it was unreasonable, or if it would be unreasonable to apply it in the circumstances of the case. I see no reason why this should not be applied today, at any rate in contracts in standard forms where there is inequality of bargaining power."

89. The Bill referred to by Lord Denning in the above passage, when enacted, became the Unfair Contract Terms Act, 1977. This statute does not apply to all contracts but only to certain classes of them. It also does not apply to contracts entered into before the date on which it came into force, namely, February 1, 1978; but subject to this it applies to liability for any loss or damage which is suffered on or after that date. It strikes at clauses excluding or restricting liability in certain classes of contracts and torts and introduces in respect of clauses of this type the test of reasonableness and prescribes the guidelines for determining their reasonableness. The detailed provisions of this statute do not concern us but they are worth a study.

90. In *Photo Production Ltd. v. Securicor Transport Ltd.* 1980 A.C. 827 a case before the Unfair Contract Terms Act, 1977, was enacted, the House of Lords upheld an exemption clause in a contract on the defendants' printed form containing standard conditions. The decision appears to proceed on the ground that the parties were businessmen and did not possess unequal bargaining power.

The House of Lords did not in that case reject the test of reasonableness or fairness of a clause in a contract where the parties are not equal in bargaining position. On the contrary, the speeches of Lord Wilberforce, Lord Diplock and Lord Scarman would seem to show that the House of Lords in a fit case would accept that test. Lord Wilberforce in his speech, after referring to the Unfair Contract Terms Act, 1977, said (at page 843):

"This Act applies to consumer contracts and those based on standard terms and enables exemption clauses to be applied with regard to what is just and reasonable. It is significant that Parliament refrained from legislating over the

whole field of contract. After this Act, in commercial matters generally, when the parties are not of unequal bargaining power, and when risks are normally borne by insurance, not only is the case for judicial intervention undemonstrated, but there is everything to be said, and this seems to have been Parliament's intention, for leaving the parties free to apportion the risks as they think fit and for respecting their decisions."

Lord Diplock said (at page 850-51):

"Since the obligations implied by law in a commercial contract are those which, by judicial consensus over the years or by Parliament in passing a statute, have been regarded as obligations which a reasonable businessman would realise that he was accepting when he entered into a contract of a particular kind, the court's view of the reasonableness of any departure from the implied obligations which would be involved in construing the express words of an exclusion clause in one sense that they are capable of bearing rather than another, is a relevant consideration in deciding what meaning the words were intended by the parties to bear."

Lord Scarman, while agreeing with Lord Wilberforce, described (at page 853) the action out of which the appeal before the House had arisen as "a commercial dispute between parties well able to look after themselves" and then added, "In such a situation what the parties agreed (expressly or impliedly) is what matters; and the duty of the courts is to construe their contract according to its tenor.

91. As seen above, apart from judicial decisions, the United States and the United Kingdom have statutorily recognized, at least in certain areas of the law of contracts, that there can be unreasonableness (or lack of fairness, if one prefers that phrase) in a contract or a clause in a contract where there is inequality of bargaining power between the parties although arising out of circumstances not within their control or as a result of situations not of their creation.

Other legal systems also permit judicial review of a contractual transaction entered into in similar circumstances. For example, Section 138(2) of the German Civil Code provides that a transaction is void "when a person" exploits "the distressed situation, inexperience, lack of judgmental ability, or grave weakness of will of another to obtain the grant or promise of pecuniary advantages which are obviously disproportionate to the performance given in return." The position according to the French law is very much the same.

92. Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of

nineteenth century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample under foot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws".

The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power.

It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them.

It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction.

In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances."

In the present case, the transaction, though commercial, is not between two businessmen or entities; the State and its instrumentality are parties to the

contract with better bargaining or imposing authority; and from the records, we find that there was no public interest in offering a lesser sum. Further, with the price fixed found to be unconscionable, this Court affirmed the enhanced price fixed by the High Court.

13. Pertinently, it is to be pointed out at this juncture that there was no agreement between the parties relating to grant of interest for the delayed payment. Even the exchange of communications between the parties remains silent on this aspect. In the absence of any agreement or contract, the provisions of Section 34 of the Code of Civil Procedure dealing with 'interest' would come into play, and the same is extracted below, for ready reference:

"34. Interest.-

(1) Where and insofar as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the court thinks fit.

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have refused such interest, and a separate suit therefor shall not lie."

13.1. The above provision empowers the court to grant interest at three different stages of a money decree viz.,

(i) the court may award interest on the principal sum claimed at a rate it deems reasonable, for the period before the suit was filed. Such interest is generally governed by agreements between the parties;

(ii) The court may award interest on the principal amount from the date of filing the suit until the date of the decree, at a reasonable rate. Here, the court has full discretion to determine the interest rate based on fairness, commercial usage and equity; and

(iii) the court may grant interest on the total decretal amount (principal + interest before decree) from the date of the decree until payment, at a rate not exceeding 6% per annum unless otherwise specified in contractual agreements or statutory provisions. However, if the claim arises from a commercial transaction, courts may allow interest at a higher rate based on agreements between the parties.

14. Furthermore, it is noteworthy to refer to the following case laws and the observations made therein concerning the issue involved herein:

(i) Clariant International Limited and another v. Securities & Exchange Board of India⁸

"Interest can be awarded in terms of an agreement or statutory provisions. It can also be awarded by reason of usage or trade having the force of law or on equitable considerations. Interest cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefor, for which a written demand is mandatory. In absence of any agreement or statutory provision or a merchantile usage, interest payable can be only at the market rate. Such interest is payable upon establishment of totality of circumstances justifying exercise of such equitable jurisdiction."

(ii) Alok Shanker Pandey (supra)

"We are of the opinion that there is no hard-and-fast rule about how much interest should be granted and it all depends on the facts and circumstances of each case. We are of the opinion that the grant of interest of 12% per annum is appropriate in the facts of this particular case. However, we are also of the opinion that since interest was not granted to the appellant along with the principal amount, the respondent should then in addition to the interest at the rate of 12% per annum also pay to the appellant interest at the same rate on the aforesaid interest from the date of payment of instalments by the appellant to the respondent till the date of refund of this amount, and the entire amount mentioned above must be paid to the appellant within two months from the date of this judgment.'

(iii) Thazhathe Thazhathe Purayil Sarabi v. Union of India⁹

"25. It is, therefore, clear that the court, while making a decree for payment of money is entitled to grant interest at the current rate of interest or contractual rate as it deems reasonable to be paid on the principal sum adjudged to be payable and/or awarded, from the date of claim or from the date of the order or decree for recovery of the outstanding dues. There is also hardly any room for doubt that interest may be claimed on any amount decreed or awarded for the period during which the money was due and yet remained unpaid to the claimants.

26. The courts are consistent in their view that normally when a money decree is passed, it is most essential that interest be granted for the period during which the money was due, but could not be utilised by the person in whose favour an order of recovery of money was passed.

30. As we have indicated hereinbefore, when there is no specific provision for grant of interest on any amount due, the court and even tribunals have been held to be entitled to award interest in their discretion, under the provisions of Section 3 of the Interest Act and Section 34 of the Civil Procedure Code."

(iv) Rampur Fertiliser Limited v. Vigyan Chemicals Industries¹⁰

"19. It was further held in Clariant International case [(2004) 8 SCC 524] that in the absence of any agreement or statutory provision or a mercantile usage, interest payable can be only at the market rate and such interest is payable upon establishment of totality of circumstances justifying exercise of such equitable jurisdiction. It was also held that in ascertaining the rate of interest the courts of law can take judicial notice of both inflation as also fall in bank rate of interest.

The bank rate of interest both for commercial purposes and other purposes has been the subject-matter of statutory provisions as also the judge-made laws. In the said case reference was made to the decisions in Kaushnuma Begum v. New India Assurance Co. Ltd. [(2001) 2 SCC 9 : 2001 SCC (Cri) 268] , H.S. Ahammed Hussain v. Irfan Ahammed [(2002) 6 SCC 52 : 2002 SCC (Cri) 1263] and United India Insurance Co. Ltd. v. PatriciaJean Mahajan [(2002) 6 SCC 281 : 2002 SCC (Cri) 1294] and it was observed that: (Clariant International case [(2004) 8 SCC 524] , SCC p. 541, para 36)

"36. Even in cases of victims of motor vehicle accidents, the courts have upon taking note of the fall in the rate of interest held 9% interest to be reasonable."

20. In Assam Small Scale Industries Development Corpn. Ltd. [(2005) 13 SCC 19] also in terms of Section 34 of the Code, in relation to the transactions made prior to coming into force of the Act, simple interest at the rate of 9% per annum was granted taking the same to be bank rate at the relevant time.

21. Therefore, in view of the foregoing legal proposition, we hold that the High Court was not justified in granting interest at the rate of 18% per annum with monthly rests. Considering the facts and circumstances of the present case we direct that pendente lite and future interest at the rate of 9% shall be paid."

(v) M/s. Tomorrowland Limited v. Housing and Urban Development Corporation Limited and another¹¹

"48. "The Appellant, of course, can seek award of interest under Section 34 of the CPC, which inter alia provides that "the court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree."

49. "It is trite law that under Section 34 of the CPC, the award of interest is a discretionary exercise steeped in equitable considerations. The law in this regard has been succinctly discussed in the Constitution Bench judgment of this Court in Central Bank of India v. Ravindra & Ors.; (2002) 1 SCC 367, which states:

"Award of interest pendente lite or post-decree is discretionary with the Court as it is essentially governed by Section 34 of the CPC de hors the contract between the parties. In a given case if the Court finds that in the principal sum adjudged on the date of the suit, the component of interest is disproportionate with the component of the principal sum actually advanced, the Court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline to award such interest. The discretion shall be exercised fairly, judiciously, and for not arbitrary or fanciful reasons."

58. "We are conscious of the fact that as a general principle, in commercial disputes, the award of interest pendente lite or post-decree is typically granted as a matter of course. This is because such interest serves to compensate the aggrieved party for the time value of money that was due but withheld during the legal process."

Thus, it is abundantly clear that the Courts have the authority to determine the appropriate interest rate, considering the totality of the facts and circumstances in accordance with law. That apart, the Courts have the discretion to decide whether the interest is payable from the date of institution of the suit, a period prior to that, or from the date of the decree, depending on the specific facts of each case.

15. Admittedly, the shares belonging to the appellants were transferred to the State Government in 1973. In 1978, the appellants instituted the suit claiming a valuation of Rs.70.50 per share. Thereafter, they sought an amendment increasing the valuation to Rs.874/- per share, based on the report of a private valuer M/s. Naresh Lakhotia & Co. The amendment sought was allowed on 12.09.2001. Subsequently, the appellants accepted the valuation of Rs.640/- per share as determined by M/s Ray & Ray, which was also ordered by the High Court and affirmed by this Court.

It is also an admitted fact that the Respondent No. 1 agreed to pay a fair valuation for the shares to the appellants, but is yet to make the payment. Such being the scenario, wherein, the appellants having suffered a delay of five decades in receiving the payment, are entitled to be reasonably compensated by way of

interest. However, their claim of interest at 18% with quarterly rest or 15% with monthly rest, in the opinion of this court, is unreasonable and cannot be accepted as such quarterly or monthly rest is beyond the scope of Section 34.

16. Be it noted, while the discretion to award interest, whether pendente lite or post-decree, is well recognized, its exercise must be guided by equitable considerations. The rate and period of interest cannot be applied mechanically or at an unreasonably high rate without any rationale. Though it is not possible to arrive at the actual value of improvement or the inflation on the fair consideration, if paid at the relevant point of time, it is just and necessary that the rate of interest must be a reparation for the appellant.

The Court must ensure that while the claimant is fairly compensated, the award does not become punitive or unduly burdensome on the Judgement Debtor. Therefore, the rate of interest should be determined in a manner that balances both fairness and financial impact, taking into account the "loss of use" principle and economic prudence, in the specific facts of each case.

17. Considering the prolonged pendency of the dispute regarding the valuation of shares, which has only been determined recently, and the substantial share amount involved, and also keeping in mind that this is a commercial transaction, and the entire burden of interest along with principal value falls upon the Government, it is necessary in the present case to award reasonable interest, in order to strike a balance between the parties.

Thus, in these peculiar facts and circumstances, we deem it fit, just and appropriate to award simple interest at the rate of 6% per annum from 8th July 1975, on the enhanced valuation of shares till the date of decree and interest at the rate of 9% per annum from the date of decree till the date of realisation. The interest shall be paid along with the amount due towards the enhanced value of the shares, after adjusting the amount already paid, to the appellants, within a period of two months from today.

18. Accordingly, all the appeals stand disposed of. The impugned judgments and orders passed by the High Court are modified to the extent indicated above.

No costs. Connected Miscellaneous Application(s), if any, shall stand disposed of.

.....J. [J.B. Pardiwala]

.....J. [R. Mahadevan]

New Delhi;

April 01, 2025

1 Hereinafter referred to as "the High Court"

2 For short, "the Company"

3 (2014) 6 SCC 335

4 (2024) 8 SCC 172

5 (2007) 3 SCC 545

6 (2009) 17 SCC 296

7 (1986) 3 SCC 156: MANU/SC/0439/1986

8 2004 (8) SCC 524

9 (2009) 7 SCC 372

10 (2009) 12 SCC 324

11 2025 LiveLaw (SC) 205

IN THE SUPREME COURT OF INDIA

M/s. Faime Makers Pvt. Ltd.

Vs.

District Deputy Registrar, Co-Operative Societies (3), Mumbai & Ors.

[Contempt Petition (C) No. 684 of 2024]

[SLP (Civil) No. 26654 of 2023]

HEADNOTE – Quasi-judicial bodies are bound by the principles of res-judicata to prevent re-litigation on the same issue. Once a Competent Authority (quasi judicial in nature) settles an issue, that determination attains finality unless it is set aside in accordance with law. Any quasi-judicial Authority would not ordinarily have the power to unilaterally take a contrary view taken by a coordinate or predecessor authority at an early point in time.

JUDGMENT

Vikram Nath, J.

1. Leave granted.

2. The appellant has assailed the correctness of the judgment and order dated 10.11.2023, passed by the High Court of Bombay, whereby the appellant's Writ Petition No. 8186 of 2022, assailing the correctness of the order dated 05.10.2021 passed by the District Deputy Registrar, Co-operative Societies, Mumbai/ Competent Authority, was dismissed.

By the order dated 05.10.2021, the competent authority had allowed Application No. 101 of 2021, filed by Prakash Apartment Co-operative Housing Society Limited (respondent No.2-Society) under Section 5/11 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, directing the execution and registration of a unilateral deed of assignment with respect to 1321.36 square meter area of land and the building situated thereon along with 198.20 square meter on the recreational ground in the name of respondent No.2-Society.

3. Briefly stated, the facts relevant for the present controversy are as follows:

3.1. The subject land of the dispute comprises Survey No. 22, Hissa No. 1, corresponding to C.T.S. No. 75/B, admeasuring 1,321.36 square meters, along with 198.20 square meters in the Recreational Ground, totalling 1,519.56 square meters, out of a larger parcel of 2,752.9 square meters, situated at Bandivali Hill

Road, Jogeshwari (West), Mumbai - 400102, within the Village Bandivali, Taluka Andheri.

3.2. The larger property, which includes the subject land, was transferred to Byramjee Jeejeebhoy Private Limited (hereinafter, "BJPL") through a Deed of Conveyance dated 24.07.1951, executed between Nanabhoy Byramjee Jeejeebhoy and BJPL 3.3. On 29.10.1952, BJPL, as the lessor, executed an Indenture of Lease in favour of Ramkishor Singh Kunjbihari (respondent No.3) as the lessee. Subsequently, respondent No.3 granted development rights over the leased land to M/s Prakash Builders (respondent No. 4).

3.4. Respondent No.4 constructed an unauthorized building on the land, without approved plans, comprising approximately 27 flats. These flats were sold to various purchasers, who later formed respondent No.2-Society.

3.5. On 07.07.2010, BJPL executed a Deed of Conveyance in favour of the appellant, whereby it sold its right, title, interest, and share in the larger property-including the subject land-to the appellant. Consequently, the appellant became the landowner as per the provisions of the 1963 Act.

3.6. On 06.09.2012, the legal heirs of the late Ramkishor Singh (respondent No. 3) filed a suit against the appellant and BJPL. The dispute was eventually settled through Consent Terms, wherein the parties agreed to divide the larger property into two portions.

3.7. Pursuant to the Consent Terms, a Deed of Surrender of Leasehold Rights was executed on 30.12.2012 between the appellant and respondent No.3. Through this deed, the appellant surrendered 3,596 square meters of land from the larger property in favour of respondent No.3, while respondent No.3 relinquished his leasehold rights over 2,786 square meters in favour of the appellant. As a result, the appellant became the owner of 2,768 square meters of land within the larger property.

3.8. The respondent No.2-Society applied for a Unilateral Certificate of Deemed Conveyance under Section 11 of the 1963 Act before the Competent Authority which was registered as Application No.53 of 2020.

3.9. By an order dated 22.02.2021, the Competent Authority dismissed the respondent No.2- Society's application, observing that the Society was eligible to seek the relief of unilateral conveyance of assignment of leasehold rights. The application was also rejected due to legal uncertainties and complications regarding the identity of the land's promoter and on account of transfers. The order directed that the parties should first seek appropriate relief from a competent Civil Court, following which the Society was granted liberty to file a

fresh application. This order attained finality as it was not assailed before any superior forum/Court.

3.10. Despite the Registrar's directive, the respondent No.2-Society did not approach the Civil Court to resolve the legal complications. Instead, on 24.03.2021, it submitted a fresh application to the Competent Authority, seeking a Unilateral Assignment of Leasehold Rights which was registered as Application No.101 of 2021.

3.11. On 05.10.2021, the Competent Authority passed an order granting the unilateral assignment of leasehold rights in favour of the respondent No.2-Society.

3.12. Aggrieved by this order, the appellant challenged it by filing Writ Petition No. 8186 of 2022 before the High Court of Bombay and by the impugned order dated 10.11.2023, the High Court dismissed the appellant's writ petition, leading to the present appeal.

4. We have heard Shri Dama Seshadri Naidu, learned senior counsel appearing for the appellant and learned counsel appearing for respondent No.2- Society as also the intervenors.

5. Mr. Naidu, learned senior counsel appearing for the appellant made the following submissions:

(i). The Competent Authority had dismissed the first application filed by the respondent No.2- Society under Section 11 of the 1963 Act by order dated 22.02.2021, on the finding that the issues involved were complicated and the respondent No. 2-Society ought to get the same sorted out by a competent Civil Court and only thereafter apply afresh. A further finding recorded was that no conveyance of sale could be directed. However, only conveyance of assignment of leasehold rights could be granted, but that too after sorting out of the issues.

The said order dated 22.02.2021 was never assailed by the respondent No.2-Society. Respondent No.2-Society thereafter did not take any steps to approach the appropriate forum for sorting out or resolving out the issues mentioned in the order dated 22.02.2021 and instead, within a month, it moved a second application before the Competent Authority on 24.03.2021, registered as Application No. 101 of 2021, seeking relief for the unilateral assignment of leasehold rights in favour of respondent No.2-Society.

The submission was that the second application was not maintainable without the issues being resolved by the competent Civil Court as directed in the order dated 22.02.2021. The second application for leasehold rights could have been filed only after the issues resolved by the competent Civil Court. The second

application was thus barred by the principle of res judicata, and the Competent Authority, while allowing the second application, committed a serious error in entertaining the same.

(ii). The Competent Authority is a statutory authority and would fall within the category of quasi-judicial authority as it decides the application as per the statutory provisions after providing due opportunity of hearing to the concerned parties, as such until and unless specifically provided by Statute, it would not have power of review. The order dated 05.10.2021, passed by the Competent Authority allowing Application No. 101 of 2021, clearly amounted to a review of the first order dated 22.02.2021. No power was vested in the said authority by the Statute i.e. the 1963 Act as such was without jurisdiction or authority of law.

(iii). Even on merits, the Competent Authority erred in granting the relief for unilateral assignment of leasehold rights, as the constructions made were not authorised, and no commencement certificate for raising the construction of building in question was ever obtained, and as such no benefit could be extended to the respondent No.2-Society under Section 11 of the 1963 Act for the inaction of the builder in transferring the ownership rights in favour of the members of the respondent No.2-Society.

(iv). It was next submitted that even assuming for the sake of argument that unilateral assignment of leasehold rights could be extended to the respondent No.2-Society, there was no justification for granting the same for an area of 1,361 square meter, whereas the building in question was situate, enclosed within a boundary wall, covering only 870 square meters.

(v). The High Court committed a manifest error by not correctly reading the first order of the Competent Authority dated 22.02.2021. The High Court went on the premise that the first order dated 22.02.2021 was little vague and confusing. Which was not correct in as much the first order of 22.02.2021 was very clear that the respondent No.2-Society needed to get the complications resolved by the competent Civil Court and only thereafter apply afresh for assignment of leasehold rights.

(vi). On such submissions, it was prayed that the appeal deserves to be allowed, the impugned orders deserve to be set aside, and the application No. 101 of 2021, filed by respondent No.2-Society under Section 11 of the 1963 Act before the Competent Authority, deserves to be rejected.

6. On the other hand, learned counsel for the respondent No.2-Society has made the following submissions:

(i). The High Court correctly appreciated and interpreted the first order dated 22.02.2021 to record a finding that the said order granted unconditional liberty to

the respondent No.2- Society to file a fresh application for the assignment of leasehold rights.

(ii). It was next submitted that the second order dated 05.10.2021 would not amount to a review, as it was dealing with an application seeking a distinct relief from the first application, and in view of the liberty granted, there was no question of any review. The second application was to be dealt with on its own merits, independent of the first order rejecting the first application.

(iii). It was also submitted that the issue relating to the demarcation of boundary, with respect to the building in question covering only 870 square meter was although raised before the High Court but was completely unsubstantiated, as no supporting documents were filed in that regard. The report of the City Survey Officer which was subsequent to the judgement of the High Court cannot be looked into or relied upon by this Court in this appeal.

7. Having considered these submissions and having perused the order dated 22.02.2021, we have no hesitation to hold that there was no unconditional liberty granted to respondent No.2-Society to apply for the unilateral assignment of leasehold rights. The order dated 22.02.2021 is very clear that complications had arisen because of various transactions inter se parties at different points of time. The relevant facts have already been noted in the earlier part of this judgment.

8. The relevant extract of the order dated 22.02.2021, whereby the application was dismissed for the reasons given therein, with liberty to apply afresh after sorting out the issues, is reproduced hereunder:

"Therefore, the petitioner has to appeal to the appropriate court in this regard. As there is a legal complication in this case, the authority will not be able to make a human transfer in the name of the applicant society. Due to this, the applicant society should only demand assignment of leasehold claim and also the competent court should resolve the legal issues related to the transfer of the name of the respondent No.3 of the rate of income. It is not possible to transfer the leasehold right of the said property in the name of the applicant Society unless these matters are settled. Therefore, I am convinced that after the settlement of these matters, the applicant should be allowed to re-apply for the human transfer of the leasehold rights of the said property and the application submitted by the applicant Society should be rejected."

9. A plain reading of the above findings of the Competent Authority in its order dated 22.02.2021 leaves no manner of doubt that respondent No.2- Society could approach the Competent Authority afresh for the unilateral assignment of leasehold rights only after getting the complications sorted out before the appropriate Court. The order clearly indicates that the competent authority could

not grant leasehold rights under the existing set of facts until and unless the complications were sorted out.

10. There is no explanation from the side of respondent No.2-Society with respect to the above findings of the Competent Authority recorded in the order dated 22.02.2021, as to why the same was not challenged before a superior forum. Once the said order has been accepted by the parties and has attained finality, the Competent Authority would not have jurisdiction to entertain a second application contrary to the findings and directions given by the Competent Authority in the first order.

11. It has been settled by this Court that the principle of res judicata applies to and binds quasi-judicial authorities. This Court in *Ujjam Bai vs. State of U.P.*² has taken the view that principles of res judicata equally apply to quasi-judicial bodies. Whenever a judicial or quasi-judicial tribunal gives a finding on law or fact, its findings cannot be impeached collaterally or in a second round and are binding until reversed in appeal or revision or by way of writ proceedings. The characteristic attribute of a judicial act or decision is that it binds, whether right or wrong. Thus, any error, either of fact or law, committed by such bodies cannot be controverted otherwise by way of an appeal or revision or a writ unless the erroneous determination relates to the jurisdictional matter of that body.

12. This position has been further reinforced in *Abdul Kuddus vs. Union of India and others*³ which relies upon *Ujjam Bai* (supra). In *Abdul Kuddus* (supra), this Court held that the opinion by the Foreigners Tribunal is a quasi-judicial order. Therefore, it would be incorrect to hold that the opinion of the Tribunal and/or the consequential order passed by the Registering Authority would not operate as res judicata. Further, it was established that any quasijudicial Authority would not ordinarily have the power to unilaterally take a contrary view taken by a coordinate or predecessor authority at an early point in time.

13. From the foregoing discussion, it is evident that once a Competent Authority (quasi-judicial in nature) settles an issue, that determination attains finality unless it is set aside in accordance with law.

14. In our opinion, the High Court erred in giving a different interpretation to the above text of the first order dated 22.02.2021. The High Court had extracted the above findings, conclusions, and directions in its impugned order but still moves on to hold that unconditional liberty was given to respondent No.2-Society, which in our opinion, was not correct.

15. Without further burdening this order by entering into the other issues, we are satisfied that the impugned order cannot be sustained. The second application filed by the respondent No.2-Society under Section 11 of the 1963 Act before the

Competent Authority, being Application No. 101 of 2021, deserves to be dismissed. However, the liberty granted in the first order of the Competent Authority dated 22.02.2021, while rejecting Application No. 53 of 2020, would still be available to the respondent No.2-Society but only after getting the complications resolved/sorted out before the appropriate Court/Forum.

16. Accordingly, the appeal is allowed, impugned order of the High Court is set aside, the writ petition would stand allowed, and the order dated 05.10.2021 passed by the Competent Authority is quashed.

17. In view of the above findings, the Contempt Petition (C) No. 684 of 2024 would not require any further consideration. It is accordingly disposed of.

18. Pending applications, if any, stand disposed of.

.....J. [Vikram Nath]

.....J. [Prasanna B. Varale]

New Delhi;

April 01, 2025

1 Hereinafter referred to as the "1963 Act"

2 1962 SCC OnLine SC 8

3 (2019) 6 SCC 604

IN THE SUPREME COURT OF INDIA

Jomon K.K.

Vs.

Shajimon P. & Ors. Etc.

**[Civil Appeal Nos. _____ of 2025
arising out of SLP (C) Nos. 7930-7931 of 2020]**

HEADNOTE – If the initial appointment is illegal, then the candidate cannot claim equitable relief to secure the post invoking the special powers under Article 142 of the Constitution. If a candidate gained entry through a process which was not legal and valid, then the Court cannot come to his rescue in the exercise of powers under Article 142.

JUDGMENT

Dipankar Datta, J.

THE APPEAL

1. These appeals, by special leave, take exception to the common judgment and order dated 2nd December, 2019 of the High Court of Kerala at Ernakulam dismissing the appellant's writ petitions¹.

FACTS

2. Facts giving rise to these appeals, which are not in dispute, are these:

a. An advertisement dated 17th October, 2012 was published by the Secretary of Kerala Public Service Commission² inviting applications from interested candidates for filling up 12 vacant posts of "Boat Lascar" under the Kerala State Water Transport Department³. The method of appointment was indicated as 'direct recruitment' and the qualifications stipulated therein read as follows:

7. Qualifications:

(1) Literacy in Malayalam or Tamil or Kannada

(2) Possession of Current Lascar's Licence Note:-

Candidates should possess current Lascar's Licence on the last date for receipt of applications, during Practical Test and Interview also.

b. Incidentally, in terms of the Special Rules of 1975⁴ for the Kerala State Water Transport Subordinate Service (Operating Wing)⁵, the service would consist of 3 classes of officers. While Class I comprised 2 categories, Classes II and III comprised 3 categories, viz. Category 1, Category 2 and Category 3. Syrang, Driver and Lascar are listed at Categories 1, 2 and 3, respectively, of Class III. In terms of the Schedule appended to the Special Rules, the post of Syrang can be filled up either by direct recruitment or by promotion from among Lascars in the ratio of 1:1 whereas appointment on the post of Lascar is entirely by direct recruitment. It is also provided in the Schedule that while literacy in Malayalam or Tamil or Kannada is the common qualification required for appointment as Syrang as well as Lascar, an individual aspiring for the post of Syrang must possess current Syrang's licence while an individual aspiring for appointment on the post of Lascar is similarly required to possess a current Lascar's Licence.

c. The licence noted above is a certificate of competency that is referred to in Chapter III of the Kerala Inland Vessels Rules, 2010. In terms thereof, any aspiring individual fulfilling the qualifications statutorily prescribed is issued a certificate of competency upon succeeding in the "viva voce examination" that is conducted either for a Syrang's licence or a Lascar's licence. Inter alia, while a person aspiring for a Syrang's licence is required to be 10th standard pass, it is 8th standard pass for anyone aspiring for a Lascar's licence.

d. By a letter dated 9th October, 2012 addressed to the Director of the Department, the Director of Ports⁶ conveyed to the following effect: This is to communicate formally that the Syrang, Master and Driver Certificate issued by the Chief Examiner under the KIV Rules 2010 is a certificate superior to Lascar Certificate. Hence those who possess Syrang, Master and Driver Certificate will be proficient in Lascar work also.

Thus Syrang and Master Certificate can be considered more than equivalent to Lascar Certificate and such persons are eligible for the job 'laser' (sic, lascar) also. This communication is issued based on the representation received from a few candidates who applied to the Public Service Commission for Lascar job in order to enable them to complete the application process. Copy of their representation is enclosed. However the final selection may be done based on practical test, on the skills required, type of vessel and other requirements of the organization.

e. The appellant was the holder of a Syrang's licence, which was valid when he noticed the advertisement.

f. Perceiving that possession of a Syrang's licence makes him eligible to apply for the post of Lascar which, incidentally, happens to be the feeder post for promotion to the post of Syrang, the appellant offered his candidature and

acquitted himself creditably resulting in his name figuring at serial number 1 (OX category) in the "Ranked List" which was circulated vide No. 257/17/ERVI and brought into force with effect from 22nd February, 2017. He had secured 45.67 marks. Based on such rank, the Secretary, KPSC informed the appellant vide letter dated 2nd May, 2017 as follows:

You are informed that you have been advised for recruitment as Boat Lascar on Rs.8,960 -14,260/- in the above Department against BC Turn. The selection is subject to Rule 3(c) and 10(b) of the Kerala State and Subordinate Service Rules, 1958. Further instructions will be issued to you in due course by the above Department.

g. While the appellant was awaiting an offer of appointment, on 8th May, 2017 and 27th July, 2017, two sets of original applications under Section 19 of the Administrative Tribunals Act, 1985⁷ were filed before the Thiruvananthapuram and Ernakulam Benches of the Kerala Administrative Tribunal⁸.

h. The prayer in O.A. No. 857 of 2017 was for a declaration that inclusion of ineligible candidates, who do not possess the essential qualification, is oppressive, arbitrary and illegal; a direction be issued to restructure the "Ranked List" by removing all such ineligible candidates; and to pass incidental orders. In OA (EKM) 1566 of 2017, similarly, the Tribunal was urged to declare candidates who did not have valid and current Lascar's licence as on 17th October, 2012, i.e., the last date for receipt of applications, as not eligible to be included in the "Ranked List" as well as for issuance of a direction to KPSC to recast the "Ranked List" by excluding the candidates not possessing valid Lascar's licence on 17th October, 2012.

i. Importantly, in OA No. 857 of 2017, no private party figured in the array of respondents and there were only three official respondents (Director of the department, the Director and KPSC). In OA (EKM) No. 1566 of 2017, apart from the official respondents, only 5 of the several selected candidates were joined as respondents. The appellant was not one among the five private respondents who were impleaded in the said application.

j. During the pendency of the original applications before the Tribunal, the appellant came to be appointed on 28th July, 2017 as "Boat Lascar".

k. The reply statement filed by the Director before the Tribunal on 20th February, 2018 is extracted hereunder:

"2. Port Department is implementing KIV Rules 2010. Director of Ports is the competent Authority to oversee the various regulations, under the provisions of KIV Rules 2010. KIV Rules insist that the MASTER, DRIVER AND SYRANG certificates will be issued only after 2 years from the date of issue of Lascar

certificate by the Chief Examiner, Department of Ports. So the persons who got competency certificates for Master, Driver and Syrang also have sufficient eligibilities to be the boat lascar. The above competency certificate holders are also eligible to apply for the post of Lascar and it is stated by the Director of Ports in the letter No.B3-389/2011 dated 9.10.2012."

l. In due course, the original applications were heard by the Tribunal. Vide its judgment and order dated 9th March, 2018⁹, the Tribunal allowed both the original applications and directed KPSC to recast the "Ranked List" and to cancel the advice to appoint ineligible candidates.

m. Acting in pursuance of the Tribunal's order, KPSC issued a show cause notice dated 31st July, 2018 to the appellant calling upon him to explain why the advice for his appointment be not treated as cancelled. The appellant responded thereto by his reply dated 10th August, 2018. Thereafter, KPSC issued an order dated 24th October, 2018 cancelling the advice for appointment of the appellant following which the Director cancelled the appellant's appointment as "Boat Lascar" by his order dated 27th October, 2018.

n. On 3rd November, 2018, the appellant challenged the Tribunal's order before the High Court in separate writ petitions. However, a Division Bench of the High Court by the common impugned judgment and order dismissed such writ petitions.

CONTENTIONS OF THE PARTIES

3. Mr. P. N. Ravindran, learned senior counsel for the appellant, argued that both the Tribunal in allowing the original applications as well as the High Court in dismissing the writ petitions fell in error in not appreciating that a higher qualification could never have been regarded as a disqualification for appointment on the post of Lascar.

4. Mr. Ravindran relied on the decisions in Parvaiz Ahmed Parry v. State of Jammu and Kashmir¹⁰ and Chandra Shekhar Singh and Others v. State of Jharkhand¹¹ in support of the contention that a candidate having a higher degree in the subject prescribed under the advertisement cannot be disqualified by reason of ineligibility for not possessing the required degree.

5. Mr. Ravindran further argued that by the time the Tribunal was moved by the unsuccessful candidates, the appellant had not been appointed. However, he did figure in the "Ranked List". During the pendency of the original applications, the appellant came to be appointed. Despite such appointment, he was not impleaded as a respondent in either of the two original applications filed before the Tribunal. When the original applications were filed, seeking exclusion of candidates holding Syrang's licence and recasting of the "Ranked List", without the appellant

being included as a respondent, no adverse order could have been passed by the Tribunal qua him. Since the appellant was not impleaded as a respondent in the original applications, the same were defective and no relief could have been granted to the unsuccessful candidates/original applicants.

6. Mr. Ravindran also submitted that assuming this Court were not inclined to accept the claim of the appellant that he could have been considered for selection despite not possessing a current Lascar's licence, it was contended that this was an eminently fit case for exercise of power by this Court under Article 142 of the Constitution. Reliance was placed on the Constitution Bench decision in Supreme Court Bar Association vs Union Of India and Anr.¹².

7. Per contra, Mr. Nair, learned counsel for KPSC, contended that the appellant and similarly placed candidates having Syrang's licence were considered for selection in view of the letter of the Director dated 9th October, 2012. However, the Tribunal having held that candidates not possessing current Lascar's licence could not have been considered for selection and having directed KPSC to recast the "Ranked List", the same was duly complied with resulting in cancellation of the advice for appointment of the appellant.

8. Mr. Nair relied on the decision in District Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi¹³ for the proposition that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned: the aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement.

9. According to him, had it been known that anyone not having a Lascar's licence but having a Syrang's licence would be eligible for consideration for appointment on the post of Lascar, others having Syrang's certificate could also have applied thereby enlarging the zone of consideration. However, keeping the process confined only to a select few and not extending opportunity to all others similarly situate like the appellant would contravene Article 16 of the Constitution and also amount to a fraud on public.

10. P.M. Latha and Anr. v. State of Kerala and ors.¹⁴ was also cited by Mr. Nair in support of his contention that anyone holding a Syrang's licence could not have been considered on the ground of being more qualified than the holder of a Lascar's licence, and that whether Syrang's licence could be considered as appropriate for recruitment of a Lascar is a question which ought to be left to be considered by the authorities concerned. Since, in P.M. Latha (supra), this Court did not consider candidates having B. Ed degree as qualified for the vacancies

advertised, which required recruitment to be made from candidates with TTC qualifications, he urged that dismissal of the appeal is the only logical conclusion.

11. Mr. Nishe Rajan Shonker, learned counsel for the State of Kerala, adopted the submissions of Mr. Nair.

QUESTION OF LAW

12. The central question of law arising for decision on this appeal is, whether the appellant who did not hold a current Lascar's licence but was the holder of a Syrang's licence could have been considered qualified to participate in the recruitment process as well as appointed.

13. Certain notable features having a bearing on the issue to be decided by us are these:

a. The advertisement dated 15th September, 2012 did stipulate that only those holding a current Lascar's licence are eligible to apply. At the same time, it did not specifically say that anyone holding a Syrang's licence or a licence higher than a Lascar's licence is not eligible to apply.

b. According to the Director, a Syrang's licence is something superior to a Lascar's licence and that holders of Syrang's licence can be considered more than equivalent to Lascar's licence, thus, being eligible for the job of Lascar also.

c. A communication to the above effect was made by the Director to KPSC, not on his own, but based on the representation received from a few candidates who, presumably having Syrang's licences, had applied for the post of Lascar and wanted to compete with aspirants having Lascar's licence.

d. Despite the appellant being selected, his name figuring in the "Ranked List", he being recommended by the Secretary, KPSC on 2nd May, 2017 for appointment as "Boat Lascar" as well as his appointment on 28th July, 2017 during the pendency of the original applications, he was not impleaded as respondent therein.

e. The original applicants could not have feigned ignorance as to the identity of candidates possessing Syrang's licence who came to be appointed; also, the Tribunal did not take the pain of passing appropriate orders to have them impleaded. Thus, the Tribunal's order adverse to the interest of the appellant was effectively passed behind his back.

f. Despite there being a reference in the show cause notice dated 31st July, 2018 to the Tribunal's order, the appellant chose to reply to the show cause notice

instead of challenging the such order before the High Court either under Article 226 or 227 of the Constitution of India.

g. Once the appellant's appointment as "Boat Lascar" was cancelled on 27th October, 2018 by the Director, such order provided him a cause of action to move an original application before the Tribunal under Section 19 of the 1985 Act; however, instead of moving the Tribunal, the appellant moved the High Court in its writ jurisdiction, admittedly, when the Tribunal's order had been acted upon.

ANALYSIS AND REASONS

14. In our considered opinion, the High Court would have been justified in dismissing the writ petitions of the appellant at the threshold on the ground that the order of cancellation had intervened in the meanwhile providing a cause of action for him to move the Tribunal. In such original application, he could have even prayed for recall of the Tribunal's order on the ground of the same having been passed behind his back and upon such recall, to hear him on the merits of the original applications.

Such a course of action was available to the appellant in terms of the decisions of this Court in *K. Ajit Babu v. Union of India*¹⁵ and *Rama Rao v. M. G. Maheshwara Rao*¹⁶. However, the High Court examined the appellant's claim on merits leading to dismissal of his writ petitions and we too having been addressed on the merits of the appeals, it would be just and fair to answer the question that we have formulated above without taking too technical a view.

15. First, we propose to consider the argument touching non-joinder of the appellant in the proceedings before the Tribunal though, undoubtedly, he was a necessary party.

16. The effect of non-joinder of a necessary party in proceedings where an order is passed adverse to the interest of the non-party was considered by a co-ordinate bench of this Court in *Ranjan Kumar v. State of Bihar*¹⁷.

17. The decision in *Ranjan Kumar* (supra) was followed by the decision in *Kulwant Singh v. Dayaram*¹⁸, where promotion to the post of head constables in Chandigarh Police was the subject matter of consideration. This Court held that after appearing in a competitive examination and upon being selected, the appointees become an identified category and that if the rights of such appointees forming part of such identified category are to be affected by any determination, the situation commands that they should be impleaded in the proceedings as necessary parties. The non-joinder now permits them to take the plea that the impugned order does not bind them.

18. The decisions in Ranjan Kumar (supra) and Kulwant Singh (supra) are authorities for the proposition that selectees who are appointed or promoted must be arrayed as parties in the original proceedings where their selections are challenged. Kulwant Singh (supra) has taken a step further and ruled that mere awareness of pendency of litigation does not make the order passed by the Court/Tribunal interfering with the selection binding upon such appointees or promotees.

19. Though there can be little quarrel with the law laid down in Ranjan Kumar (supra) and Kulwant Singh (supra) and considering what has been argued by Mr. Ravindran as a proposition of law, noted above, to be correct, what stands out is that the appellant did not immediately challenge the Tribunal's order and rested on his oars to throw a challenge till his service came to be terminated.

In fact, he took a chance of favourable consideration of his case by responding to the show cause. Having taken a chance and not being successful, he cannot, thereafter, succeed before us on the ground of his nonjoinder as a necessary party. Having not initiated appropriate legal action that the law permitted him to take, he can get back his service only if the primary contention raised by Mr. Ravindran succeeds.

20. Next, turning to the crux of the issue, it is absolutely necessary to bear in mind that though the posts of Syrang and Lascar are included in Class III of the Subordinate Service, the requisite qualifications for appointment on such posts as ordained by the Special Rules are different. Moreover, it is specifically ordained by Rule 6 of the Special Rules as follows:

"6. Other Qualifications.- No person shall be eligible for appointment to the categories specified in column (1) of the Table below by the method specified in column (2) unless he possesses the qualifications prescribed in the corresponding entry in column (3) thereof."

21. As noted in the factual narrative, possession of a current Lascar's licence is an essential qualification for anyone aspiring for the post of Lascar. This is what is laid down in column (3), i.e., the qualifications required; and going by what is said therein read with Rule 6, there can be no gainsaying that apart from those having a current Lascar's licence, none else is eligible. The word "current" is also significant in the sense that the Rules insist on a subsisting licence, i.e., a certificate of competency, which is valid and operative during the time the last date for receiving applications intervenes.

22. The advertisement did not require anything else other than what the Special Rules require. The absence of express mention that those holding a Syrang's licence or a Driver's licence which, according to the Director, are superior to a

Lascar's licence, is insignificant, irrelevant and immaterial having regard to the clear terms of Rule 6 (supra).

23. Viewed from a different angle, on a conjoint reading of Rule 6 of the Special Rules and the advertisement, we find both mentioning a particular qualification, i.e., a current Lascar's licence, which each aspirant has to possess for being considered eligible to participate in the process of selection, thereby creating a distinct class and it is aspirants falling in such class alone who could have applied for being considered. Thus, any aspirant, even though possessing a Syrang's licence or a Driver's licence not being part of such distinct class, could not have been considered eligible. The classification has not been shown to be and is not unreasonable.

24. True it is, from the reply statement of the Director filed before the Tribunal and also from the 2010 Rules, it does appear that the holder of a Syrang's licence is mandatorily required to obtain and have a Lascar's licence for 2 years and, therefore, without having a Lascar's licence one cannot apply for a Syrang's licence. By the same analogy, it could be presumed that the holder of a Syrang's licence is having the requisite eligibility to be a Lascar. However, what turns the tide against the appellant is the requirement of the 'current' Lascar's licence, discussed above, which the appellant did not have on the last date for receiving applications.

25. We have further seen from the letter of the Director dated 9th October, 2010 addressed to KPSC that it was not voluntary; rather, it was at the behest of candidates who did not possess current Lascar's licence. It can well be presumed that the Director buckled under pressure. However, notwithstanding that, qualifications statutorily laid down could not have been diluted by what the Director felt should be considered by KPSC and, therefore, it is the statutorily prescribed qualifications that should prevail.

26. Mr. Nair is also right in referring to us the decision in M. Tripura Sundari Devi (supra). Although in such decision it was held that it amounts to a fraud on public to appoint candidates with qualifications inferior to the qualifications advertised, which is not precisely the case here because the appellant has higher qualifications than what was required, yet, the other principle of law flowing from such decision is squarely applicable. It has neither been shown that the Director's letter dated 9th October, 2012 was given wide publicity nor has it been shown by the appellant that KPSC had issued any corrigendum vide public notice whereby the zone of consideration was enlarged permitting holders of a Syrang's licence to participate in the process.

We, thus, hold drawing inspiration from the said decision that the aggrieved are all those who had similar or even better qualifications than the appellant but who

had not applied for the post because they were unaware of the fact that persons not having a current Lascar's licence would also be eligible to apply and compete in the process. Equality of opportunity in matters of public employment being a sine qua non for a fair and transparent selection process, such equality is conspicuously absent in the present case.

27. There is one other important aspect which also cannot be lightly overlooked. We shall assume for a moment that though the process was commenced for appointment on vacant posts of Lascar, there was no illegality in persons having Syrang's licence being permitted to participate. Of course, there could be aspirants holding Lascar's licence in sufficient numbers who might not have the higher qualifications necessary for even appearing for a viva voce to aim at possessing a certificate of competency as Syrang. Those aspirants, holding a Lascar's licence, might not also be so capable and/or competent for obtaining a Syrang's licence. After all, all individuals are not blessed with the same level of intelligence, human abilities and intellect.

The distribution of innate abilities and intellectual prowess being far from uniform, resulting in a diverse spectrum of human potential, it is axiomatic that aspirants having only a Lascar's licence can never be considered for direct recruitment on any post in Class III of the Subordinate Service other than a Lascar. It is quite but natural that in the matter of observation, perception and memorisation of details of principles of navigation, and skill in respect of seamanship, there would be significant differences in the faculties of different individuals.

If persons holding Syrang's licence - who are obviously better equipped than persons holding Lascar's licence - are allowed to apply and participate in the process for appointment on the post of Lascar, the probability of the persons holding Lascar's licence being outperformed by the persons holding Syrang's licence would be quite high. It could also be a distinct possibility where all the vacant posts of Lascar are filled up by persons having Syrang's licence but not having a current Lascar's licence as per the statutory requirement.

That would pose a real difficulty for persons not so fortunate and lacking in higher intelligence, abilities and intellect, for, they would cease to have a level playing field of competing with other similarly qualified candidates, and left to compete with candidates having higher qualifications despite the zone of consideration having been specially carved out for holders of current Lascar's licence. It is not that the holders of Syrang's licence are left in the lurch.

Those having Syrang's licence could well compete for appointment on the post of Syrang in the 50% direct recruitment quota along with others having current Syrang's licence. If, in case, all the vacant posts of Lascar are filled up by persons

having Syrang's licence and such holders of Syrang's licence do not participate in the process for direct recruitment to the post of Syrang, it is fairly likely that the persons holding Lascar's licence would never secure any public employment. That could not have been the intention of a welfare State.

28. Also, it cannot be gainsaid that not only the qualifications but the nature of duties required to be performed and the nature of service to be rendered by a Lascar and a Syrang are different. Merely because the post of Lascar is a feeder post for promotion to the post of Syrang does not per se make the holder of a Syrang's licence qualified for the job of a Lascar. Thus, nothing much turns on it.

29. Law is well-settled that an appointment made contrary to the statute/statutory rule would be void [see: Pramod Kumar v. U.P. Secondary Education Services Commission¹⁹].

30. Based on such consideration, we are ad idem with the Division Bench of the High Court that KPSC could not have included candidates with licences other than a Lascar's licence in the "Ranked List" and proceed to recommend those candidates for appointment.

31. On merits, therefore, no legally protected right of the appellant having been affected by the impugned action, he has no valid claim.

32. We have considered the decisions of this Court in Parvaiz Ahmed Parry (supra) and Chandra Shekhar Singh (supra).

33. In Parvaiz Ahmed Parry (supra) the appellant therein possessed degrees in BSc with Forestry as one of his major subjects as well as MSc (Forestry). The qualification prescribed in the Advertisement was "BSc (Forestry) or equivalent from any university recognised by ICAR". This Court held that the appellant's qualifications were equivalent to the minimum prescribed qualifications and should be considered for the concerned post.

34. Chandra Shekhar Singh (supra) was on the question of whether 'degree' as mentioned in the advertisement therein included a postgraduate degree, which the appellants therein possessed. This Court applying the golden rule of interpretation held that the word 'degree' would include within its scope and ambit all three degrees - bachelor's degree, master's degree and a doctorate degree - unless a specific expulsion has been made.

35. The said decisions are, thus, distinguishable on facts.

36. We hasten to add that whether or not the action of the employer to exclude an aspirant from the process of selection (on the ground that either he is over qualified for a particular post or has qualifications which, being over and above

what is ordained by statutory rules or rules framed under the proviso to Rule 309 of the Constitution, does not match the qualification specifically required) is justified has to be decided considering the rules governing the selection, the qualifications prescribed, the nature of duty to be performed, the nature of service to be rendered and a host of other factors.

It has to be remembered that, at times, the employer's need to have the right people at the right place, and not always the higher qualified, has to be conceded. We know of decisions holding that over-qualification cannot be a disqualification since such an approach amounts to discouraging the acquisition of qualifications on the one hand and on the other, such an approach could be seen as arbitrary, discriminatory and not in national interest. However, this principle cannot be put in a straitjacket imposing rigid or inflexible rules or norms.

Lack of public employment opportunities in sufficient numbers may force even a Master degree holder to apply for the job of a peon but, if he is appointed upon his application being favourably considered, what happens to the aspirants who have not had the means of pursuing study beyond the 12th standard? Do they remain unemployed for ever, if all or majority of the posts of peon are filled up by such degree holders? What happens if the Master degree holder, in pursuit of greener pastures, leaves the post of Peon for a better and secured higher job commensurate with his qualifications after a couple of years?

Does it not, in such a case, burden the public exchequer by requiring the employer to initiate a fresh selection process? Is not the State, as a model employer, obliged to ensure that the posts of peon are filled up only by those having the basic qualification, and not by over qualified candidates, for subserving the common good? Does not the State have the obligation to strive to ensure that all citizens have adequate means of livelihood?

These are questions which no Court can afford to ignore. We end by saying that each case that comes before the Court has to be decided on its own peculiar facts and the problem that it presents for resolution and that there can be no universally accepted rule that every time, a higher qualified candidate is to be preferred to a candidate who matches the essential qualification required for the post.

37. It is now time to consider Mr. Ravindran's final submission that this is an eminent case for exercising powers under Article 142 of the Constitution.

38. This Court in *Ashok Kumar Sonkar v. Union of India*²⁰ held that if an appointment is illegal, it is non-est in the eye of law and rendering the appointment a nullity and principles of equity in a case of such nature would have no role to play; also that, sympathy should not be misplaced.

39. Exercise of power under Article 142 of the Constitution would have been warranted in the present case if palpable injustice were demonstrated. Unfortunately for the appellant, despite the assiduous endeavour of Mr. Ravindran, we have consciously decided to confine our role to being the dispute-settlers.

40. We are of the considered opinion that the appellant having gained entry through a process which was not legal and valid, this is not a fit and proper case where this Court ought, in exercise of its power under Article 142 of the Constitution, to ignore the illegality and invalidity to come to his rescue.

CONCLUSION

41. The appeals, accordingly, fail and are dismissed. No costs.

42. Pending application, if any, stands disposed of.

.....**J. (Dipankar Datta)**

.....**J. (Manmohan)**

New Delhi;

April 02, 2025.

1 O.P.(KAT) No. 153 of 2019 and O.P.(KAT) No. 154 of 2019

2 KPSC

3 the department

4 the Special Rules

5 Subordinate Service

6 the Director

7 O.A. No. 857 of 2017 and O.A. (EKM) No. 1566 of 2017

8 Tribunal

9 Tribunal's order

10 (2015) 17 SCC 709

11 2025 SCC OnLine SC 595

12 1998 4 SCC 409

13 (1990) 3 SCC 655

14 2003 3 SCC 541

15 (1997) 6 SCC 473

16 (2007) 14 SCC 54

17 (2014) 16 SCC 187

18 2015 3 SCC 177

19 (2008) 7 SCC 153

20 (2007) 4 SCC 54

IN THE SUPREME COURT OF INDIA

State of West Bengal

Vs.

Baishakhi Bhattacharyya (Chatterjee) and Ors.,

**[Civil Appeal No. _____ of 2025
arising out of SLP (Civil) No. 9586 of 2024]**

**[Civil Appeals arising out of
SLP (Civil) Nos. 9614, 11883, 9637, 10617, 12148, 11752, 10552, 10603-10607,
11765, 11867, 11759, 11761, 12144, 11880, 11746, 10485, 10599, 10545, 11769,
12766, 11721, 11878, 10669-10670, 11857, 11756, 11846-11848, 15233, 15232,
16109, 12134, 13358, 14070-14072, 16110, 18501, 17041, 17022, 16911-16915,
15234, 11313, 15839, 15842, 14116-14117, 15231, 15843, 15844, 13337-13339,
14331, 15845, 15101, 13989, 16088-16091, 15846, 15391-15392, 15835, 15833,
15838, 15836, 16160, 16111, 15298, 15077, 16113, 16114, 16118, 15987, 16115,
18621, 16249, 16116, 16117, 16643-16645, 16887, 15294, 16093, 19768, 12770,
18366, 16933, 20455, 22110, 20462-20464, 19179, 22112, 22158-22159, 22111,
26465, 22109, 25078 of 2024]**

**[Civil Appeals arising out of
SLP (Civil) Nos. Diary Nos. 20709, 21000, 21281, 23851, 25090, 25093 25096,
27432, 27690, 27815, 28146, 28314, 28508, 30235, 30857, 32112, 32157, 33587,
25086, 27647, 27934, 28790, 29406, 30458, 30460, 30645, 31169, 33463, 27969,
41922, 20467, 30364, 30457, 30498, 34059, 20930, 31175 OF 2024, and Diary
No. 2104 of 2025]**

HEADNOTE – Results of 25000 teaching and non-teaching staff struck down of which appointments were made by the West Bengal School Selection Commission (SSC) in 2016.

When an in-depth factual inquiry reveals systemic irregularities, such as malaise or fraud, that undermine the integrity of the entire selection process, the result should be cancelled in its entirety. If deep manipulation in process is proven, purity of the process has to be given precedence over inconvenience to untainted candidates.

Four main principles to be followed to check whether the entire selection procedure should be struck down when riddled with irregularities.

(1) Entire exam result be cancelled if in-depth inquiry signals fraud in process

(1) When an in-depth factual inquiry reveals systemic irregularities, such as malaise or fraud, that undermine the integrity of the entire selection process, the result should be cancelled in its entirety. However, if and when possible, segregation of tainted and untainted candidates should be done in consonance with fairness and equity.

In arriving at the said principle, it mainly relied upon the decision of the Top Court in **Sachin Kumar and Others Vs. Delhi Subordinate Service Selection Board (DSSSB), (2021) 4 SCC 631**. In Sachin Kumar court was considering the issue of when the examination process is vitiated by irregularities requires an in-depth fact-finding inquiry.

In this case, it was held that it must be seen whether the irregularities were systemic enough to undermine the sanctity of the process. In some cases, the irregularities may border on or even constitute fraud, which severely damages the credibility and legitimacy of the process. In such cases, the only option is to cancel the result entirely.

Care must be taken to ensure that no innocent suffers unfairly when cancelling the entire result. Thus it should be seen if there is a possibility to separate the tainted candidates from the untainted ones. If the segregation is possible, the selection process can proceed with the untainted candidates as this will be in line with the equality principle under Article 16(1) and 14.

Also referred the decision of Bihar School Examination Board v. Subhas Chandra Sinha and Others where it was held that when the conduct of all examinees, or at least the vast majority, at a particular examination centre reveals the use of unfair means, it may not be necessary for the board to give individual opportunities of hearing to the candidates if the entire examination is being cancelled. This is not a case where anyone is charged with unfair means and would need to defend themselves. An examination vitiated by widespread unfair means falls into a separate category, so giving notice in individual cases is not required.

Referred the decision of **Inderpreet Singh Kahlon and Ors. Vs. State of Punjab and Others, (2006) 11 SCC 356**. In this case, **three principles** were elucidated which must be adhered to when cancelling appointments. "**First**, *there must be satisfaction regarding the sufficiency of the material collected so as to enable the State to conclude that the selection process was tainted.*

Second, *to determine whether the illegalities committed go to the root of the matter and vitiate the entire selection process, such satisfaction should be based on a reasoned and thorough investigation conducted in a fair and transparent manner.*

Third, there must be sufficient material to support the conclusion that the majority of the appointments were part of the fraudulent purpose or that the system itself was corrupt. This three-pronged test, as outlined by Sinha J., is appropriate and should be adhered to."

(2) The evidence used to cancel en masse selection may not necessarily prove malpractice beyond reasonable doubt

"The decision to cancel the selection en masse must be based on the satisfaction derived from sufficient material collected through a fair and thorough investigation. It is not necessary for the material collected to conclusively prove malpractice beyond a reasonable doubt. The standard of evidence should be reasonable certainty of systemic malaise. The probability test is applicable."

(3) If deep manipulation in process is proven, purity of the process has to be given precedence over inconvenience to untainted candidates

"Despite the inconvenience caused to untainted candidates, when broad and deep manipulation in the selection process is proven, due weightage has to be given to maintaining the purity of the selection process."

(4) If it is factually established that entire process is vitiated, individual hearings not necessary

"Individual notice and hearing may not be necessary in all cases for practical reasons when the facts establish that the entire selection process is vitiated with illegalities at a large scale."

To arrive at the above three principles, the bench placed reliance on the decision of **State of Tamil Nadu and Another v. A. Kalaimani (2021) 16 SCC 217**. This case involved allegations of large-scale malpractices involving tampering with OMR sheets. After re-evaluation and further scrutiny, the Teachers Recruitment Board found that 196 candidates had been the beneficiaries of fraudulent alteration of marks.

JUDGMENT

Sanjiv Khanna, CJI.

1. Leave granted.

2. The impugned judgment dated 22.04.2024 en bloc sets aside the 2016 selection process conducted by the West Bengal Central School Service Commission¹ for the recruitment of non-teaching staff in Groups C and D, and Assistant Teachers for Classes IX and X, as well as Classes XI and XII.

3. The appellants before us are the selectees, some of whom have been working for over five years. They fall into two categories:

(i) selectees with purported evidence and material indicating wrongdoing and

(ii) other selectees who claim that they were validly selected and have committed no wrongdoing. The State of West Bengal and the WBSSC have also challenged the impugned judgment.

4. The respondents before us are the writ petitioners who have succeeded before the High Court at Calcutta. The Central Bureau of Investigation² which had carried out the investigation pursuant to the directions given by the High Court at Calcutta is also arraigned as a respondent.³

5. The implicated selectees have challenged the judgment on the following main grounds: First, that the evidence against them is weak, unproven, and inadmissible. Second, they were punished without an inquiry, violating the principles of natural justice. Third, while they were chargesheeted, they have not been convicted and should be treated as innocent. The other selectees, the State of West Bengal, and WBSSC argue that the High Court erred by annulling the entire selection process based on the CBI report and should have only cancelled the appointments of those found guilty, leaving the other appointments intact.

FACTUAL MATRIX

6. To avoid prolixity, we will not revisit the detailed facts or the origin of the litigation, as they are clearly outlined in the impugned judgment. Instead, we will focus on the key facts necessary to decide the appeals:

- The West Bengal School Service Commission Act, 1997 governs the establishment of the School Service Commission, which is responsible for selecting individuals for teaching and non-teaching positions in Statefunded schools in West Bengal.
- The West Bengal Board of Secondary Education Act, 1963 governs the establishment and functioning of the West Bengal Board of Secondary Education,⁴ which appoints teachers and non-teaching staff in the institutions as per the West Bengal School Service Commission Act, 1997.
- The West Bengal School Service Commission (Selection for Appointment to the posts of Teachers for Classes IX and X in Secondary and Higher Secondary Schools) Rules, 2016⁵ govern the selection process for Assistant Teachers for Classes IX and X.
- The West Bengal School Service Commission (Selection for Appointment to the posts of Teachers for Classes XI and XII in Secondary and Higher Secondary Schools) Rules, 2016⁶ govern the selection process for Assistant Teachers for Classes XI and XII.

- The West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009⁷ govern the selection process for Group C and Group D Non-Teaching posts.

- In 2016, WBSSC, the statutory selection body, had issued a notification for regional and state level selection tests and commenced the selection process for the following posts:

(i) 12,905 Assistant Teachers for Classes IX & X;

(ii) 5,712 Assistant Teachers for Classes XI & XII;

(iii) 2,067 Non-teaching Staff under Group C; and

(iv) 3,956 Non-teaching Staff under Group D.

- M/s. Nysa Communications Pvt. Ltd.⁸ was given the task of scanning and assessing the Optical Mark Recognition⁹ sheets.

- The candidates who had appeared in the exam were allowed to log in and check their respective status/result on the evaluation of the OMR sheet on or about the following dates:

(a)	Assistant Teachers for Classes IX & X	02.05.2017
(b)	Assistant Teachers for Classes XI & XII	08.05.2017
(c)	Non-teaching Staff Group 'C'	24.07.2017
(d)	Non-teaching Staff Group 'D'	23.06.2017

- A common list with the marks was not uploaded. However, candidates were allowed to log in to the WBSSC website to check if they had been called for a personality test or interview.

- WBSSC then conducted the interviews and personality tests, maintaining a ratio of 1:1.4 for teachers and 1:2 for non-teaching staff, based on the marks obtained by the candidates.

- Personality tests/interviews for the candidates were conducted on the following dates:

(a)	Assistant Teachers for Classes IX & X	06.11.2017 onwards
(b)	Assistant Teachers for Classes XI & XII	14.09.2017 to 24.09.2017
(c)	Non-teaching Staff Group 'C'	24.10.2017 to 02.11.2017
(d)	Non-teaching Staff Group 'D'	16.08.2017 to 31.08.2017

- The final status rank list was published on the website of WBSSC as per the details given below:

(a)	Assistant Teachers for Classes IX & X	28.08.2018
(b)	Assistant Teachers for Classes XI & XII	27.11.2017
(c)	Non-teaching Staff Group 'C'	20.12.2017
(d)	Non-teaching Staff Group 'D'	06.11.2017

The list did not display the marks obtained, but it included both the candidates who were in the panel and those on the waiting list.

- Even before the results were declared, WPA No. 30649 of 2016 was filed by Baishakhi Bhattacharyya against the State of West Bengal and others before the High Court at Calcutta in December 2016. The allegation made by Baishakhi Bhattacharyya was the failure to grant age relaxation. This case became the lead case before the High Court at Calcutta.

- Other writ petitions were filed subsequently in 2021, seeking individual appointments and alleging illegalities in the 2016 recruitment process. Illustratively, some of the issues raised were:

I. Appointment letters were received but candidates were not allowed to join.¹⁰

II. Non-publication of the fourth phase of the counselling list contrary to the 2009 Rules.¹¹

III. Rank jumping i.e. candidates holding the rank below the petitioner(s) had been given appointments.¹²

IV. Candidates in the waiting list for Group D posts in the panel published on 20.06.2019 were ignored, as a new notification dated 14.06.2021 had been published initiating a new recruitment process.¹³

V. Pick and choose method in selecting candidates and flouting of recruitment rules.¹⁴

VI. Candidate(s) neither in the merit list nor in the waiting list was/ were given appointment and also joined the school(s).¹⁵

- Counter affidavits, affidavits and reports were filed by the WBSSC and the Board.

- On some occasions, WBSSC filed affidavits accepting the illegalities and mistakes, be it on account of rank-jumping or the person being issued appointment letter(s) was not one of the selected/empanelled candidates.

- When questioned, WBSSC stated that it could not verify the number of illegal recommendations or provide details of such candidates. We will later refer to their affidavit dated 27.09.2022 filed in WPA No. 17273 of 2021 for further explanation.
- A four-member committee, chaired by Justice Ranjit Kumar Bag, a retired Judge of the High Court at Calcutta, was formed. The committee included representatives from WBSSC, the Board, and an Advocate. This committee was tasked with scrutinizing and verifying the appointments of non-teaching staff in Groups 'C' and 'D'. We will discuss their findings later.
- WBSSC was unable to produce the original OMR sheets. Initially, they submitted mirror/scanned copies, but later claimed they had not retained these copies. They stated that these copies had been provided by M/s. Nysa.
- WBSSC, citing Rule 21 of the Classes IX-X and Classes XI-XII Rules, justified its executive decision dated 22.07.2019 to destroy the physical OMR sheets one year after the results were declared. We will examine this argument subsequently.
- Although the applicable rules clearly do not permit the destruction of OMR sheets for non-teaching staff (Groups C and D), WBSSC violated these rules by directing the destruction of the physical OMR sheets through its executive decision dated 22.07.2019.
- Upon realizing illegalities in appointment, WBSSC terminated the services of some candidates under Rule 17 of the Classes IX-X and XI-XII Rules, and Rule 18 of the 2009 Rules. In accordance with the interim orders passed by the High Court at Calcutta, WBSSC also withdrew the recommendations for certain candidates.
- Vide order dated 15.02.2022¹⁶, the Single Judge directed the CBI to investigate the alleged illegalities in the recruitment process. Pursuant to further orders dated 05.04.2022,¹⁷ 07.04.2022,¹⁸ 18.05.2022,¹⁹ and 20.05.2022²⁰ of the Single Judge, four different FIRs²¹ were registered by CBI.
- Special Leave Petitions were filed before this Court and heard.²² Vide order dated 09.11.2023, while dealing with a batch of cases in Achinta Kumar Mondal and Others etc. v. Laxmi Tunga and Others etc.,²³ this Court directed that:

"We accordingly direct the CBI to complete the investigation within two months and submit its report before the High Court. The CBI shall also be at liberty to take such steps as may be lawful in pursuance of their investigation.

(ii) We also direct that protection to the appointments which is being accorded today in this order shall continue for a period of six months to enable the Division Bench to finally adjudicate on the subject-disputes. The Division Bench shall examine all the points that may be raised before it including the question of maintainability of the proceedings.

(iii) The proceedings in which petitioners/appellants have approached this Court directly without being impleaded as parties to the proceedings before the High Court shall also have right of audience before the High Court but for that purpose, appropriate application(s) shall have to be filed before the High Court.

(iv) As we foresee the possibility of a large number of litigants approaching the Division Bench of the High Court, we leave it to the Division Bench to formulate its own procedure for regulating the manner in which hearing shall be conducted by it. The Division Bench may explore the possibility of hearing the parties in representative capacity, so that there is no multiple hearing on the same point of law or fact."

- Pursuant to the direction for investigation, the CBI had submitted four interim and final Reports²⁴ before the High Court.

- Vide impugned judgment dated 22.04.2024, the Division Bench set aside the entire selection process. The Division Bench has given the following directions:-

"363. In view of the discussions above, we issue the following directions:

(i) Writ petitions appearing in the monthly list of March, 2024 of this Bench, which are not filed and numbered in the years 2021 and 2022 are released from the list due to lack of jurisdiction/determination.

(ii) All appointments granted in the selection processes involved being violative of Articles 14 and 16 of the Constitution of India, are declared null and void and cancelled.

(iii) OMR sheets available in the three hard disks, if not already done or such portion not done, must be uploaded in the website of SSC forthwith and made available to the public for viewing.

(iv) Persons who had been appointed outside the panel, after expiry of the panel as also those who submitted blank OMR sheets but obtained appointments, must return all remunerations and benefits received by them to the State exchequer along with interest calculated at 12 percent per annum, from the date of receipt thereof till deposit, within a period of four weeks from date.

(v) In default, the District Magistrates under whose jurisdictions, such candidates reside, will take expeditious steps to realize such amount from such persons, as arrears of land revenue and shall ensure that recovery is made within a period of six weeks of the date of initiation of proceeding for recovery.

(vi) Respective District Inspectors of School will report to the respective District Magistrates as to whether money directed to be paid by the persons concerned have been paid to the State exchequer or not.

(vii) CBI will undertake further investigation in respect of all the four cases. CBI will interrogate all persons who had received appointments beyond the panel, after expiry of the panel and after submitting blank OMR sheets. If necessary, CBI shall undertake custodial interrogation in respect of each of them.

(viii) CBI will undertake further investigations with regard to the persons involved, in the State Government approving creation of supernumerary post to accommodate illegal appointments. If necessary, CBI will undertake custodial interrogation of such person involved.

(ix) CBI shall submit its reports with regard to further investigations as directed herein, preferably within three months from date, with the jurisdictional Court.

(x) Leave granted to SIT to seek appropriate directions so that the investigations and trials come to their logical conclusions.

(xi) SSC shall undertake a fresh selection process in respect the declared vacancies involved in these selection processes preferably within a fortnight from the date of declaration of results of the ensuing elections.

(xii) Appointments for preparation, evaluation and scanning of OMR sheets shall be made by SSC by open tender and after declaring the eligibility criteria and other terms and conditions of the contract.

(xiii) SSC shall follow the Rules governing the selection processes in letter and spirit. (xiv) SSC shall make available all policy decisions with regard to compliance of the Recruitment Rules governing any of the categories of the selection process in its website."

LEGAL POSITION

7. This Court in several cases has examined the question when the entire selection process should be struck down in case of irregularities. It will be apposite to refer to some of the decisions as the ratio and reasoning, in our opinion, is clear and does not suffer from contradictions. In *Sachin Kumar and Others v. Delhi Subordinate Service Selection Board (DSSSB) and Others*,²⁵ this

Court observed that determining when the examination process is vitiated by irregularities requires an in-depth fact-finding inquiry. The answer lies in examining whether the irregularities were systemic enough to undermine the sanctity of the process.

In some cases, the irregularities may border on or even constitute fraud, which severely damages the credibility and legitimacy of the process. In such cases, the only option is to cancel the result entirely. These are situations where it is difficult to separate the tainted from the untainted participants, and the irregularities are widespread, indicating a malaise or fraud that has corrupted the process. On the other hand, there are cases where only some participants have committed irregularities.

In such cases, it may be possible to segregate the wrongdoers from those who adhered to the rules. The innocent should not suffer for the actions of the wrongdoers. By segregating the guilty, the selection process for the untainted candidates can proceed to its logical conclusion. This aligns with the principle of equality of opportunity under Article 16(1) of the Constitution of India, as well as the fundamental requirement of Article 14 of the Constitution, which mandates a fair, equitable, and reasonable process.

Care must be taken to ensure that the innocent are not unfairly penalized alongside the wrongdoers by cancelling the entire process. To treat the innocent and the wrongdoers equally would violate Article 14 of the Constitution, as it would involve treating unequals equally. The innocent should not be punished for faults they did not commit. Finally, while the decision of the recruiting body is subject to judicial control, the body must retain a measure of discretion.

8. Sachin Kumar (*supra*) refers to an earlier decision of three Judges of this Court in *Bihar School Examination Board v. Subhas Chandra Sinha and Others*²⁶ where it was held that when the conduct of all examinees, or at least the vast majority, at a particular examination centre reveals the use of unfair means, it may not be necessary for the board to give individual opportunities of hearing to the candidates if the entire examination is being cancelled. This is not a case where anyone is charged with unfair means and would need to defend themselves. An examination vitiated by widespread unfair means falls into a separate category, so giving notice in individual cases is not required.

9. In *Board of High School and Intermediate Education, U.P., Allahabad v. Ghanshyam Das Gupta and Others*,²⁷ a Constitution Bench of this Court held that when there is a discovery of widespread unfair practices, such as the leakage of question papers or destruction of answer books, it may not be necessary to give each examinee an opportunity to be heard.

While it may not be appropriate to completely whittle down the requirement of natural justice and fair play, a straitjacket formula cannot be applied when the examination was not properly conducted or when the majority of the examinees did not act as they should have. Therefore, insisting that the Board should hold a detailed inquiry into each individual case was considered incorrect. It was also observed that such an approach would delay the functioning of an autonomous body like the Board of High School and Intermediate Education.

10. In line with the above ratio, this Court in *Anamica Mishra and Others v. U.P. Public Service Commission, Allahabad and Others*,²⁸ has held that the cancellation of the entire recruitment process was not justified as there was no systemic flaw in the entire recruitment process, and the issue was only with regard to calling the candidates for interview.

However, in *Madhyamic Shiksha Mandal, M.P. v. Abhilash Shiksha Prasar Samiti and Others*,²⁹ the entire examination was cancelled in view of the report of mass copying and leakage of the question paper. In *Madhyamic Shiksha Mandal, M.P. (supra)*, the teachers did not object to the students entering the examination hall with books, indicating their complicity. It was held that the fact that some innocent students may have suffered in the given facts was inconsequential.

11. Similarly, in *Union of India and Others v. Rajesh P.U., Puthuvalnikathu and Another*,³⁰ this Court examined a case where a Special Committee scrutinized the answer sheets of 134 successful and 184 unsuccessful candidates, identifying only 31 as involved in unfair practices. Based on this, the Court struck down the decision of the competent authority to cancel the entire recruitment process, deeming it extreme, unreasonable, and unnecessary given the circumstances. The Court applied the test of whether there were widespread, pervasive issues that had undermined the entire process and whether it was impossible to weed out those benefiting from the irregularities or illegalities.

12. In yet another decision in *Inderpreet Singh Kahlon and Others v. State of Punjab and Others*,³¹ this Court elucidated three principles which must be adhered to when cancelling appointments. First, there must be satisfaction regarding the sufficiency of the material collected so as to enable the State to conclude that the selection process was tainted. Second, to determine whether the illegalities committed go to the root of the matter and vitiate the entire selection process, such satisfaction should be based on a reasoned and thorough investigation conducted in a fair and transparent manner. Third, there must be sufficient material to support the conclusion that the majority of the appointments were part of the fraudulent purpose or that the system itself was corrupt. This three-pronged test, as outlined by Sinha J., is appropriate and should be adhered to.

13. The precursor to Inderpreet Singh Kahlon (supra) involved raids that led to the recovery of large sums of cash from the house of the Chairman of the Punjab Public Service Commission. The allegations suggested that the Chairman - who served from 1996 to 2002 - had made several appointments between 1998 and 2001 for extraneous considerations, including monetary ones. The affected appellants before this Court, whose services were terminated, comprised four categories of officers selected through four recruitment examinations held between 1997 and 2001. Two FIRs came to be registered against the Chairman and other officers of the Public Service Commission. However, among the selectees, an FIR was filed only against one.

In this factual background, Sinha J. drew a distinction between a proven case of mass cheating in a Board Exam and an unproven charge of corruption in the context of appointment of a civil servant. The en masse termination order setting aside several selections spread over 3-4 years was reversed. This was an unprecedented case of mass termination, with a walloping impact and consequences. Applying the threefold factual and legal test, en masse termination was set aside. In this context, it was observed that termination orders should only be issued in cases where it is found to be impossible or highly improbable to separate the tainted cases from the non-tainted ones.

14. In our considered view, the opinion expressed by Dalveer Bhandari J. in Inderpreet Singh Kahlon (supra) regarding the strict compliance with the principles of natural justice is not in line with the ratio of the earlier three Judge Bench decision in Bihar School Examination Board (supra). We would like to observe that the en masse termination in Inderpreet Singh Kahlon (supra) was based on the charge of corruption against the former Chairman, leading to the cancellation of the entire selection process and appointments, even though the charges against him had not yet been proven in a court of law.

15. Similarly, in another two Judge Bench decision in Joginder Pal and Others v. State of Punjab and Others,³² this Court observed that every effort should be made to separate tainted from untainted candidates, and if it is found that segregating the tainted from untainted is possible, cancellation of the entire selection process would be incompatible with law.

16. In Chairman, All India Railways Recruitment Board and Another v. K. Shyam Kumar and Others,³³ where the decision of the Railway Recruitment Board to cancel the examination and conduct retest on the ground of malpractices involving mass copying, leakage of question paper and impersonation was struck down by the High Court, this Court - reversing the judgment of the High Court - upheld the order of the Board to cancel the examination and conduct retest.

Considering the material on record, the widespread irregularities and malpractice in the first written test, and the ultimate object of fair selection, this Court upheld the finding of the Board that the test was vitiated due to mass copying, impersonation, and question paper leakage, rather than misconduct by just a few candidates. In the said facts and circumstance, the decision of the Board to cancel the selection and reconduct the examination was held to be reasonable and well-balanced.

17. In *State of Tamil Nadu and Another v. A. Kalaimani and Others*,³⁴ there were allegations of large-scale malpractices involving tampering with OMR sheets. After re-evaluation and further scrutiny, the Teachers Recruitment Board found that 196 candidates had been the beneficiaries of fraudulent alteration of marks. This Court referred to the observations in *Gohil Vishvaraj Hanubhai and Others v. State of Gujarat and Others*³⁵ to hold that the authority of the State to maintain the purity of the examination process is unquestionable. *Gohil Vishvaraj Hanubhai (supra)* takes note of the settled dictum that the cancellation of the examination is necessary and required in cases where large-scale malpractices in the course of the conduct of any examination process are alleged.

In this context, this Court in *A. Kalaimani (supra)* held that despite the inconvenience caused to the untainted candidates, a serious doubt regarding the magnitude of manipulation in the examination has to be given due weightage. It was held that the finding of the Board that there were chances of more people being involved in the manipulation of marks was a bona fide decision being taken by the Board to instil confidence in the public regarding the integrity of the selection process.

18. In *Vanshika Yadav v. Union of India and Others*,³⁶ this Court observed that a holistic view must be adopted by assessing the extent of unfair means used and whether it is possible to separate the tainted candidates from the untainted ones. The court must ensure that allegations of malpractice are substantiated and that the material on record, including investigative reports, supports this conclusion. There must be at least some evidence for the court to reach such a conclusion. However, the standard of evidence need not be unduly strict. Specifically, the material on record need not point to a single, definitive conclusion that malpractice occurred at a systemic level. Nevertheless, there must be a real possibility of systemic malaise, as reflected in the material before the court.

19. The following principles emerge from the aforesaid discussion:

- When an in-depth factual inquiry reveals systemic irregularities, such as malaise or fraud, that undermine the integrity of the entire selection process, the result should be cancelled in its entirety. However, if and

when possible, segregation of tainted and untainted candidates should be done in consonance with fairness and equity.

- The decision to cancel the selection en masse must be based on the satisfaction derived from sufficient material collected through a fair and thorough investigation. It is not necessary for the material collected to conclusively prove malpractice beyond a reasonable doubt. The standard of evidence should be reasonable certainty of systemic malaise. The probability test is applicable.
- Despite the inconvenience caused to untainted candidates, when broad and deep manipulation in the selection process is proven, due weightage has to be given to maintaining the purity of the selection process.
- Individual notice and hearing may not be necessary in all cases for practical reasons when the facts establish that the entire selection process is vitiated with illegalities at a large scale.

ILLEGALITIES IN THE SELECTION PROCESS

20. In our opinion, this is a case wherein the entire selection process has been vitiated and tainted beyond resolution. Manipulations and frauds on a large scale, coupled with the attempted cover-up, have dented the selection process beyond repair and partial redemption. The credibility and legitimacy of the selection are denuded. The High Court has referred to the illegalities in the impugned judgment as under:

"335. The evidence placed before us have established the following illegalities in the selection process:-

- (i) SSC had appointed an agency namely M/s. NYSA for the purpose of scanning and evaluating the OMR sheets by a closed-door tender process in violation of Articles 14 and 16 of the Constitution of India
- (ii) such agency had engaged another agency namely, Data Scantech to scan the OMR sheets
- (iii) although scanning was done at the office premises of SSC, it is claimed by SSC that, SSC had never engaged Data Scantech to scan the OMR sheets or authorised M/s. NYSA to engage Data Scantech or any other agency
- (iv) SSC had destroyed the original OMR sheet ostensibly with scanned mirror image thereof being preserved in its server
- (v) CBI did not find any scanned mirror image of OMR sheets in the server of SSC

(vi) OMR sheets had been destroyed without the scanned mirror images being preserved in the server of SSC

(vii) SSC had provided scanned OMR sheets to RTI applicants in the year 2018 till 2023 claiming that such OMR sheets were from its database although, CBI did not find any OMR sheets in the server of SSC

(viii) appointments higher than the declared vacancies had been given in respect of all 4 categories

(ix) appointments had been given to persons who were not even in the panel

(x) appointments had been given to persons who submitted blank OMR sheets

(xi) appointments had been given persons after expiry of the panel

(xii) persons placed lower in rank had been given appointment in preference to persons placed higher in rank in the merit list

(xiii) merit list containing the marks obtained by the respective candidates had never been published

(xiv) counselling had been held subsequent to the expiry of the panel

(xv) total beneficiaries of the illegalities are yet to be identified and rendered improbable given the stand of SSC, Board and State

(xvi) SSC had applied for permission to create supernumerary posts to accommodate the illegal appointees

(xvii) Recruitment Rules governing the four categories had never been adhered to either in letter or spirit"

The aforesaid established irregularities, cumulatively and incrementally, demarcate the contours of the court to navigate the reliefs sought. To ensure clarity and objectivity, we shall independently examine the facts and form our conclusion.

21. First, we begin by referring to the findings of the Justice (Retd.) Bag Committee, which undertook a thorough scrutiny and verification of the appointments of non-teaching staff in Groups C and D. The summary of the findings are as under:

"Summary of findings of the Enquiry Committee. On consideration of our findings, described in detail under heading 6 and fixing of responsibility of the

individuals described under heading 7, we would like to summarize our findings as follows:

(i) The Central Commission changed the rank of the candidates in the panel before uploading the panel in the website of the Central Commission on June 20, 2019 in spite of direction of the High Court at Calcutta to upload to entire existing panel already published on November 6, 2017.

(ii) The constitution of the Committee approved by the Hon'ble MIC of School Education Department (Dr. Partha Chatterjee) notified in the form of an Order of the Joint Secretary to the Government of West Bengal on November 1, 2019 to supervise, monitor and guide the Central Commission in connection with pending recruitment process cannot be construed as direction of the State Government in terms of Section 19 of the School Service Commission Act, 1997 and as such the said Order cannot have any validity in the eye of law.

(iii) Dr. Sharmila Mitra, Chairperson of Southern Regional Commission, Dr. Mahuya Biswas, Former Chairperson of the Eastern Regional Commission, Mr. Subhajit Chattopadhyay, 55 Former Chairman of the South-Eastern Regional Commission and Sk. Sirajuddin, Chairman of Northern Regional Commission and Chairman of Western Regional Commission abdicated their duties and responsibilities in counseling the candidates and recommending the names of the candidates of Group "D" posts in terms of the provisions of Rule 16(v) and Rule 18(1) and (2) of the School Service Commission Rules, 2009 during the period of validity of the panel.

(iv) Dr. Subires Bhattacharya, Former Chairman of the Central Commission usurped the power and authority of the Regional Commissions by counseling the candidates and making recommendation of names of the candidates for Group "D" posts by manipulating infrastructure and evolving illegal procedure in violation of the provisions of Rule 16(v) and 18(1) and (2) of the School Service Commission Rules, 2009.

(v) Dr. Subires Bhattacharya, Dr. Sharmila Mitra, Dr. Mahuya Biswas, Mr. Subhajit Chattopadhyay and Sk. Sirajuddin are prima facie liable for disciplinary action on the charge of gross dereliction of duty for violating the provisions of Rule 16(v) and Rule 18(1) and (2) of the School Service Commission Rules, 2009 and as such disciplinary action can be taken against them by the Disciplinary Authority or the Pension Sanctioning Authority in case of retirement of any of the above officials in terms of the provisions of the Rules by which they are governed.

(vi) Samarjit Acharya, Programme Officer of the Central Commission and Dr. Santi Prasad Sinha, Former Advisor of the Central Commission are prima facie

liable for committing offences punishable under Section 465/417/468/34 of Indian Penal Code.

(vii) Prof. Saumitra Sarkar, Former Chairman of the Central Commission, Mr. Ashok Kumar Saha, Former Assistant Secretary, Former Secretary and Former Chairman of the Central Commission, Dr. Santi Prasad Sinha, Former Advisor of the Central Commission and Dr. Kalyanmoy Ganguly, President of the Board are prima facie liable for committing offences punishable under Section 120B of Indian Penal Code.

(viii) FIR can be registered against Samarjit Acharya and Dr. Santi Prasad Sinha on the allegation of committing offences punishable under Section 465/417/468/34 of Indian Penal Code and against Prof. Saumitra Sarkar, Mr. Ashok Kumar Saha, Dr. Santi Prasad Sinha and Dr. Kalyanmoy Ganguly on the allegation of committing offences punishable under Section 120B of Indian Penal Code.

6. Summary of findings of the Enquiry Committee. On consideration of our findings, described in detail under heading 5 and fixing of responsibility of the individuals described under heading 6, we would like to summarise our findings as follows:

(i) The Central Commission did not maintain transparency at the time of publication of the panel of Group "C" posts on December 20, 2017, as the candidates could not access the panel to know his/her rank vis-a-vis the rank of other candidates in the panel and the copy of the panel was not circulated among the Regional Commissions and the offices of the District Magistrates of the concerned district.

(ii) The Central Commission changed the rank of the candidates in the existing panel before uploading the entire panel in the website of the Central Commission on June 20, 2019 in spite of direction of the High Court at Calcutta to upload the entire existing panel already published on November 6, 2017.

(iii) The constitution of the Committee approved by the Hon'ble MIC of School Education Department (Dr. Partha Chatterjee) notified in the form of an Order of the Joint Secretary to the Government of West Bengal on November 1, 2019 to supervise, monitor and guide the Central Commission in connection with pending recruitment process cannot be construed as direction of the State Government in terms of Section 19 of the School Service Commission Act, 1997 and as such the said Order cannot have any validity in the eye of law.

(iv) Dr. Sharmila Mitra, Chairperson of Southern Regional Commission, Dr. Mahuya Biswas, Former Chairperson of the Eastern Regional Commission Dr. Chaitali Bhattacharya, Former chairperson of South-Eastern Regional

commission, Mr. Subhajit Chattopadhyay, Former Chairman of the South-Eastern Regional Commission and Dr. Sk. Sirajuddin, Chairman of Northern Regional Commission and Chairman of Western Regional Commission abdicated their duties and responsibilities in counselling of the candidates and recommending the names of the candidates of Group "C" posts in terms of the provisions of 73 amended Section 7 of the School Service Commission Act, 1997 and Rule 16(v) and Rule 18(1) and (2) of the School Service Commission Rules, 2009 during the period of validity of the panel.

(v) Dr. Subires Bhattacharya, Former Chairman of the Central Commission during the first half of the year 2018 and Dr. Sharmila Mitra, Former Chairperson of the Central Commission During the second part of the year 2018 usurped the power and authority of the Regional Commissions by counselling the candidates and making recommendation of names of the candidates for Group "C" posts by manipulating infrastructure and evolving illegal procedure in violation of the provisions of amended Section 7 of the School Service Commission Act, 1997 and Rule 16(v) and 18(1) and (2) of the School Service Commission Rules, 2009.

(vi) Dr. Subires Bhattacharya, Dr. Sharmila Mitra, Dr. Mahuya Biswas, Dr. Chaitali Bhattacharya, Mr. Subhajit Chattopadhyay and Dr. Sk. Sirajuddin are prima facie liable for disciplinary action on the charge of gross dereliction of duty for violating the provisions of amended Section 7 of the School Service Commission Act, 19997 and the provisions of Rule 16(v) and Rule 18(1) and (2) of the School Service Commission Rules, 2009 and as such disciplinary action can be taken against them by the Disciplinary Authority or the Pension Sanctioning Authority in case of retirement of any of the above officials in terms of the provisions of the Rules by which they are governed.

(vii) Mr. Samarjit Acharya, Programme Officer of the Central Commission and Dr. Santi Prasad Sinha, Former Advisor or the Central Commission are prima facie liable for committing offences punishable under Section 465/417/468/34 of Indian Penal Code.

(viii) Prof. Saumitra Sarkar, Former chairman of the Central Commission, Mr. Ashok Kumar Saha, Former Assistant Secretary, Former Secretary and Former Chairman of the Central Commission, Dr. Santi Prasad Sinha, Former Advisor of the Central Commission and Dr. Kalyanmoy Ganguly, President of the 74 Board are, prima facie, liable for committing offences punishable under Section 120B of Indian Penal Code.

(ix) FIR can be registered against Samarjit Acharya and Dr. Santi Prasad Sinha on the allegation of committing offences punishable under Section 465/417/468/34 of India Penal Code and against Prof. Saumitra Sarkar, Mr. Ashok Kumar Saha, Dr. Santi Prasad Sinha and Dr. Kalyanmoy Ganguly on the

allegation of committing offences punishable under Section 120B of India Penal Code."

22. We have four reports submitted by the CBI. We would like to quote some of the passages from the report dated 05.02.2024, submitted by the CBI in compliance with the order dated 24.01.2024 passed by the High Court at Calcutta. The relevant portion of the said report reads as under:

"3. That during investigation, it was revealed that the West Bengal Central School Service Commission (hereinafter referred to as 'commission' had awarded a work order to M/s Nysa Communication Private Limited ('hereinafter referred to as M/s. NYSA') for scanning and evaluation of OMR answer sheets pertaining to the selection tests of Group - D, Group - C, Assistant Teachers for classes IX - X and XI - XII.

4. Investigation has established that Sh. Puneet Kumar was the then Director and Sh. Niladri Das was the then Vice President of the said M.s Nysa Communications Pvt. Ltd. during relevant period. It has been established during investigation that Sh. Niladri Das was in charge of operations in respect of recruitment examinations conducted by WBCSSC and frequently visited the officer of WBCSSC to attend to the actual operational part and did the requisite liaison on behalf of the agency for necessary compliance of the instructions given by WBCSSC. Sh Puneet Kumar, being the Director, mainly looked after the financial affairs of the agency and represented it on records.

5. Investigation has established that the scanning of OMR sheets was undertaken by the said M/s Nysa Communication Pvt Ltd at WBCSSC office at Acharya Sadan under direct supervision of Sh Niladri Das and in presence of WBCSSC officials. It has been further established that M/s NYSA communication Pvt. Ltd. had further given work order w.r.t. scanning the original OMR to M/s Data Scantech Solutions, Noida who remained present on the premises of WBCSSC for the scanning work.

After completion of scanning, the precessed data in the form of scanned images of OMRs, scan data etc. were handed over by M/s Data Scantech Solutions to M/s Nysa Communication Pvt Ltd. who took the same to their officer located at Noida in digital form (Hard Disks) leaving the original hard copies of OMR sheets in the office of the WBCSSC, WBCSSC handed over their answer keys in respect of all subjects to M/s Nysa Communications Pvt Ltd for evaluation of OMR responses.

6. That, while scanning the original OMR sheets by M/s Data Scantech Solutions on behalf of M/s Nysa, two ".DAT" files were generated containing SCAN NO., Bar Code, ROLL NO., VENUE CODE, BOOKLET SERIAL NUMBER,

SUBJECT CODE, CATEGORY, GENDER, MEDIUM and RESPONSE CODE. In the process of scanning, the image copies of the original OMR sheets were also captured.

7. That, a sample of the ".DAT" file generated during scanning of one OMR sheet is cited as an example below: -

Responses of candidates in the OMR is appearing as Response Code in alphabets, while "#" indicates end of one OMR sheet

8. That, two such ".DAT" files are generated since scanning is done twice to avoid any technical error. Thereafter, a final ".DAT" file is prepared which is called a clean data file. After receiving the answer keys from Commission, the same is compared with this final ".DAT" file and a "DBF" File is generated having the score of the candidates.

9. That during investigation the server database of the Commission was seized by the Central Bureau of Investigation containing all the data pertaining to selection tests of Group - D, Group - C, Assistant Teachers for classes IX - X and XI - XII.

10. That, during investigation of the case, three hard disks were recovered on 15/16.09.2022 from the residence of Pankaj Bansal, ex-employee of M/s. NYSA, located at Ghaziabad. The certificates dated 16.09.2022 u/s 65-B of Indian Evidence Act, 1872, from Shri. Pankaj Bansal were also obtained, in triplicate, with regard to genuineness of the data contained in these three hard-disks so recovered.

11. That, During investigation, data files containing scanned OMRs, ".DAT" files etc. pertaining to the aforesaid WBCSSC recruitment matters were also seized from M/s Data Scantech Solutions. During investigation of RC-03(A)/2022-Kol, the hash values of these Data files of Scantech Solutions were matched with the hash value of the corresponding files recovered from the hard discs seized from Pankaj Bansal and was found to be matching, which establishes that the data contained in the three hard disks recovered from Pankaj Bansal's possession were not contaminated.

12. That, a similar exercise of matching the data available on the hard disks of Pankaj Bansal with the data seized from the Commission was done during the course of investigation and it was found that there were mismatch between the two, in as much as, the written marks awarded to candidates as available on the server of the commission had been increased to qualify undeserving candidates. This mismatch establishes that manipulation in marks of written examination in the case of many candidates was resorted to and such candidates were identified. The comparison of these actual/genuine OMR marks with the OMR marks available in WBCSSC Server shows that there is manipulation in 952 nos. of

candidates of IX-X, 907 nos. of candidates of XI-XII, 3481 nos. of Gr. C candidates and 2823 nos. of Gr. D candidates.

13. That, during the course of investigation, several emails were found to have been exchanged between the accused officials of the Commission, certain private persons and officials of NYSA. These emails contained lists of candidates, whose OMR marks were found to be increased in the server of the Commission. Besides this, emails have been exchanged between the staff of NYSA themselves containing manipulated data of candidates. This shows the complicity of officials of M/s NYSA in this conspiracy.

14. That, during investigation, it emerged that in the year 2019, Shri Niladri Das of M/s NYSA Communications Pvt Ltd left NYSA and started his own business in name & style of M/s ND Info Systems Pvt Ltd., Noida, and was engaged in the business of Data processing in line of M/s NYSA. The said Niladri Das poached Pankaj Bansal, Kuldeep Singh, Anoy Saha, Muzammil Hossain and others support staff from NYSA.

15. That, it has emerged from the investigation that before leaving NYSA, Niladri Das and his staffs retained all the data pertaining to recruitment examinations of WBCSSC including the data of Group C,D, Assistant Teacher (IX-X, XI - XII) with them. Even after leaving NYSA, Niladri Das, Pankaj Bansal and Muzammil Hossain kept providing assistance to WBCSSC in the matters of RTI on the basis of the data of NYSA which was manipulated and also hosted on the WBCSSC server. This also establishes that Niladri Das, Pankaj Bansal and Muzammil Hossain who were involved in the entire scam and it was in their knowledge that data has been manipulated and therefore they continued to extend this assistance solely to avoid detection.

16. That, if there would have been no manipulations then the scanned images of OMRs available with WBCSSC were sufficient to respond to RTI queries. Investigation revealed that WBCSSC had destroyed the original OMR sheets and the scanned images of original OMR sheets in the year 2019, which again leads to an inference that the same were destroyed to keep the entire scam under wraps.

17. That, investigation establishes that as a reward for doing aforesaid manipulation in the OMR score, M/s NDISPL of Niladri das was provided work of recruitment of Teachers in Upper Primary conducted by WBCSSC. Apart from this, many other recruitment works were also assigned to Niladri Das by the Government of West Bengal. Various list of candidates related to Upper Primary were communicated to Niladri Das from S P Sinha, Sharmila Mitra, etc. Were found in the email of Niladri Das (niladri@ndispl.com) which shows his criminal conduct.

18. Result of comparison of these electronic records collected from M/s Data Scantech Solutions with that of the hard disks seized from Pankaj Bansal -

(a) As discussed in the preceding paragraphs, the hard disk recovered from Pankaj Bansal contained the marks of written examination, typing test, etc. This marks when compared with marks available in WBCSSC server resulted in the identification of candidates whose marks of written examination, typing test were manipulated.

(b) M/s Data Scantech Solutions made the initial scanned images of OMR's. These scanned images were given to M/s NYSA. Pankaj Bansal retained a copy of these scanned images.

(c) That in connection with candidates of Class IX - X, XI - XII, the scanned image of OMR sheets as collected from M/s Data Scantech Solutions pertaining to the alleged candidates whose OMR marks were found manipulated were matched with the scanned image of OMR sheets as available in the hard disk of Pankaj Bansal and the same are found identical.

(d) The Response string of candidates pertaining to IXX and XI- XII as recovered from M/s Data Scantech Solutions matches with the Response String available in the hard disk seized from Pankaj Bansal. On the basis of these response strings the actual/ genuine OMR marks of IX-X and XI-XII candidates were determined. The comparison of these actual/ genuine OMR marks with the OMR marks available in WBCSSC Server shows that there is manipulation in 952 nos. Of candidates of IX-X and 907 nos. of candidates of XI-XII.

(e) The Response string of candidates pertaining to Gr. C & Gr. D as recovered from M/s Data Scantech Solutions matches with the Response String available in the hard disk seized from Pankaj Bansal. On the basis of these response strings the actual/ genuine OMR marks of Gr. C & Gr. D candidates were determined. The comparison of these actual/ genuine OMR marks with the OMR marks available in WBCSSC Server shows that there is manipulation in 3481 nos. of Gr. C candidates and 2823 nos. of Gr. D candidates.

(f) That, the investigation has established the genuineness of the data of hard disks seized from Pankaj Bansal.

19. THAT, in compliance to the solemn order dated 24.01.2024 of this Hon'ble Court, three hard-disks, in original, seized from the residence of Pankaj Bansal along with original certificate dated 16.09.2022 u/s 65-B of Indian Evidence Act, 1872, obtained from Pankaj Bansal are being submitted before this Hon'ble Court. The three hard-disks are in sealed condition. The certificate u/s 65-B of Indian Evidence Act, 1872, in original, obtained from Shri. Pankaj Bansal dated 16.09.2022 is annexed hereto and marked as "Annexure - A".

20. That, Hon'ble Division Bench at High Court at Calcutta in WPA 2613 of 2018 (Basanta Das Vs The State of West Bengal & Ors) directed CBI on 24.01.2024 for production of the above mentioned three original hard disks seized from Pankaj Bansal and in compliance to such direction all the said three hard disks were returned back by CFSL, Hyderabad in sealed condition and are now being produced with this report.

21. That, the present status of all the above mentioned four recruitment cases of CBI is "disposed -off from investigation", where multiple charge sheets in each such cases have been filed by CBI before the Learned Trial Court, Alipore. The alleged offences of the First Information Reports and the subsequent irregularities found during the course of investigation have been substantiated in all such cases of CBI and all the charge sheets contain the detailed investigation carried out by CBI in such cases."

The facts stated in the report dated 05.02.2024, submitted by the CBI, speak for themselves.

23. WBSSC has been candid enough to admit; (i) rank jumping, that is, to say candidates having lower rank were preferred over those having higher rank, (ii) out of panel appointments, that is, candidates who are not in the panel of shortlisted candidates have been recommended and appointed, (iii) candidates who were not recommended by WBSSC were appointed by the Board, and (iv) manipulation of the OMR scores. However, there is a discrepancy in both the number of candidates and their corresponding percentages where such irregularities have been identified.

24. The impugned judgment refers to the following statistical report submitted by WBSSC before the High Court³⁷:

S. No.	Post Name	Classes Level	Total Recommendation	OMR Issue	Rank Jumping	Alleged Irregularity	Alleged Irregularity in Percentage
1.	Assistant Teacher	IX-X Level	11610	808	185	993	8.50%
2.	Assistant Teacher	XI-XII Level	5596	771	39	810	14.47%
3.	Group-	-	2037	783	-	783	38.43%

	C (clerk)						
4.	Group-D -	-	3880	1741	-	-	44.87%

25. In the written submissions filed on behalf of WBSSC in this Court, two tables have been furnished. Table 1 pertains to candidates who either jumped rank or were appointed despite not being in panel. Their details are as under:

TABLE - 1

S. No	Category (a)	Rank Jumped (b)	Out of Panel but still appointed (c)	Total (d)
1	Assistant Teachers for Class IX-X	74	111	185
2	Assistant Teachers for Classes XI-XII	20	18	38
3	Group C	132	249	381
4	Group D	237	371	608
5	Total	463	749	1212

Table 2 furnished by WBSSC is for candidates who were appointed by manipulating the OMR sheets. Table 2 is as under:

TABLE - 2

Category (a)	No. of Candidates with alleged OMR score mismatch as per CBI image	No. of Candidates out of (b) who were appointed
Assistant Teachers Classes IX and X	952	808
Assistant Teachers for Classes XI and XII	907	772
Group C	3481	782
Group D	2823	1911

26. In another written submission filed on behalf of WBSSC in this Court, it is claimed that on further verification, the following details of the candidates who either jumped rank or were appointed despite not being in the panel came to light:

A: Person identified as tainted in the category of Rank Jumping and out of Panel but appointed

Category	Rank Jumped	Out of Panel but still Appointed
Assistant Teachers- Classes IX-X	74	111
Assistant Teachers- Classes XI-XII	20	18
Group C	132	249
Group D	237	371
Total (1212)	463	749

The details of candidates who were appointed by manipulation of the OMR scores is as under:

B: Person identified having dispute in OMR issue:

Category	No. of Candidates identified by CBI (appointed and not appointed)	OMR issue and recommended by Commission
Assistant Teachers- Classes IX and X	952	796
Assistant Teachers- XI and XII	907	772
Group C	3481	782
Group D	2823	1741
TOTAL		4091

WBSSC claims that 57 Group C and 170 Group D selectees/appointees with OMR mismatches were not recommended but appointed. However, their names also figure in the lists of candidates appointed through rank jumping and out of panel. WBSSC admits that:

- 1,498 out-of-panel candidates were illegally appointed;
- 926 candidates were involved in rank jumping; and
- 4,091 candidates were recommended despite OMR mismatches.

Thus, excluding 23938 candidates who fall under both OMR mismatch and other illegalities, WBSSC acknowledges that 6,276 illegal appointments were made.

27. At this stage, we would like to refer to the affidavit dated 27.09.2022 filed on behalf of the WBSSC before the High Court at Calcutta, wherein the WBSSC stated:

"I, further say that in the course of the investigation by the Central Bureau of Investigation (CBI, in short) the Chairman and the Secretary of the Commission have had several meetings with the officials of the CBI including the Head of Branch, ACB, wherefrom it appeared that in the course of their investigation/interrogation they have also come across a considerable number of illegal appointments. However, as the CBI has not disclosed the details with regard to the said illegal appointments detected by them to the Chairman and/or Secretary of the Commission, the Commission is not in a position to state the number of such illegal recommendations and/or furnish the details of such candidates."

WBSSC, however, submits that the affidavit dated 27.09.2022 was filed before they had access to the status reports of the CBI and the data/details gathered pursuant to their investigation, including the scanned mirror copies of the OMR sheets. The data which has now come to light allows segregation of meritorious candidates from those appointed illegally. Therefore, WBSSC argues that the entire selection process should not be annulled.

28. We may have accepted this argument if WBSSC had the original physical OMR sheets or the mirror copy of the OMR sheets. However, WBSSC accepts that they do not have the physical OMR sheets as they were destroyed in terms of Rule 21 of the Class IX and X and Class XI and XII Rules, which require retention of the OMR sheets for only one year. Rule 21 of the Class IX and X and Class XI and XII Rules reads:

"21. Preservation of written examination answer scripts.-

The written answer scripts/OMRs of examinations shall be destroyed by the Commission after 1 year from the date of publication of the panel."

29. Admittedly, the OMR sheets for the candidates who had applied for nonteaching Groups C and D posts were also destroyed. The reliance placed on Rule 21 by WBSSC to justify the destruction of OMR sheets is misplaced, as Rule 21 applies only to Assistant Teachers for Classes IX-X and XI-XII, not to non-teaching Groups C and D posts. It is acknowledged that the Chairman of WBSSC, in a letter dated 22.07.2019, instructed the destruction of OMR sheets related to the 2016 selection process for Assistant Teachers (Classes IX-X and XI-XII) and Group C and D employees.

30. Moreover, given that the recruitment process was ongoing even after the oneyear validity period of the panel, there is no justification for the destruction of the OMR sheets. It is apparent that the time period specified in Rule 21 was coinciding with the time period specified for the validity of the panel. Further, WBSSC did not maintain the mirror copies of the OMR sheets in their

computer/records. Thus, the destruction of the physical OMR sheets and the failure to maintain scanned/mirror images of the OMR sheets are significant factors which were rightly taken into consideration by the High Court. We concur.

31. WBSSC has also tried to justify the extension of the term of the panel. As noted above, the time period of one year specified in Rule 21 for the destruction of the OMR sheets coincides with the time period specified for the validity of the panel. There is no doubt that the counselling process and appointments made to the post of Assistant Teachers for classes IX-X and XI-XII were made after the expiry of the panel.

This is illegal and contrary to the rules. Reliance on the orders/judgments of the High Court in stray cases of rank jumping, where the High Court directed to appoint candidates after the expiry of the validity of the panel, would not have any significant impact. The court, at that stage, was not concerned and aware of the illegalities in the appointment procedure and had not specifically examined the question of appointment after the expiry of the panel.

32. The CBI report dated 05.02.2024 states that M/s. Nysa - contracted for scanning and evaluation of OMR sheets by WBSSC - undertook the said exercise at the offices of WBSSC. M/s. Nysa had further sub-contracted the work order w.r.t. scanning the original OMR sheets to M/s Data Scantech Solutions, whose officials also remained present at the offices of WBSSC for scanning. The scanning process was conducted by examining two outputs:-

(i) the scanned image of the OMR sheet and

(ii) the scanned image of the answer string with language coded inputs. M/s. Nysa then made a tabulation of the results of the OMR sheet evaluation and shared it with WBSSC.

33. It is peculiar that WBSSC did not retain the mirror/scanned copies of the OMR sheets in their electronic record while allowing M/s. Nysa to keep them. The CBI report dated 05.02.2024 indicates that WBSSC did initially retain the scanned/mirror copies of the OMR sheets which were subsequently deleted/destroyed.³⁹ The contradictory stance of WBSSC on the possession and destruction of scanned/mirror copies of the OMR sheets reflect an attempt to cover up illegalities and lapses in the selection process.

Though the WBSSC claimed to not retain the scanned/mirror images of the OMR sheets, vide Right to Information application response dated 12.10.2023 and 18.01.2024, they furnished the scanned/mirror images of OMR sheets to two candidates. WBSSC records in the Right to Information application response dated 12.10.2023 and 18.01.2024 that the mirror image of OMR sheet is being

furnished 'as per data stored in Commission's database'. However, subsequently WBSSC took a stance that the said scanned/mirror copies of the OMR sheets were obtained from the data retrieved by CBI.

34. WBSSC in the initial affidavits filed before the High Court and earlier when they had furnished information, including marks reflected in the OMR sheets, had not claimed non-availability of the scanned OMR sheets.

35. The CBI report dated 05.02.2024 notes the mismatch between the OMR sheet evaluation and the marks as recorded by WBSSC. The CBI report also refers to the email exchange between the staff of M/s. Nysa regarding the increase of marks for specific candidates and the manipulation of data. The email correspondence also shows that as a reward for the manipulation in the OMR score, some other works were awarded to M/s. Indi Info Systems Private Limited, Noida, a company founded by Mr. Niladri Das, who was previously associated with M/s. Nysa. The report suggests a connection between the awarding of this work and the manipulation of the examination results.

36. Apart from WBSSC not retaining mirror copies of the scanned OMR sheets, other questions arise. In particular are the significant discrepancies between the marks in WBSSC's computer software and the data found on the three hard disks recovered from Pankaj Bansal's office in Noida. Further, WBSSC did not upload the marks of candidates while uploading the list of the candidates called for interview or included in the panel/waitlist.

Marks were only displayed after the High Court vide order dated 12.05.2022 in WPA 8059 of 2022 mandated the disclosure of marks for each empanelled candidate. This omission appears deliberate, likely intended to conceal the marks of candidates on the waitlist, raising concerns about potential data manipulation. It is also a known fact that some candidates who did not attempt a single question were awarded marks and issued appointment letters.

37. It is also important to refer to another finding recorded in the impugned judgment regarding a discrepancy in the recommendations made by WBSSC and the number of appointment letters issued by the Board. The investigation revealed the following disparities between the number of candidates recommended for appointment by WBSSC and the number of appointment letters issued by the Board:

Post Name	Number of candidates recommended for appointment by WBSSC	Number of appointment letters issued by the Board	Excess appointment letters issued by the Board

Assistant Teachers for Classes IX and X	11,425	12,946	1,071
Assistant Teachers of Classes XI and XII	5,557	5,756	199
Group C	2067	2483	416
Group D	3881	4550	669

When confronted, the Board had proffered that all appointment letters were issued on the recommendation of WBSSC. On the other hand, the WBSSC contradicted the stance of the Board by stating that they had not issued recommendations for the excess numbers mentioned by the Board. WBSSC and the Board now claim that the discrepancy in the number of appointment letters issued is incorrect.

The Board counted all letters without adjusting for candidates who did not join, while WBSSC excluded those candidates from its recommendations. Therefore, there is no discrepancy for teaching staff, and the small difference for non-teaching staff is irrelevant, as many of these candidates are already on the tainted list for rank-jumping or being out of panel. We reject this late attempt by WBSSC and the Board to reconcile the figures, as the number of recommendations made by WBSSC is independent of whether a candidate joined the post.

38. There is also a dichotomy in the positions taken by the tainted candidates and the untainted candidates regarding the scanned copies of OMR sheets recovered from Pankaj Bansal and M/s. Data Scantech Solutions. It is the stand of the tainted candidates before us that the scanned copy of the OMR sheets are not the ones which the candidates had filled up at the time of examination. Thus, they cannot be persecuted and treated as tainted. On the other hand, the untainted candidates claim that the scanned copies of the OMR sheets are the original sheets which the candidates had filled up.

39. It is also submitted by the tainted candidates that the certificate under Section 65B of the Indian Evidence Act, 187240 is inadmissible and thus, the said data is unreliable. In our opinion, the issues of authenticity of the data viz. the mismatch between the datasets and the admissibility of the certificate under Section 65B of the Evidence Act, need not be decided in these proceedings, as it falls under the purview of the criminal court. However, suffice it to state that the Evidence Act does not strictly apply to the proceedings in a Writ Court, and the decision is rendered based on the evidence and material on record.

Further, the issue involved in the present case is different and one relating to the purity and sanctity of the selection process. Therefore, the Court can rely upon the contradictory pleas taken by the tainted and the untainted candidates. In the given facts and circumstances, the failure of WBSSC to keep scanned/mirror copies of the OMR sheets assumes great importance. 40. Further, it is clear that there is a discrepancy between the scanned OMR sheets recovered from the three hard disks in Pankaj Bansal's possession and the marks recorded in WBSSC's computer/records. This discrepancy has been acknowledged and accepted by WBSSC.

41. The claim that the data on the three hard disks shows no interpolation and is consistent with the data in M/s. Data Scantech Solutions' computers fails to account for significant gaps and discrepancies. These issues, highlighted in both the impugned judgment and our findings, clearly point to large-scale manipulation and tampering with results, including rank-jumping, discrepancies in marks, the issuance of appointment letters to candidates not on the panel, and appointments made beyond the panel's validity period.

42. In spite of the factual background and the credible evidence indicating irregularities, WBSSC initially did try and cover up the lapses and illegalities. The cover up itself has made the verification and ascertainment more difficult or rather impossible given the scale of camouflage and dressing up done at each stage. We are convinced that the entire selection process was intentionally compromised due to the illegalities involved.

DELAY, LACHES AND NATURAL JUSTICE

43. WBSSC and the candidates have raised pleas of estoppel, delay, and laches in filing the writ petitions. In our view, the impugned judgment correctly dismisses these pleas, relying on this Court's judgment in Chennai Metropolitan Water Supply and Sewerage Board and Others v. T.T Murali Babu.⁴¹ The judgment distinguishes between acquiescence, delay and laches, noting that they have distinct characteristics, though the underlying principle remains one of estoppel. Laches refers to remissness or slackness, involving unreasonable delay or negligence in seeking equitable relief, which prejudices the other party. It arises from the neglect of a party to assert their right, thereby preventing them from obtaining relief.

In our opinion, this bar does not apply here, as the fraud and illegalities were only uncovered in 2021 and 2022. Applying the defence of laches, which is not a statutory bar, would be contrary to equity and justice in these circumstances. The principle of acquiescence also does not apply, as it assumes knowledge of the act, followed by passive acceptance. Therefore, it introduces a new implied defence that does not fit the facts of this case. Delay, as a general principle, encompasses

both laches and acquiescence, and delay is always fact-specific. In this case, where fraud was concealed, as well as a cover up was practised, these principles cannot be applied.

44. We have already partially addressed the plea of failure to adhere to the principles of natural justice while examining the applicable case law. It is also important to emphasize that, in this case, public notices were issued, and the candidates/applicants/petitioners were afforded the opportunity to inspect the data and present their arguments. In light of the facts of this case, we are of the opinion that the principles of natural justice cannot be invoked to validate the fraud that has occurred. These principles are not rigid or inflexible; rather, they must be applied with due regard to the specific facts and circumstances at hand.

CONCLUSION

45. The last question relates to the relief and whether it requires any modification. We find no valid ground or reason to interfere with the direction of the High Court that the services of tainted candidates, where appointed, must be terminated, and they should be required to refund any salaries/payments received. Since their appointments were the result of fraud, this amounts to cheating. Therefore, we see no justification to alter this direction.

46. For candidates not specifically found to be tainted, the entire selection process has been rightly declared null and void due to the egregious violations and illegalities, which violated Articles 14 and 16 of the Constitution. As such, the appointments of these candidates are cancelled. However, candidates who are already employed need not be asked to refund or restitute any payments made to them. However, their services will be terminated. Furthermore, no candidate can be appointed once the entire examination process and results have been declared void.

47. Some of the appointed candidates who do not fall within the category of tainted candidates may have previously worked in different departments of the State Government or with autonomous bodies, etc. In such cases, although their appointments are cancelled, these candidates will have the right to apply to their previous departments or autonomous bodies to continue in service with those entities. These applications must be processed by the respective government departments or bodies within three months, and the candidates will be allowed to resume their positions.

Further, the period between the termination of their previous appointment and their rejoining will not be considered a break in service. Their seniority and other entitlements will be preserved, and they will be eligible for increments. However, for the period they were employed under the disputed appointment, no wages will

be paid by the State Government or autonomous bodies. Further, if required and necessary, supernumerary posts may be created for persons appointed in the interregnum.

48. Lastly, we address the case of disabled candidates. Our attention has been drawn to one such case where the impugned judgment held that the appointee, Ms. Soma Das, shall be allowed to continue on humanitarian grounds. While we will not interfere with this finding, we make it clear that other differentlyabled candidates will not be entitled to the same benefit, as it would contradict legal principles and the rule of law. However, in consideration of their disability, these candidates will be permitted to continue and will receive wages until the fresh selection process and appointments are completed.

49. The disabled candidates mentioned in the previous paragraph will be allowed to participate in the fresh selection process, if required, with age relaxation and other concessions. Similarly, other candidates who are not specifically tainted will also be eligible to participate, with appropriate age relaxation. In our opinion, such a direction would be fair and just, as it would allow these candidates to take part in the fresh selection process, which should now be initiated to fill the vacancies.

50. Our observations and findings would not influence the criminal proceedings.

51. Accordingly, we uphold the impugned judgment cancelling en bloc / entire selection process but have made certain modifications in the directions issued by the High Court. The appeals are disposed of in aforesaid terms.

52. We, however, will independently take up the issue raised in the appeal(s) filed by the State of West Bengal with regard to the direction of investigation by the CBI on the decision taken to create supernumerary posts. The Special Leave Petition(s) to this extent will be listed for hearing on 08.04.2025.

53. All pending applications, including impleadment applications, also stand disposed of. No order as to costs.

.....CJI. (Sanjiv Khanna)

.....J. (Sanjay Kumar)

New Delhi;

April 03, 2025.

1 Hereinafter, "WBSSC".

2 Hereinafter, "CBI".

3 Diary No. 21281/2024, SLP (C) 16643-45/2024, SLP (C) 18366/2024, SLP (C) 11721/2024, SLP (C) 14331/2024, SLP (C) 22110/2024, SLP (C) 25078/2024 etc.

4 Hereinafter, "Board".

5 Hereinafter, "Class IX-X Rules".

6 Hereinafter, "Class XI-XII Rules".

7 Hereinafter, "2009 Rules".

8 Hereinafter, "M/s. Nysa".

9 Hereinafter, "OMR".

10 WPA No. 14612 of 2021.

11 WPA No. 12266 of 2021.

12 WPA 18585 of 2021.

13 WPA 12270 of 2021.

14 WPA No. 13700 of 2021.

15 WPA 17273 of 2021.

16 Passed in WPA 12270 of 2021.

17 Passed in WPA 18585 of 2021.

18 Passed in WPA 5538 of 2022.

19 Passed in WPA 5406 of 2022.

20 Passed in WPA 12270 of 2021.

21 RC0102022A0002, RC0102022A0003, RC0102022A0004 and RC0102022A0005.

22 Arising out of impugned final/interim judgment and orders dated 16-02-2023 in MAT No. 274/2023 & MAT No. 259/2023 passed by the High Court at Calcutta.

23 SLP (C) Nos. 4078-4079/2023.

24 Dated 09.01.2024 in WPA 18585/2021, 16.01.2024 in WPA 5406/2022, 05.02.2024 in WPA 5406/2022 and 07.12.2022 in WPA 13700/2021.

25 (2021) 4 SCC 631.

26 (1970) 1 SCC 648.

27 AIR 1962 SC 1110.

28 (1990) Supp SCC 692.

29 (1998) 9 SCC 236.

30 (2003) 7 SCC 285.

31 (2006) 11 SCC 356.

32 (2014) 6 SCC 644.

33 (2010) 6 SCC 614.

34 (2021) 16 SCC 217.

35 (2017) 13 SCC 621.

36 (2024) 9 SCC 743.

37 See paragraph 240 of the impugned judgment.

38 57 candidates (Group C - OMR Mismatch), 170 candidates (Group D - OMR Mismatch) and 12 candidates (Class IX-X Assistant Teacher - common to rank jumping and out of panel).

39 Para. 16, CBI Report dated 05.02.2024.

40 Hereinafter, "Evidence Act".

41 (2014) 4 SCC 108.

IN THE SUPREME COURT OF INDIA

**M/s. R. K. Transport Company
Vs.
M/s. Bharat Aluminum Company Ltd. (BALCO)**

**[Civil Appeal No. 4763 of 2025
arising out of SLP (C) No. 26489 of 2024]**

HEADNOTE – The three-month limitation period under Section 34(3) of the Arbitration & Conciliation Act, 1996 for challenging an arbitral award should not be rigidly interpreted as exactly 90 days, rather it should be interpreted as three calendar months.

JUDGMENT

Pamidighantam Sri Narasimha, J.

1. Leave granted.
2. It is just as necessary to follow a precedent as it is to make a precedent.
3. The present appeal arises out of an order of the Chhattisgarh High Court dated 27.09.2024 by which it allowed the respondent's appeal under Section 37 of the Arbitration and Conciliation Act, 1996 and held the respondent's application under Section 34 as being filed within the limitation period.
4. The short facts necessary for adjudication are as follows. The parties entered into a contract on 01.04.2002 for bauxite mining and delivery. Pursuant to disputes arising on payments under the contract, the matter was referred to arbitration, resulting in an arbitral award of Rs. 51,33,40,100 dated 09.04.2022 in favour of the appellant. It is undisputed that the award was signed and delivered to the respondent on this very day. The respondent filed an application to set aside the award under Section 34 on 11.07.2022, along with an application for stay of the award.

The Trial Court, on 13.07.2022, passed an ex-parte order that the Section 34 application was within limitation as the 3-month period expired on 09.07.2022, which was a second Saturday and the following day was a Sunday. Since the court was closed on both these days, the respondent filed the application on the next working day. It also directed the respondent to deposit 50% of the arbitral sum. It is relevant to note that such amount was deposited by the respondent, and the same has been withdrawn by the appellant after furnishing a bank guarantee.
5. The appellant challenged the order dated 13.07.2022 by filing a writ petition under Article 227 of the Constitution, wherein the High Court gave the appellant

liberty to file a recall application as the Trial Court order had been passed ex-parte. The appellant filed such recall application before the Trial Court, which was allowed on 25.04.2023 and it was held that the Section 34 application is barred by limitation as the 3-month period expired on 08.07.2022 on which day the court was working. The respondent filed a Section 37 appeal against this order, which was allowed by the High Court by the order impugned herein.

The High Court relied on Section 12 of the Limitation Act, 1963² and this Court's decision in *State of Himachal Pradesh v. Himachal Techno Engineers*³ to hold that the limitation period expired on 09.07.2022, which was a court holiday. Therefore, Section 4 of the Limitation Act becomes applicable as per *Bhimashankar Sahakari Sakkare Karkhane Niyamita v. Walchandnagar Industries Limited*⁴, and the Section 34 application must be considered as being within the limitation period as it was filed on the next working day. The High Court remanded the parties to appear before the Trial Court, and also directed that the interim order in respect of execution of pending recovery shall continue till the application is decided on merits.

6. We have heard learned senior counsel, Mr. Mukul Rohatgi for the appellant and learned senior counsel, Mr. Ranjit Kumar for the respondent and have also perused the written submissions.

7. Mr. Rohatgi submitted that the limitation period must be calculated from the date on which the award was received by the respondent, i.e., 09.04.2022 and therefore, the 3-month limitation period expired on 08.07.2022. He submitted that the Limitation Act, including Section 12, does not apply to proceedings under Section 34 of the ACA.

Since the court was working on the date on which limitation expired, Section 4 of the Limitation Act will not apply to hold the application filed on 11.07.2022 as being within the limitation period. There was a 3-day delay in filing the Section 34 application but the respondent did not file an application for condonation that showed sufficient cause to condone the delay. Finally, he also submitted that the respondent must be required to deposit 100% of the arbitral sum, and the High Court has not offered any reasons for restricting the deposit to 50%.

7.1 On the other hand, Mr. Ranjit Kumar has relied on Section 12 of the Limitation Act and the judgment in *Himachal Techno Engineers* (supra) to submit that the date on which the arbitral award was received, i.e. 09.04.2022, must be excluded while calculating the limitation period. Hence, the High Court rightly concluded that the 3-month period commencing on 10.04.2022 expired on 09.07.2022, which was a court holiday and therefore Section 4 of the Limitation Act is attracted and the application was filed in time. He also took us through the prayer in the Article 227 writ petition to show us that the appellant only sought

deposit of 60% of the amount before the High Court and a bank guarantee for the remaining 40%, and hence cannot demand deposit of the entire amount at this stage.

8. Section 34(3) of the ACA stipulates the limitation period for filing an application to set aside an arbitral award as 3 months from the date on which the party receives the arbitral award, which can be further extended by 30 days on sufficient cause being shown.⁵

At this stage, it is necessary to reiterate that the statutory language of Section 34(3) clearly stipulates the limitation period as "three months", as opposed to the condonable period as "thirty days". This difference in language unambiguously demonstrates the legislative intent that the limitation period is 3 calendar months as opposed to 90 days.⁶ Therefore, we reject the argument taken by the appellant in its written submissions that 3 months must be read as 90 days in the context of Section 34(3).

9. We will now deal with how limitation must be calculated in the present case. The law on the applicability of the Limitation Act to Section 34 proceedings has been summarised by us in a recent decision in *My Preferred Transformation & Hospitality Pvt Ltd v. Faridabad Implements Pvt Ltd*⁷ as follows:

"23. Through the above discussion, it is amply clear that there is no wholesale exclusion of the provisions of the Limitation Act in calculating the period of limitation under Section 34(3). Rather, each provision's applicability/exclusion has been individually tested by this Court, on a case-to-case basis, based on the language and purpose of the specific provision in the Limitation Act, the language of Section 34(3) of the ACA, and the scheme and object of the ACA."

10. The applicability of Section 12 of the Limitation Act is in issue in the present case. The relevant portion of Section 12 reads:

"12. Exclusion of time in legal proceedings.- (1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded."

11. This Court in *Himachal Techno Engineers (supra)* held that Section 12(1) of the Limitation Act applies while calculating the limitation period under Section 34(3) such that the day from which such period is to be reckoned must be excluded.⁸ The relevant portion reads as follows:

"12. Section 12 of the Limitation Act, 1963 provides for exclusion of time in legal proceedings. Sub-section (1) thereof provides that in computing the period of limitation for any application, the day from which such period is to be reckoned, shall be excluded. The applicability of Section 12 of the Limitation

Act, 1963 to petitions under Section 34 of the Act is not excluded by the provisions of the Act."

12. In the recent decision in *State of West Bengal v. Rajpath Contractors and Engineers Ltd*⁹ also, this Court applied Section 12(1) while calculating the limitation period of 3 months under Section 34(3).¹⁰ There is nothing in the statutory language or scheme of Section 34(3) that is contraindicative that Section 12(1) does not apply.

13. In the present case, the respondent received a signed copy of the award on 09.04.2022. Since Section 12(1) applies, this date must be excluded and the 3-month limitation period must be reckoned from 10.04.2022. This expires on 09.07.2022, which happened to be a second Saturday when the court was not working. Hence, the benefit of Section 4 of the Limitation Act will inure to the benefit of the respondent. This position of law is wellsettled and has been reiterated by us in *My Preferred Transformation & Hospitality* (supra) as follows:

"35. Summarising the Current Position of Law: From the reasoning and decisions in the above cases, the following conclusions evidently follow:

35.1 First, Section 4 of the Limitation Act applies to Section 34(3) of the ACA.

35.2 Second, Section 4 of the Limitation Act benefits a party only when the "prescribed period", i.e. the 3-month limitation period under Section 34(3) expires on a court holiday. In such a situation, the application under Section 34 will be considered as having been filed within the limitation period if it is filed on the next working day of the court.

35.3 Third, Section 4 of the Limitation Act does not come to the aid of the party when the 3-month limitation period expires on a day when the court was working. The 30-day condonable period expiring during the court holidays will not survive and neither Section 4, nor any other provision of the Limitation Act, will inure to the benefit of the party to enable filing of the Section 34 application immediately after reopening.

35.4 Fourth, since Section 4 of the Limitation Act applies to proceedings under Section 34 of the ACA, the applicability of Section 10 of the GCA stands excluded in view of the express wording of its proviso that excludes the applicability of the provision when the Limitation Act applies."

14. Therefore, the respondent's application under Section 34, which was filed on 11.07.2022, i.e., the next working day of the court, must be considered as being filed within the limitation period. Consequently, there was no delay in filing the application and sufficient cause need not be shown for condonation of delay. The

High Court therefore rightly allowed the Section 37 appeal and held that the respondent's Section 34 application was filed within the limitation period.

15. Further, we do not wish to interfere with the High Court's direction to stay the execution of pending recovery till the matter is adjudicated on merits, since the same is interim in nature and the appellant has already withdrawn 50% of the arbitral sum that was deposited by the respondent. In this view of the matter, the present appeal is dismissed.

16. No order as to costs.

17. Pending applications, if any, stand disposed of.

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

.....J. [Prashant Kumar Mishra]

New Delhi;

April 03, 2025

1 Hereinafter "ACA".

2 Hereinafter "the Limitation Act".

3 (2010) 12 SCC 210.

4 (2023) 8 SCC 453.

5 Section 34(3) of the ACA reads:

"34. Application for setting aside arbitral award.- (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

6 Himachal Techno Engineers (supra), paras 14 and 15.

7 2025 INSC 56.

8 Himachal Techno Engineers (supra), para 12.

9 (2024) 7 SCC 257.

10 *ibid*, para 8. The relevant portion of this decision reads as follows:

"8. As per Section 12(1) of the Limitation Act, the day from which the limitation period is to be reckoned must be excluded. In this case, the period of limitation for filing a petition under Section 34 will have to be reckoned from 30-6-2022, when the appellants received the award. In view of Section 12(1) of the Limitation Act, 30-6-2022 will have to be excluded while computing the limitation period. Thus, in effect, the period of limitation, in the facts of the case, started running on 1-7-2022. The period of limitation is of three months and not ninety days. Therefore, from the starting point of 1-7-2022, the last day of the period of three months would be 30-9-2022. As noted earlier, the pooja vacation started on 1-10-2022."

IN THE SUPREME COURT OF INDIA

New Mangalore Port Trust & Anr.

Vs.

Clifford D Souza Etc.

[Civil Appeal Nos. 1796-1828 of 2024]

HEADNOTE – Section 18 of Limitation Act applies to Public Premises Eviction of Unauthorised Occupants) Act, 1971

JUDGMENT

Vikram Nath, J.

1. The appellants New Mangalore Port Trust¹ has assailed the correctness of the judgment and order dated 22.11.2019 passed by the High Court of Karnataka at Bengaluru dismissing a bunch of writ petitions preferred by NMPT assailing the correctness of the judgment and order dated 15.03.2017 passed by the District Judge allowing the appeal of the respondents and quashing the order of the Estate Officer of NMPT raising demand against the respondents.

2. The facts in brief relevant for proper adjudication of these appeals are summarised hereunder:

2.1. NMPT allotted land to the respondents (hereinafter referred to as Licensees) for loading and unloading goods subject to payment of licence fee which is to be revised every five years with the approval of Tariff Authority for Major Ports (TAMP).

2.2. Allotment to the respondent for the licensees had been made in the year 2003. By notification dated 20.06.2005 licence fee was revised w.e.f. February, 2002. Thereafter, the next revision was notified on 23.07.2010 approving the revision of licence fee w.e.f. 20.02.2007 again for a period of five years.

2.3. Pursuant to the said revision, demand was raised for realising the arrears of licence fee for the period 20.02.2007 till 23.07.2010 i.e. the date of the notification. Beginning March, 2011, the Assistant Estate Manager/Estate Officer issued demand notice to all the Licensees. The Licensees challenged the notification dated 23.07.2010 before the High Court by way of writ petitions filed in the year 2011-2012 primarily on the ground that it was not permissible to revise the licence fee retrospectively. The learned Single Judge vide judgment dated 28.06.2013 dismissed the bunch of writ petitions holding that the licence fee could be revised retrospectively and upheld the notification dated 23.07.2010.

2.4. Aggrieved by the same the Licensees preferred writ appeals before the Division Bench of the Karnataka High Court at Bengaluru. These group of appeals are still pending however without any interim orders.

2.5. After the judgment of the Single Judge dated 28.06.2013, the Assistant Estate Manager issued a demand notice on 15.01.2015, copy whereof is filed as Annexure P-5. It would also be relevant to mention that there are other notices also issued but the notice dated 15.01.2015 is specifically mentioned as there is a reply given to it by the Licensees. The notice dated 15.01.2015 is reproduced hereunder:-

"FINAL NOTICE

No.30/44/2015/EBL.1/TAMP

Date: 15.01.2015

To
M/s Export Trade Link Agencies
Lal Bagh
MANGALORE - 575 003

Sir,
Sub: Payment of difference in Licence fee on account of revision of Scale of Rate w.e.f. 20.02.2007

Ref:

- 1) TAMP ORDER G NO.184 dated 23.07.2010.
- 2) T.O. letter even No.dtd/07.11.2014

Please refer to the letter cited above, wherein it was requested to remit the difference of licence fee/penal licence fee including Service Tax amounting to Rs.55,32,234/- on account of revision of SoR w.e.f. 20.02.2007, But you have not remitted the said amount.

Hence you are once again requested to make necessary arrangement for remittance of difference in Licence Fee and Service Tax within 15 days from the date of receipt of this letter failing which penal interest @ 13% shall be payable from the due date till the payment is received and action for recovery of dues will be initiated as per law.

Thanking you

Yours faithfully
Sd/- 15.01.2015
Asstt. Estate Manager (Gr.I)"

2.6. The Licensees responded to the same vide letter dated 04.02.2015 and objected to the demand raised on the ground that as the issue is still pending before the Division Bench of the High Court, no question arises for the payment of the difference in licence fee for the period 20.02.2007 till 23.07.2010. The same would prejudice their case. The question whether licence fee could have been revised with retrospective effect and recovered was still to be decided by the High Court in the pending writ appeal. It was thus requested that the NMPT may not demand the difference in licence fee for the period prior to 23.07.2010 till such time the appeal is not decided. The said communication dated 04.02.2015 is reproduced hereunder:-

"The Asst. Estate Manager (Gr.I)
New Mangalore Port Trust,
Mangalore,

Sir,

Subject: Writ Petition No.36972/2011, order dated 28.06.2013 of Hon'ble High Court of Karnataka

Ref: i) Payment of difference licence fee on account of revision of scale of rates w.e.f. 20.02.2007, on the basis of Tamp order No. G184, dated: 23.07.2010.

ii) Your Letter bearing No.3/44/2015/EBL.1/TAMP, dated 15.01.2015.

With reference to the above said subject, we would like to inform you that we had challenged the TAMP order dated: 23.07.2010, before the Hon'ble High Court of Karnataka, Bangalore by filing the writ petition No.34541 & 34784/211 and the said writ petition was dismissed on 28.06.2013 by the Hon'ble High Court of Karnataka, Bangalore.

We have challenged the order dated:28.06.2013 passed in the writ petition by the Hon'ble High Court of Karnataka, Bangalore before the division bench by filing the writ appeal no.4400 & 4401/2013, the said writ appeal was posted on 10.11.2014 for preliminary hearing/admission and the Hon'ble Court after hearing the matter by the council appearing for our company and by the council appearing for New Mangalore Port Trust the appeal was admitted by the Hon'ble High Court of Karnataka on 10.11.2014, therefore the above said subject matter i.e. the notification dated: 23.07.2010 (TAMP) is under challenge before the Hon'ble High Court and the Court has already admitted the matter the said subject matter pending before the Hon'ble High Court therefore immediately the

question doesn't arise for payment of difference license fees to be paid to you as per your letter, it will prejudice our case since we are not liable to pay the difference license fees with retrospective effect, whether we are liable to pay or not that question has to be decided by the court in the pending writ appeal.

Therefore, we are requesting you to not to demand difference license fees amount with retrospective effect as per the TAMP order, dated 23.07.2010, during the pendency of the appeal before the Hon'ble High Court of Karnataka, Bangalore and the question of remittance of money demanded by you as per your Letter, dated 15.01.2015 for a sum of Rs.5,73,833/- present does not arise, since appeal is pending before the Hon'ble High Court of Karnataka, Bangalore."

2.7. The Assistant Estate Manager Grade-1 was also nominated as Estate Officer under Public Premises (Eviction of Unauthorised Occupants) Act, 19712. The Estate Officer vide communication dated 12.08.2015 gave a notice under sub-section (3) of section 7 of the PP Act to the Licensees calling upon them to show cause on or before thirty days from the date of receipt of the notice why an order requiring to pay the said arrears of rent together with simple interest should not be made.

The Licensees again came up with their reply on 07.09.2015 taking up the same defence that their writ appeal was pending before the Division Bench of the Karnataka High Court at Bengaluru and till such time it is not decided, any demand would prejudice their case. The question of demanding the difference of license fee for the period prior to 23.07.2010 was yet to be decided by the Division Bench in the pending writ appeal.

2.8. Since the response is the same as given in the earlier reply dated 04.02.2015 we are not reproducing the same. The Estate Officer again issued a notice dated 15.02.2016 granting them three weeks further time to show cause and it further stated that the compound interest at the rate of 9% (nine percent) would also be payable under the statutory provisions. This notice was also replied on 25.02.2016 by the Licensees resisting any demand during the pendency of the writ appeal citing the same reasons as given earlier.

2.9. The Estate Officer not satisfied with the reply and noting the fact that there was no stay granted in the pending writ appeals proceeded to pass an order under section 7(1) of the PP Act granting a month's time to make the payment failing which it would be recovered as land revenue.

2.10. The Licensees preferred a miscellaneous appeal under section 9 of the PP Act before the District Judge at Mangalore. The District Judge clubbed all the appeals and decided the same vide judgment dated 15.03.2017, allowing all the appeals holding that the proceedings under section 7(1) was barred by time and

accordingly, set aside the demand. Aggrieved by the aforesaid judgment of the District Judge, the NMPT filed writ petitions before the High Court which have since been dismissed by the impugned judgment giving rise to the present appeals.

3. We have heard Mr. Yatindra Singh, learned senior counsel appearing for the appellant and on behalf of the respondents Shri Vikas Singh and Ms. Haripriya Padmanabhan, learned senior counsels, and have perused the material on record.

4. The arguments advanced on behalf of the appellant are briefly summarised hereunder:

a) The licensees did not raise the plea of limitation in their reply to the show cause notice under Section 7(3) of the PP Act. For the first time they raised it in the appeal. Under the PP Act no limitation is prescribed for passing an order under Section 7(1).

b) The judgment in the case of NDMC vs. Kalu Ram,³ although wrongly decided holding that there would be limitation of three years applicable to recovery proceedings under the PP Act, but without going into that question in view of the facts of the present case, the proceedings for recovery under the PP Act were within the limitation period of three years. This submission is based upon Section 18 of the Limitation Act. It is submitted that the respondent, in writing, had acknowledged the debt vide their reply dated 04.02.2015 to the demand notice dated 15.01.2015 and therefore the limitation would stand extended up to 03.02.2018.

c) Admitted facts and admitted documents can be relied upon to argue a question of law before this Court even if not raised before the Courts below. The submission is that though the benefit of Section 18 of the Limitation Act was not claimed specifically before the Court below, but in view of the admitted facts based on admitted documents, this Court may consider extending the benefit of Section 18 of the Limitation Act. Once this benefit is extended, the limitation for recovery of arrears of rent would extend up to 03.02.2018 and even beyond in view of further acknowledgement of the debt in response to the show cause notice and reply given by the respondents on 07.09.2015 and 25.02.2016 for a further period of three years.

d) The Division Bench and the High Court held the recovery proceedings to be barred by limitation taking the date of notification of the revised tariff i.e. 23.07.2010 as the cause of action for the recovery of arrears. After excluding the period during which interim order was operating i.e. 1 year and 293 days, the limitation would extend up to 11.05.2015 but as the show cause notice was issued on 21.08.2015, it was beyond the prescribed period of limitation.

e) The respondents challenged the notification of revised tariff dated 23.07.2010 by way of several petitions before the learned Single Judge of the Karnataka High Court, in which interim order was also passed. The said bunch of petitions was dismissed on 28.06.2013. Aggrieved by the same, respondent preferred intra-court appeals which were admitted and are still pending before the Division Bench of the High Court of Karnataka. Throughout in their correspondence to the various demands and the show cause notices, the only defence taken by the respondents was that the demand should not be pressed at this stage as it would prejudice their case pending in the appeal before the Division Bench of the Karnataka High Court. The tenor of the defence is clear. Then subject to the outcome of the appeals, the demand could be raised if the respondents failed.

f) It is further submitted that in view of the specific stand taken in their replies, the respondents cannot now urge that the recovery proceedings were barred by limitation.

g) In view of the admitted position that the intracourt appeals are pending before the Division Bench of the High Court, this Court may consider setting aside the quashing of the recovery proceedings on the ground of limitation and may remand the proceedings before the High Court to be clubbed with the pending appeals and both the matters may be decided simultaneously.

If the intra-court appeals of the respondents are allowed and the revision of tariff retrospectively is set aside, that is the notification dated 23.07.2010, to the extent that its retrospective application is set aside, automatically the writs filed by the appellant before the High Court would stand dismissed. However, if the respondents' appeals are dismissed by the Division Bench, then the writ petition filed by the appellant before the High Court, deserves to be allowed and the respondents would be liable to pay the arrears of rent along with admissible interest.

h) Lastly, it was submitted that the respondents were well aware of the revision of the tariff and thus would have realised the enhanced tariff. If they succeed on this technical ground, they would be guilty of unjust enrichment.

i) On the above submissions, learned senior counsel prayed that the appeals be allowed after setting aside the impugned order of the High Court.

5. Mr. Vikas Singh and Ms. Haripriya Padmanabhan, learned senior counsels appearing for the respondents, vehemently submitted that the appeals are liable to be dismissed. None of the arguments advanced by the appellant are tenable in law. Their arguments are summarised hereunder:

a) The appellant, having failed to raise the plea of acknowledgment and extension of limitation under Section 18 of the Limitation Act either before the Estate

Officer, the District Judge or the High Court and not even in the pleadings before this Court, cannot raise this plea during the course of oral arguments. The submission relating to applicability of Section 18 of the Limitation Act deserves to be rejected outright.

b) The question of limitation would be a mixed question of law and fact and, as such, a party seeking benefit of an extension provision should specifically plead and lead evidence in support of their submissions. In the absence of any such pleading before any of the forum, no benefit can be extended to the appellants seeking applicability of Section 18 of the Limitation Act.

c) The communication dated 04.02.2015 never admitted the liability/debt. In fact, it clearly denied the liability/demand on the ground that there could be no retrospective revision of tariff. It is, thus, wrong on the part of the appellant to argue that the communication dated 04.02.2015 acknowledged the liability/debt.

d) The demands raised prior to 12.08.2015 were not under any statutory provision. These demands were being raised by the lessor to the lessee. The statutory authority under the PP Act for the first time, issued show cause notice on 12.08.2015, which admittedly was beyond a period of three years if the benefit of section 18 of the Limitation Act is not extended.

Had there been a notice under Section 7(3) of the PP Act prior to 11.05.2015 to which a reply had been given by the respondents may be for deferment of the demand in view of the pending appeal before the Division Bench, it could be urged on behalf of the appellant that they were entitled to the benefit of Section 18 of the Limitation Act. There being no such show cause notice prior to 11.05.2015, any proceedings for recovery would be barred by law. Both the notices under Section 7(3) dated 12.08.2015 and the order passed under Section 7(1) on 21.07.2016 were beyond the prescribed period of limitation and, thus, proceedings have been rightly quashed by the District Judge as confirmed by the High Court.

e) It may be true that the Assistant Estate Manager also happened to be the Estate Officer under the PP Act, it cannot be presumed that rather no benefit can be extended to the appellant that the previous notices issued by the Assistant Estate Manager could be treated to be notice under the provisions of the PP Act.

f) For all the reasons recorded above, the submission is that the appeals deserve to be dismissed.

6. Having considered the submissions and having perused the material on record, we now proceed to deal with the respective arguments.

7. Common argument raised on behalf of both sides is to the effect that objections had not been taken at the right time and at the initial stage. On behalf of the appellant, it was submitted that in reply to the show cause notice under section 7(3) of the PP Act, no objection regarding the plea of limitation had been taken. However, in the appeal, ground for limitation was taken for the first time. Similarly on behalf of the respondents, it was submitted that the plea of section 18 of Limitation Act was not raised right up to the stage of filing the appeal before this Court, but it was taken only during the course of arguments. As the facts and the material on record, i.e. the correspondences between the parties, are not in dispute, we are rejecting the said submission of both the sides and thus would be dealing with the plea of limitation also.

8. The District Judge had allowed the appeal of the respondents and quashed the demand notice on the finding that it was barred by limitation. Taking the date of cause of action to be 23.07.2010, and after excluding the period during which there was an interim order operating in the writ petition pending before the Single Judge filed by the respondents, the limitation of 3 years would expire on 11.05.2015. The said limitation of 3 years is provided under Article 52 to the Schedule of the Limitation Act. The High Court also took the same view and accordingly held that the proceedings under the PP Act having been initiated by issuance of notice for the first time on 12.08.2015 the same would be barred by limitation.

It also placed reliance on the judgement of this Court in the case of New Delhi Municipal Committee vs. Kalu Ram⁴. In the absence of Kalu Ram (supra), the Limitation Act would not apply because the PP Act does not explicitly incorporate it. While Section 9 of the PP Act provides a limitation period for filing appeals, Section 7 thereof contains no such provision. However, Kalu Ram clarifies that the Limitation Act does apply to proceedings under the PP Act. On behalf of the appellants, it was briefly argued that Kalu Ram (supra) was incorrectly decided and required to be revisited by a larger Bench, but this was raised merely as a passing reference.

9. On behalf of the respondents, it has been submitted that in view of the admitted facts that no notice was issued under the PP Act by the Estate Officer prior to 11.5.2015, the impugned proceedings under section 7 of the PP Act were rightly held to be barred by law.

10. In effect, both sides agree that the Limitation Act will apply to the proceedings under the PP Act. The respondents cannot argue that only section 3 of the Limitation Act along with the limitation provided under Article 52 of the Schedule of the Limitation Act will apply and not section 18 of the same Act. Once the Limitation Act applies, all its provisions will be applicable to the proceedings under the PP Act.

It is true that the plea of benefit of section 18 of the Limitation Act was not raised before the High Court and therefore not considered but nevertheless, as we have already rejected the objection of the respondents that the arguments relating to the benefits of section 18 of Limitation Act may not be considered by this Court, we proceed to deal with the same and analyze as to whether the benefit could or could not be extended to the appellant as claimed.

11. Before proceeding further, it would be appropriate to reproduce section 18 of the Limitation Act:

"Effect of acknowledgment in writing.

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.-For the purposes of this section,-

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right, (b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."

12. Section 18 of the Limitation Act is very clear that where liability is acknowledged in respect of any property or right, a fresh limitation may be computed from the time when the acknowledgment was so signed. Clause (a) of the explanation to Section 18 declares that an acknowledgment would be sufficient for various reasons to be stated therein, which includes the time for payment has not yet come as one of the reasons. In the present case this reason squarely applies.

The respondents were throughout alleging that the time had not been come as the appeals were pending before the Division Bench. This acknowledgement was given in response to the demand by the lessor (appellant) made well within the limitation of 3 years. The lessor as such would be entitled to the benefit of extension of limitation taking benefit of Section 18 of the Limitation Act.

13. The respondents have vehemently argued that this point had never been raised before any of the forum below nor in the pleadings before this Court. However, the fact remains that the communication dated 04.02.2015 is not disputed by the respondents. There is no dispute on the contents either of the said communication. If that be so, under admitted position, and in view of Clause (a) of explanation to Section 18 of the Limitation Act, the acknowledgment of the liability stands established. Thus, the limitation would extend to 03.02.2018.

14. It has also been urged on behalf of the respondents that they never admitted the liability, rather they had specifically denied it. This submission is based on the ground that the revised tariff vide notification dated 23.07.2010 had been challenged before the High Court with respect to its retrospective application. This submission of the respondents is of no help to them. The respondents do not dispute the revised tariff under the notification dated 23.07.2010. Their challenge was only to the retrospective application of the same.

The Single Judge had dismissed the writ petition filed by the respondents against which an intra-court appeal before the Division Bench of the Karnataka High Court was filed and is still pending. There are no interim orders in the said appeal. The respondents had been objecting to the demand on the ground of pendency of this intra-court appeal. As such there was no denial to pay nor the amount was disputed. The respondents were bound by the notification dated 23.07.2010 till such time it was set aside by any Court of law. Having failed before the Single Judge, the respondents, were liable to comply with the notification dated 23.07.2010.

15. At the time of the filing of the writ petition by the appellants before the High Court, the intra-court appeals preferred by the respondents were already pending. The learned Single Judge could have considered deferring the hearing of the writ petition till the disposal of the intra-court appeals as the outcome of the intra court appeals would have a direct bearing on the writ petition filed by the appellants.

16. Once the issue relating to retrospective applicability of revised tariff has been upheld by the learned Single Judge and the writ petitions filed by the respondents were dismissed, against which intra-court appeals at the instance of the respondents were pending, the High Court ought not to have proceeded with the hearing of the writ petition.

Rather, it should have awaited the outcome of the pending intra-Court appeals relating to retrospective application of the notification dated 23.07.2010. Subject to the final outcome of the said intra-court appeals, the writ petition should have been decided. This was all the more necessary for the High Court in view of the consistent stand taken by the respondents that the demands raised by the appellant vide various notices issued prior to 12.08.2015 or thereafter may be deferred awaiting the outcome of the appeals.

17. The respondents were well aware that they had lost from the Single Judge as their petitions had been dismissed but still, they had been resisting the demand only on the basis of the pendency of the appeals before the Division Bench. This objection was taken only to delay the payment of the dues of the revised tariff. The respondents therefore ought not to have benefitted out of the technical objection raised by them regarding the limitations when they were themselves bound by the decision of the learned Single Judge and had no other objection or denial to the demand except that of the pending appeals before the Division Bench.

18. In the above facts and circumstances, we are not entering into the other arguments advanced by the parties. We are restoring the writ petition of the appellants to be heard after the decision in the intracourt appeals. In case the appeals are allowed by the Division Bench then there would no question of any recovery retrospectively. The demands would be liable to be withdrawn. However, if the respondents fail in their appeals, they would be liable to pay the demand in accordance to law along with interest admissible under law.

19. We accordingly allow the appeals, set aside the impugned order of the High Court and restore the writ petitions before the High Court to be heard after disposal of the pending intra-court appeals filed by the respondents.

.....J. (Vikram Nath)

.....J. (Prasanna B. Varale)

New Delhi

April 03, 2025

1 NMPT

2 The PP Act

3 (1976) 3 SCC 407

4 AIR 1976 SC 1637

IN THE SUPREME COURT OF INDIA

G.C. Manjunath & Ors.

Vs.

Seetaram

**[Criminal Appeal No. 1759 of 2025
arising out of SLP (Criminal) No. 6053 of 2021]**

HEADNOTE – Mere excess or overreach in the discharge of official duties does not, by itself, deprive a public servant of the statutory protection granted under Section 197 Cr.P.C.

This protection extends even to acts carried out in excess of official duties, as long as there is a reasonable nexus between the alleged act and the discharge of official functions.

JUDGMENT

Nagarathna, J.

1. Leave granted.

2. Being aggrieved by the order passed by the High Court of Karnataka dated 17.03.2021 in Criminal Petition No.4512 of 2020 in refusing to quash the order dated 11.06.2020 passed by the learned LXI City Civil and Sessions Judge, Bengaluru City affirming the summoning order dated 07.05.2016 passed by the learned VII Additional Chief Metropolitan Magistrate, Bengaluru against the accused persons under Sections 326, 358, 500, 501, 502, 506 (b) read with Section 34 of the Indian Penal Code, 1860 (for short "IPC"), the appellants/accused Nos.2, 3, and 5 have preferred this appeal.

3. Briefly stated facts of the case are that the complainant/respondent herein has been prosecuting certain police officers for their illegal activities. Due to this, the complainant alleged that some police officers had engaged accused Nos.1 to 5, who were also police officers, to take revenge against him. Accused Nos.1 to 5 were serving at the Mahalakshmi Layout Police Station, and accused No.6 is the daughter of the proprietor of Bruna Weekly Magazine.

4. The complainant stated that in order to seek revenge, accused Nos.1 to 5 lodged false complaints against the complainant and registered fabricated cases. They also threatened him with dire consequences. On 10.04.1999, at about 10:30 p.m., accused Nos.2, 3, and 5 trespassed into his house, dragged him out, and

forcibly took him to the Mahalakshmi Layout Police Station. There, the accused Nos.1 to 5 allegedly assaulted him after stripping him of his clothes and continued to torture him throughout the night.

5. On 11.04.1999, accused Nos.2, 3, and 5 allegedly procured a slate, forced the complainant to hold it with his name written on it, and accused No. 6 took his photograph at that time. Subsequently, the complainant was produced before the Magistrate after registering false cases in Crime Nos.137 and 138 of 1999. The complainant showed his injuries to the learned Magistrate, who referred him to a hospital. He was later released and eventually acquitted in the above cases.

6. It was further averred that on 27.10.1999, at about 9:45 p.m., accused Nos.3 to 5 stopped the complainant while he was riding his scooter. They slapped him, engaged an autorickshaw, and took him to the Mahalakshmi Layout Police Station. Accused No.1 was present at the station and abused the complainant in filthy language, demanding that he should withdraw the case filed by him.

It was further alleged that accused No.1 then instructed accused No.3 to take possession of the complainant's belongings. Accused No.3 removed his gold chain, wristwatch, purse, spectacles, and Rs.26,000/- in cash, wrapped them in a handkerchief, and handed over the same to accused No.1. Thereafter, they stripped the complainant of his clothes and assaulted him throughout the night using a lathi and an iron rod causing dislodgement of his tooth leading to profuse bleeding.

7. The complainant further stated that the accused persons continued to torture the complainant and later produced him before the Magistrate, registering a false case under Crime No.448 of 1999 for the offences under Section 392 of the IPC. The complainant reported the ill-treatment to the learned Magistrate, who directed the jail authorities to provide him with medical treatment. He was released from custody and sought treatment at Victoria Hospital on 04.11.1999.

8. Subsequently, accused No.6, with the intent to defame and ruin the complainant's life, published the illegally taken photographs along with defamatory slogans in the Bruna Weekly Magazine on 25.01.2001, 10.09.2001, and 15.09.2001. Accused No.6 also filed a case against the complainant in Crime No.146 of 2005. The complainant alleged that accused Nos.1 to 6 have continuously threatened him, causing him mental agony, and have even threatened to kill him if he does not withdraw the complaints filed against them.

9. Therefore, the complainant approached the Court of learned VII Additional Chief Metropolitan Magistrate, Bengaluru by filing a private complaint P.C.R. No.6754 of 2007 dated 21.04.2007 and prayed for taking cognisance of the offences punishable under Sections 196, 199, 200, 201, 211, 326, 327, 345, 338,

357, 368, 395, 397, 500, 501, 502, 506(b) read with Section 120B of the IPC against accused Nos. 1 to 6.

10. The learned VII Additional Chief Metropolitan Magistrate by order dated 26.12.2009, recorded the sworn statement of the complainant, took cognisance of the complaint dated 21.04.2007 and issued summons to accused No.1 to 6 in C.C No. 368 of 2010. Being aggrieved, accused No.6 approached the High Court by way of filing Criminal Petition No.4364 of 2010 challenging the order dated 26.12.2009. By order dated 30.03.2012, the High Court set aside the order dated 26.12.2009 insofar as accused No.6 is concerned and remanded the matter to the learned Magistrate for a fresh consideration.

11. Thereafter, by order dated 07.05.2016, the learned VII Additional Chief Metropolitan Magistrate, held that there was prima facie material to register the case against accused Nos.1 to 5 for the offences under Sections 326, 358, 500, 501, 502, 506 (b) read with Section 34 of the IPC and accordingly ordered to register a criminal case against accused Nos.1 to 5 as well as issued summons against accused Nos.1 to 5.

However, in the said order, the learned VII Additional Chief Metropolitan Magistrate, found that the materials on record are insufficient to take cognisance of the offence punishable under Sections 196, 199, 200, 201, 211, 34, 338, 357, 367, 368, 395 and 397 of the IPC. Insofar as the aspect of delay in filling the private complaint is concerned, the learned VII Additional Chief Metropolitan Magistrate observed that sufficient material was produced to prove that the complainant was pursuing this case by way of writing letters/complaints to the Higher Officials. Further, the charges against accused No.6 were dropped.

12. Being aggrieved by the order dated 07.05.2016 passed by the learned VII Additional Chief Metropolitan Magistrate, accused Nos.1 to 3 and 5 approached the Court of LXI City Civil and Sessions Judge, Bengaluru City by way of filing Criminal Revision Petition No.720 of 2017. By order dated 11.06.2020, the learned LXI City Civil and Sessions Judge, Bengaluru City dismissed the Criminal Revision Petition No.720 of 2017 filed by the accused Nos.1 to 3 and 5.

13. Being aggrieved, the accused Nos.1 to 3 and 5 approached the High Court by way of filing Criminal Petition No.4512 of 2020 praying to set aside the order dated 07.05.2016 passed by the learned VII Additional Chief Metropolitan Magistrate, Bengaluru in taking cognisance of offences punishable under Sections 326, 358, 500, 501, 502 and 506(b) read with Section 34 of the IPC against them and in registering the case in C.C. No.368 of 2010 and issuing summons against them as well as the order dated 11.06.2020 passed by the learned LXI City Civil and Sessions Judge, Bengaluru City predominantly on the ground that a prior order of sanction under Section 197 of the Code of Criminal

Procedure, 1973 (for short "CrPC") and Section 170 of the Karnataka Police Act, 1963 (for short "Police Act") was not obtained from the Government before prosecuting the accused persons.

14. During the pendency of the Criminal Petition No.4512 of 2020 before the High Court, accused No.1 passed away. By impugned order dated 17.03.2021, the High Court dismissed the Criminal Petition No.4512 of 2020 filed by accused No.2, 3 and 5. The High Court observed that sufficient material was placed on record against the accused persons for facing criminal trial. As regards the plea of limitation under Section 197 of the CrPC read with Section 170 of the Police Act, the High Court further observed that the learned VII Additional Chief Metropolitan Magistrate, Bengaluru and the learned LXI City Civil and Sessions Judge, Bengaluru City have not gone into the aspect of obtaining a prior order of sanction.

However, the High Court held that it was evident that the complainant made sufficient efforts to get the order of sanction. Further, the High Court noted that the accused persons exceeded their limits and assaulted the complainant resulting in grave injuries. Ergo, the High Court held that the same cannot be termed as an act done in the discharge of the official duty and protection cannot be given under Section 197 of the CrPC. In other words, the High Court held that an order of sanction under Section 197 of the CrPC and Section 170 of the Police Act was not necessary in the instant case.

The High Court noted that the judgment of this Court in D. Devaraja vs. Owais Sabeer Hussain, (2020) 7 SCC 695 ("D. Devaraja") relied upon by the accused persons cannot come to their rescue. The High Court observed that the Supreme Court in the said judgment has categorically held that the protection given under Section 197 of the CrPC and Section 170 of the Police Act has its own limitation and that the said protection would be available only for the acts done by the public servant in discharge of his official duty or if it is reasonably connected with the discharge of his official duties and not in instances such as the present case. Being aggrieved, accused Nos.2, 3, and 5 have preferred the present appeal before this Court.

15. During the pendency of the present proceedings, the learned senior counsel appearing for the accused persons submitted that accused Nos.1, 3, and 4 have passed away, resulting in abatement of the criminal proceedings against them. Consequently, the present appeal survives only insofar as accused Nos.2 and 5 are concerned. It was further submitted that accused Nos.2 and 5 have attained superannuation from their posts in the years 2015 and 2020, respectively.

16. We have heard the learned senior counsel for the appellants/accused No.2 and 5 and the learned counsel for the respondent/complainant. We have perused the material on record.

17. Learned senior counsel appearing for the appellants/ accused persons submitted that there has been an inordinate and unexplained delay in filing the present complaint. In this regard, it was contended that the complaint was lodged only on 21.04.2007, pertaining to an alleged incident that is stated to have occurred during the period 1999-2000, while the accused were in active police service.

Learned senior counsel further argued that several criminal cases had been registered against the complainant, in which he was ultimately acquitted in the year 2006. It was pointed out that immediately following his acquittal, the present complaint came to be filed in 2007. In this backdrop, it was submitted that the present complaint is nothing but a retaliatory measure, filed vindictively against the accused persons solely for having discharged their official duties as police officials.

18. Learned senior counsel further contended that, admittedly, the complaint was filed without obtaining the requisite prior sanction as mandated under Section 197 of the CrPC and Section 170 of the Police Act. It was submitted that the High Court erroneously observed that the acts alleged against the accused persons bore no connection with their official duties. Accordingly, it was argued that the High Court committed an error in concluding that prior sanction was not necessary before initiating criminal proceedings against the accused persons.

19. Learned senior counsel further submitted that the expression "under colour or in excess of any such duty" employed in Section 170 of the Police Act is of particular significance. It was contended that the offences alleged against the accused persons would squarely fall within the ambit of the phrase "under colour or in excess of any such duty." Therefore, it was urged that obtaining prior sanction from the competent Government authority is an indispensable prerequisite before entertaining prosecution against the accused persons.

In support of this contention, reliance was placed on the decision of this Court in *Virupaxappa Veerappa Kadampur vs. State of Mysore*, AIR 1963 SC 849 ("Virupaxappa"). In the said case, while interpreting Section 161(1) of the Bombay Police Act, 1951, this Court held that the phrase "under colour of duty" encompasses acts done by police officers ostensibly in the discharge of their official functions, even if they exceeded the authority vested in them under the Act.

20. Learned senior counsel further contended that the High Court misinterpreted the ratio laid down by this Court in D. Devaraja. In this regard, it was submitted that in the said judgment, this Court unequivocally held that even if a police officer acts in excess of the scope of his official duties, so long as there exists a reasonable nexus between the act complained of and the discharge of his official functions, the mere fact of exceeding authority would not, by itself, disentitle the officer from the statutory safeguard of obtaining prior government sanction before initiation of criminal proceedings. In view of the foregoing submissions, the learned senior counsel submitted that the impugned order passed by the High Court is liable to be set aside.

21. Per contra, learned counsel appearing for the respondent/complainant vehemently contended that, at the time of the complainant's arrest in connection with certain criminal cases, he was subjected to physical assault at the hands of the accused persons. It was further submitted that this fact was duly brought to the attention of the learned Magistrate, who, on each occasion, issued directions to both the Jailor and the Investigating Officer to ensure that the complainant was provided with necessary medical treatment for the injuries allegedly sustained during the said assault.

22. Learned counsel further submitted that he has placed relevant documents on record before this Court, including the wound certificate, which clearly reflects that the complainant sustained grievous injuries, including broken teeth. Additionally, it was pointed out that the X-ray report corroborates the medical findings, indicating the presence of a healing socket and confirming that Injury No. 2 is grievous in nature.

In light of these materials, learned counsel for the complainant argued that a prima facie case was clearly made out against the accused persons. Consequently, learned VII Additional Chief Metropolitan Magistrate, Bengaluru took cognisance of the offences against them by order dated 07.05.2016, which was subsequently affirmed by the learned LXI City Civil and Sessions Judge, Bengaluru City, by order dated 11.06.2020, and further upheld by the High Court in the impugned order.

23. It was further submitted that, in the present case, learned VII Additional Chief Metropolitan Magistrate duly considered the materials placed on record, which demonstrate that the complainant had made consistent efforts from the year 2002 to 2006 to obtain sanction for prosecution. The learned Magistrate has also noted that the complainant had addressed multiple representations to the head of the department seeking the requisite sanction; however, no conclusive or effective response was forthcoming from the authorities. Learned counsel for the complainant further pointed out that the High Court, in the impugned order, similarly recorded that all necessary steps were taken by the complainant to

secure the sanction, but despite his earnest efforts, the competent authority failed to grant the same.

24. Learned counsel for the complainant submitted that the accused persons "under the colour of official duty" removed his clothes and had abused and assaulted him. These acts neither have any bearing on official duties nor are they connected remotely to official duties. Instead, it was submitted that the accused persons exceeded the limits allowed by the law. The act of raid and seizure is part of official duties but the further acts of the accused persons cannot fall within the scope of official duty.

It was argued that even the High Court noted that the brutal conduct of the accused persons, which included not only breaking the complainant's teeth but also causing grievous injuries, clearly demonstrates that they far exceeded the bounds of their official duties. Accordingly, learned counsel for the complainant submitted that the High Court was justified in holding that criminal proceedings could have been initiated without prior sanction.

25. It was argued that this Court in *Bakhshish Singh Brar vs. Gurmej Kaur*, (1987) 4 SCC 663 ("*Bakhshish Singh*") dealt with the issue of sanction under Sections 197 and 196 of the CrPC. It was submitted that the said case involved a police officer accused of causing grievous injuries and death during the course of a raid and search.

It was submitted that in the said judgment, this Court noted that, in order to determine whether the officer, while ostensibly acting in the discharge of his official duties, had exceeded the limits of his official capacity, the court must first take cognisance of the offence. Accordingly, this Court observed that, in such circumstances, the trial need not be stayed merely due to the absence of sanction for prosecution at the initial stage. Hence, learned counsel for the complainant submitted that the High Court was justified in holding that a prior sanction was not necessary in this case thereby dismissing the criminal petition filed by the accused persons.

26. Upon hearing the learned counsel for the rival parties and after a thorough examination of the material available on record, the core issue that emerges for determination is, whether, the learned VII Additional Chief Metropolitan Magistrate was legally justified in taking cognisance of the offences alleged against the accused persons in P.C.R. No.6754/2007, in the absence of the prior sanction contemplated under Section 197 of the CrPC read with Section 170 of the Police Act. The real question, therefore, is whether the acts complained of are reasonably connected to, or performed, in the purported discharge of the official duties of the accused persons, so as to attract the statutory protection afforded by the said provisions. 27. Section 170 of the Karnataka Police Act reads as follows:

"170. Suits or prosecutions in respect of acts done under colour of duty as aforesaid not to be entertained without sanction of Government.-

(1) In any case of alleged offence by the Commissioner, a Magistrate, Police Officer or Reserve Police Officer or other person, or of a wrong alleged to have been done by such Commissioner, Magistrate, Police Officer or Reserve Police Officer or other person, by any act done under colour or in excess of any such duty or authority as aforesaid, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained except with the previous sanction of the Government.

(2) In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall be bound to give to the alleged wrongdoer one month's notice at least of the intended suit with sufficient description of the wrong complained of, failing which such suit shall be dismissed.

(3) The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service, and shall state whether any, and if so, what tender of amends has been made by the defendant. A copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof."

28. Section 197 of the CrPC is set out hereinbelow for convenience:

"197. Prosecution of Judges and public servants.-

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognisance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:"

29. A plain reading of Section 170 of the Police Act reveals that the legislature, in its wisdom, has sought to afford a statutory safeguard to certain public functionaries, including Commissioners, Magistrates, Police Officers, and Reserve Police Officers. The provision is categorical in its stipulation that where

any offence is alleged to have been committed, or any wrong alleged to have been occasioned, by such officials in the discharge of their duties or in the exercise of their lawful authority, no court shall entertain any prosecution or suit against them without the prior sanction of the Government. Importantly, the protective umbrella of Section 170 is not confined solely to acts strictly within the bounds of authority but extends to acts done ostensibly in excess of such authority, so long as there exists a reasonable nexus between the act complained of and the discharge of official functions.

30. A careful reading of Section 197 of the CrPC unequivocally delineates a statutory bar on the Court's jurisdiction to take cognisance of offences alleged against public servants, save without the prior sanction of the appropriate government. The essential precondition for the applicability of this provision is that the alleged offence must have been committed by the public servant while acting in the discharge of, or purported discharge of, their official duties. The protective mantle of Section 197 of the CrPC, however, is not absolute; it does not extend to acts that are manifestly beyond the scope of official duty or wholly unconnected thereto. Acts bereft of any reasonable nexus to official functions fall outside the ambit of this safeguard and do not attract the bar imposed under Section 197 of the CrPC.

31. Both the aforesaid provisions serve a similar protective function. While Section 170 of the Police Act mandates prior sanction for prosecuting a public official for "acts done under colour of, or in excess of, such duty or authority," Section 197 of the CrPC requires prior sanction where a public official is accused of having committed "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty." The underlying rationale of both these statutory provisions is to safeguard public functionaries from frivolous or vexatious prosecution for actions undertaken in good faith in the discharge of, or purported discharge of, their official duties, thereby ensuring that the fear of litigation does not impede the efficient functioning of public administration.

32. This Court in *B. Saha vs. M.S. Kochar*, (1979) 4 SCC 177 ("B. Saha") observed that the words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197 of the CrPC, are capable of a narrow as well as a wide interpretation. This Court observed that if these words are construed too narrowly, the section will be rendered altogether sterile, for, "it is no part of an official duty to commit an offence, and never can be". In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed.

The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, that is entitled to the protection of Section 197 of the CrPC, an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision. As pointed out by Ramaswami, J. in *Baijnath vs. State of Madhya Pradesh*, (AIR 1966 SC 220), "it is the quality of the act that is important and if it falls within the scope and range of his official duties, the protection contemplated under Section 197 CrPC will be attracted".

33. This Court in *Amod Kumar Kanth vs. Association of Victim of Uphaar Tragedy*, (2023) 16 SCC 239 held that the State performs its obligations through its officers/public servants and every function performed by a public servant is ultimately aimed at achieving public welfare. Often, their roles involve a degree of discretion. But the exercise of such discretion cannot be separated from the circumstances and timing in which it is exercised or, in cases of omission, when the omission occurs. In such circumstances, the courts must address, whether the officer was acting in the discharge of official duties.

It was observed that even when an officer acts under the purported exercise of official powers, they are entitled to protection under Section 197 of the CrPC. This protection exists for a valid reason so that the public servants can perform their duties fearlessly, without constant apprehension of legal action, as long as they act in good faith. While Section 197 of the CrPC does not explicitly mention the requirement of good faith, such a condition is implied and is expressly included in several other statutes that offer protection to public servants from civil and criminal liability.

34. While dealing with the provisions of Section 197 of the CrPC, read with Section 170 of the Police Act, this Court in *D. Devaraja* observed that not every offence committed by a police officer automatically gets this protection. The safeguard under Section 197 of the CrPC and Section 170 of the Police Act is limited. It applies only if the alleged act is reasonably connected to the officer's official duties. The law does not offer protection if the official role is used as a mere excuse to commit wrongful acts. However, it was held that the protection of prior sanction will be available when there is a reasonable connection between the act and their duty.

While enunciating when the protection of prior sanction will be applicable, this Court held that even if a police officer exceeds his official powers, as long as there is a reasonable connection between the act and his duty, they are still entitled to the protection requiring prior sanction. Excessiveness alone does not strip them of this safeguard. The language of both Section 197 of the CrPC and Section 170 of the Police Act is clear that sanction is required not only for acts

done in the discharge of official duty as well as for the acts purported to be done in the discharge of official duty and/or acts done "under colour of or in excess of such duty or authority".

Sanction becomes mandatory if there is a reasonable connection between the act and the officer's official duties, even if the officer acted improperly or exceeded his authority. Therefore, if a complaint against a police officer involves actions reasonably related to his official role, the Court cannot take cognisance unless sanction from the appropriate Government has been obtained under Section 197 of the CrPC and Section 170 of the Police Act. The relevant portion from the abovementioned judgment is as follows:

"66. Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassing, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the Government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate Government.

67. Every offence committed by a police officer does not attract Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given under Section 197 of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act.

An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a policeman assaulting a domestic help or indulging in domestic violence would certainly not be entitled to protection. However, if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.

68. If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of the government sanction for initiation of criminal action against him.

69. The language and tenor of Section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act makes it absolutely clear that sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty and/or act done under colour of or in excess of such duty or authority.

70. To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of the law.

35. Recently, this Court in Gurmeet Kaur vs. Devender Gupta, 2024 SCC OnLine SC 3761 dealt with the object and purpose of Section 197 of the CrPC which reads as follows:

"22. the object and purpose of the said provision is to protect officers and officials of the State from unjustified criminal prosecution while they discharge their duties within the scope and ambit of their powers entrusted to them. A reading of Section 197 of the CrPC would indicate that there is a bar for a Court to take cognisance of such offences which are mentioned in the said provision except with the previous sanction of the appropriate government when the allegations are made against, inter alia, a public servant.

There is no doubt that in the instant case the appellant herein was a public servant but the question is, whether, while discharging her duty as a public servant on the relevant date, there was any excess in the discharge of the said duty which did not require the first respondent herein to take a prior sanction for prosecuting the appellant herein. In this regard, the salient words which are relevant under subsection (1) of Section 197 are "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognisance of such offence except with the previous sanction".

Therefore, for the purpose of application of Section 197, a sine qua non is that the public servant is accused of any offence which had been committed by him in "discharge of his official duty". The said expression would clearly indicate that Section 197 of the CrPC would not apply to a case if a public servant is accused of any offence which is de hors or not connected to the discharge of his or her official duty."

36. In light of the aforesaid judgments, the guiding principle governing the necessity of prior sanction stands well crystallised. The pivotal inquiry is whether the impugned act is reasonably connected to the discharge of official duty. If the act is wholly unconnected or manifestly devoid of any nexus to the official functions of the public servant, the requirement of sanction is obviated.

Conversely, where there exists even a reasonable link Page 27 of 31 between the act complained of and the official duties of the public servant, the protective umbrella of Section 197 of the CrPC and Section 170 of the Police Act is attracted. In such cases, prior sanction assumes the character of a sine qua non, regardless of whether the public servant exceeded the scope of authority or acted improperly while discharging his duty.

37. Turning to the case at hand, there is little doubt that the allegations levelled against the accused persons are grave in nature. Broadly classified, the accusations against the accused persons encompass the following: (1) abuse of official authority by the accused persons in allegedly implicating the complainant in fabricated criminal cases, purportedly driven by malice or vendetta; (2) physical assault and ill-treatment of the complainant by the accused persons, constituting acts of alleged police excess; (3) wrongful confinement of the complainant; and (4) criminal intimidation of the complainant.

38. In the circumstances at hand, we are of the considered opinion that the allegations levelled against the accused persons, though grave, squarely fall within the ambit of "acts done under colour of, or in excess of, such duty or authority," and "acting or purporting to act in the discharge of his official duty," as envisaged under Section 170 of the Police Act and Section 197 of the CrPC respectively.

This Court, while adjudicating on instances of alleged police excess, has consistently held in Virupaxappa and D. Devaraja, that where a police officer, in the course of performing official duties, exceeds the bounds of such duty, the protective shield under the relevant statutory provisions continues to apply, provided there exists a reasonable nexus between the impugned act and the discharge of official functions. It has been categorically held that transgression or overstepping of authority does not, by itself, suffice to displace the statutory safeguard of requiring prior government sanction before prosecuting the public servant concerned.

39. In the present case, it is an admitted position that the complainant was declared a rowdy sheeter by the Deputy Commissioner of Police, Law and Order (West), Bengaluru City, pursuant to a request made by the Mahalakshmi Layout Police Station, Bengaluru, upon due consideration of the criminal cases registered

against the complainant, vide order dated 23.08.1990. Subsequently, multiple criminal cases have been instituted against the complainant.

It is in the course of the investigation of these cases that the instant allegations have been levelled against the accused persons. As noted above, any action undertaken by a public officer, even if in excess of the authority vested in them or overstepping the confines of their official duty, would nonetheless attract statutory protection, provided there exists a reasonable nexus between the act complained of and the officer's official functions.

40. In the present case, it is evident that the actions attributed to the accused persons emanate from the discharge of their official duties, specifically in connection with the investigation of criminal cases pending against the complainant. As previously observed, a mere excess or overreach in the performance of official duty does not, by itself, disentitle a public servant from the statutory protection mandated by law.

The safeguard of obtaining prior sanction from the competent authority, as envisaged under Section 197 of the CrPC and Section 170 of the Police Act cannot be rendered nugatory merely because the acts alleged may have exceeded the strict bounds of official duty. In view of the foregoing, we are of the considered opinion that the learned VII Additional Chief Metropolitan Magistrate erred in taking cognisance of the alleged offences against the accused persons without the requisite sanction for prosecution in the instant case. The absence of the necessary sanction vitiates the very initiation of criminal proceedings against the accused persons.

41. Admittedly, the alleged incident pertains to the period of 1999-2000. Accused Nos.1, 3, and 4 have since passed away. The proceedings now survive solely against accused Nos.2 and 5. It is pertinent to note that both accused No.2 and accused No.5 retired from service long ago on attaining the age of superannuation; accused No.2 superannuated in the year 2015 and is presently 71 years of age, while accused No.5 retired in the year 2020 and is now 64 years old. In these circumstances, we are of the considered view that no meaningful purpose would be served by prolonging the criminal prosecution against them. Accordingly, we are satisfied that the ends of justice would be adequately met in the instant case by quashing the proceedings against accused Nos.2 and 5.

42. In view of the foregoing discussion, we are of the considered opinion that the appeal deserves to succeed. Accordingly, the appeal is allowed. The impugned order dated 17.03.2021 passed by the High Court in Criminal Petition No.4512 of 2020, preferred under Section 482 of the CrPC is hereby set aside. Consequently, Criminal Petition No.4512 of 2020 stands allowed.

As a result, the summoning order dated 07.05.2016 passed by the learned VII Additional Chief Metropolitan Magistrate, Bengaluru against accused Nos.2 and 5, as well as the order dated 11.06.2020 passed by the learned LXI City Civil and Sessions Judge, Bengaluru City in affirming the same are hereby quashed.

The appeal is allowed in the aforesaid terms.

.....J. (B.V. Nagarathna)

.....J. (Satish Chandra Sharma)

New Delhi;

April 03, 2025

IN THE SUPREME COURT OF INDIA

Sangita Sinha
Vs.
Bhawana Bhardwaj and Ors.

**[Civil Appeal No. 4972 of 2025
arising out of SLP (C) No. 28460 of 2024]**

HEADNOTE – A suit for the specific performance of an agreement to sell, filed after its cancellation, is not maintainable unless it includes a prayer for declaratory relief under Section 34 of the Specific Relief Act challenging the validity of the cancellation.

Declaratory relief challenging the validity of the cancellation was essential when seeking specific performance of the agreement to sell, as the suit could not be sustained without a valid and subsisting agreement.

JUDGMENT

Manmohan, J

1. Leave granted.

2. The primary issue that arises for consideration in the present civil appeal is whether a suit for specific performance of an Agreement to Sell is liable to be decreed if the buyer had accepted the refund of majority of the earnest money deposit/advance consideration, during the pendency of the civil suit?

3. Brief facts leading to the present appeal are as under:-

3.1. Late Kushum Kumari ("original defendant" / "seller") was allotted the subject property by the People's Cooperative House Construction Society Limited ("Society") vide a registered sub-lease dated 2nd April 1968.

3.2. On 25th January 2008, an unregistered Agreement to Sell with respect to the subject property was executed between the "Respondent No.1-buyer"-plaintiff and the seller for a total sale consideration of Rs. 25,00,000/- (Rupees Twenty Five Lakhs). At the time of the execution of the Agreement to Sell, the Respondent No.1- buyer paid a sum of Rs.2,51,000/- (Rupees Two Lakh Fifty One Thousand) in cash to the seller and issued three post-dated cheques worth Rs.7,50,000/- (Rupees Seven Lakh Fifty Thousand).

3.3. It is the case of Respondent No.1-buyer that when she visited the subject property along with her husband on 11th February 2008, the tenants of the seller

created a scuffle and forced them to return. In the circumstance, the Respondent No.1-buyer issued legal notices dated 23rd February 2008 and 23rd April 2008, expressing her intention to pay the balance sale consideration and to get the property registered in her favour.

3.4. Upon the failure of the seller to execute the sale deed, Respondent No.1-buyer filed a suit before the Trial Court, Sub Judge-IV, Patna under the Specific Performance Act, 1963 ("Act, 1963)" seeking specific performance of the Agreement to Sell dated 25th January 2008 and the same was registered as Title Suit No. TS/176/2008 ("subject suit").

3.5. The subject suit was contested by the seller by filing a written statement, stating therein that she came to know about the Agreement to Sell dated 25th January 2008 on 5th February 2008 and immediately thereafter, made a complaint dated 6th February 2008 with the Inspector of Police-cum-Station House Officer, Kankarbagh Police Station, Patna stating that her signatures had been fraudulently taken on the Agreement to Sell dated 25th January 2008.

It was further stated that the seller issued a letter dated 7th January 2008 cancelling the Agreement to Sell dated 25th January 2008 and refunded Rs.2,11,000/- (Rupees Two Lakh Eleven Thousand) through five demand drafts dated 7th February 2008 in lieu of the cash and returned two of the three post-dated cheques of Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand) each, which were issued by the seller. Vide Order dated 16th December 2008, issues were framed by the Trial Court.

3.6. Upon the demise of the seller, the Respondent No.3 herein, who is the step grandson of the seller, was impleaded as substituted defendant no. 1 and the appellant herein was impleaded as defendant no. 3 as the subject property had been bequeathed in her favour by way of a Will dated 23rd September 2002 executed by the original owner/seller.

3.7. After consideration of the depositions of PW-1 (Respondent No.1 herein) and her husband, PW-2, the Trial Court framed three additional issues vide order dated 21st January 2013. The issues were framed once again on 27th April 2018, and a judgment was passed in favour of Respondent No.1-buyer on the same date.

3.8. The judgment dated 27th April 2018 and the decree dated 10th May 2018 were challenged by the appellant herein in First Appeal No. 83 of 2018. The said appeal was dismissed by the Patna High Court vide the impugned Judgment dated 9th May 2024.

3.9. Upon the present Special Leave Petition being filed, this Court, while issuing notice, had directed parties to maintain status quo with respect to the possession on 20th August 2024.

SUBMISSIONS ON BEHALF OF THE APPELLANT

4. Shri S.B. Upadhyay, learned senior counsel for the appellant, stated that the signatures of the seller on the Agreement to Sell dated 25th January 2008 had been fraudulently obtained by Respondent No.3 herein. He stated that the seller-defendant signed some blank papers believing the same to be related to the Will that she had executed in favour of the appellant on 23rd September 2002.

5. He stated that upon the discovery of the Agreement to Sell dated 25th January 2008 on 5th February 2008, the seller made a criminal complaint dated 6th February 2008 with the Inspector of Police-cum-Station House Officer, Kankarbagh, Patna that her signatures had been fraudulently obtained on the Agreement to Sell dated 25th January 2008.

6. He stated that on 7th February 2008, the seller wrote a letter to Respondent No.1-buyer cancelling the Agreement to Sell dated 25th January 2008 enclosing therewith five demand drafts dated 7th February 2008 amounting to Rs. 2,11,000/- (Rupees Two Lakh Eleven Thousand) in lieu of the cash and two of the three post-dated cheques of Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand) each, which were issued by the Respondent No.1-buyer.

7. He pointed out that the Respondent No.1-buyer as well as her husband-PW2, in their depositions, have admitted that they had received five demand drafts dated 7th February 2008 amounting to Rs. 2,11,000/- (Rupees Two Lakh Eleven Thousand) in lieu of the cash and also received two of the three post-dated cheques of Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand) along with the letter cancelling the Agreement to Sell dated 25th January 2008 in March 2008.

He explained that five demand drafts dated 7th February 2008 of Rs.2,11,000/- (Rupees Two Lakh Eleven Thousand) were encashed by the Respondent No.1-buyer in July 2008, after institution of the subject suit on 5th May 2008. He submitted that the encashment of the demand drafts amounted to revocation of the Agreement to Sell dated 25th January 2008. He contended that the subject suit was filed by the Respondent No.1-buyer after revocation of the Agreement to Sell dated 25th January 2008, without seeking any relief against the revocation and without disclosing that she was in receipt of the demand drafts and postdated cheques.

8. He contended that the subject suit was filed on the basis of an Agreement to Sell which stood cancelled and as such, the same was not maintainable. He submitted that existence of a valid agreement is sine qua non for grant of relief of

specific performance. He pointed out that, in similar circumstances, this Court in R. Kandasamy (Since Dead) & Ors. vs. T.R.K. Sarawathy & Anr. (Civil Appeal No. 3015 of 2013 decided on 21st November 2024), had set aside the judgment and decree passed in favour of the Respondent No.1-buyer inter alia on the ground that a nonexistent Agreement to Sell cannot be enforced by a Court of law.

9. Even otherwise, he contended that the Respondent No.1-buyer was not ready and willing to perform the Agreement to Sell dated 25th January 2008. He stated that a mere averment that the Respondent No.1-buyer is ready and willing to perform the contract will not suffice as readiness and willingness must be inferred in overall circumstances of the case, including the conduct of the Respondent No.1-buyer prior and subsequent to the filing of the suit.

10. He pointed out that the Respondent No.1-buyer in her cross-examination, had admitted that at the time of execution of the agreement, she was not aware of the balance in her bank account and at the time when the three post-dated cheques for Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand) were issued, there was no sufficient balance in her account. He contended that the conduct of the Respondent No.1-buyer in encashing the demand drafts proved that she was not ready or willing to perform the contract. In support of his contentions, he relied upon the judgments of this Court in Mehboob-Ur-Rehman (Dead) through Legal Representatives vs. Ahsanul Ghani, (2019) 19 SCC 415 and C.S. Venkatesh vs. A.S.C. Murthy (Dead) by Legal Representatives and Ors., (2020) 3 SCC 280.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 1

11. Per contra, Mr. Mungeshwar Sahoo, learned senior counsel for the Respondent No.1-buyer stated that the suit had been decreed in favour of the Respondent No.1-buyer by the Trial Court after rightly appreciating the evidence and a sale deed had been executed subsequently in favour of the Respondent No.1-buyer upon deposit of Rs. 24,61,000/- (Rupees Twenty Four Lakh Sixty One Thousand) before the Trial Court. He contended that the judgment and decree passed by the Trial Court had been rightly upheld by the High Court. He stated that the entire case of the appellant in the present proceedings is based upon reappraisal of evidence and the same cannot be permitted at this stage.

12. He stated that the entire earnest money/advance consideration had not been refunded/returned by the seller. He stated that the Respondent No.1-buyer had paid Rs.2,51,000/- (Rupees Two Lakh Fifty One Thousand) in cash to the seller against which the seller had refunded Rs.2,11,000/- (Rupees Two Lakh Eleven Thousand) through five demand drafts dated 7th February 2008. Therefore, according to him, an amount of Rs. 40,000/- (Rupees Forty Thousand) remained with the seller as earnest money/advance consideration. He contended that as the

balance sale consideration had been paid subsequently, the cancellation of the Agreement to Sell dated 25th January 2008 was not valid.

13. Even otherwise, he stated that a bilateral agreement cannot be unilaterally cancelled by a party by returning the earnest money. According to him, a (bilateral) agreement can only be cancelled by a Court of law or by executing a subsequent agreement, cancelling the prior agreement. He stated that in the event parties are permitted to unilaterally cancel the agreement, the purchaser will be left remediless as any third party can intervene by offering a higher earnest money.

14. He contended that the seller passed away before she could prove her defense by leading evidence. He stated that neither the appellant nor the Respondent No.3 herein had deposed in support of the written statement filed by the seller. He therefore stated that the written statement of the seller had not been proved. He also contended that the appellant did not have the locus to file the present appeal. According to him, the appellant had no right, title or interest in the subject property and the findings of the Trial Court or the High Court do not affect the appellant in any manner.

COURT'S REASONING RESPONDENT NO.1 WAS NOT WILLING TO PERFORM THE AGREEMENT TO SELL

15. Having heard learned senior counsel / learned counsel for the parties and having perused the paper book, the admitted position that emerges is that Respondent No.1-buyer had paid Rs. 2,51,000/- (Rupees Two Lakh Fifty One Thousand) in cash and handed over three post-dated cheques of Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand) each at the time of execution of the Agreement to Sell dated 25th January 2008.

It is also not disputed that the Respondent No.1-buyer had subsequently received a letter dated 7th February 2008 cancelling the Agreement to Sell dated 25th January 2008 enclosing therewith five demand drafts dated 7th February 2008 totaling to Rs.2,11,000/- (Rupees Two Lakh Eleven Thousand) (in lieu of the cash paid by the Respondent No.1-buyer) along with two of the three post-dated cheques of Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand) each, which had been issued initially by the Respondent No.1-buyer.

Further, the third post-dated cheque which was not returned to the Respondent No.1-buyer had not been encashed. The Respondent No.1- buyer has admitted that the letter dated 7th February 2008 had been received prior to filing of the suit for specific performance and five demand drafts dated 7th February 2008 totaling to Rs.2,11,000/- (Rupees Two Lakh Eleven Thousand) had been encashed in July, 2008 after institution of the subject suit on 5th May 2008, without raising

any objection with respect to the difference in the cash amount and the demand drafts furnished by the seller.

16. It is settled law that under the Act, 1963, prior to the 2018 Amendment, specific performance was a discretionary and equitable relief. In *Kamal Kumar vs. Premlata Joshi and Ors.*, (2019) 3 SCC 704, which has been followed in *P. Daivasigamani vs. S. Sambandan*, (2022) 14 SCC 793, this Court framed material questions which require consideration prior to grant of relief of specific performance. The relevant portion of the judgment in *Kamal Kumar* (supra) is reproduced hereinbelow:

"7. It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance, are:

7.1. First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property.

7.2. Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract.

7.3. Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract;

7.4. Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff;

7.5. Lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money, etc. and, if so, on what grounds.

8. In our opinion, the aforementioned questions are part of the statutory requirements [See Sections 16(c), 20, 21, 22, 23 of the Specific Relief Act, 1963 and Forms 47/48 of Appendices A to C of the Code of Civil Procedure]. These requirements have to be properly pleaded by the parties in their respective pleadings and proved with the aid of evidence in accordance with law. It is only then the Court is entitled to exercise its discretion and accordingly grant or refuse the relief of specific performance depending upon the case made out by the parties on facts."

17. It is trite law that 'readiness' and 'willingness' are not one but two separate elements. 'Readiness' means the capacity of the Respondent No.1- buyer to

perform the contract, which would include the financial position to pay the sale consideration. 'Willingness' refers to the intention of the Respondent No.1-buyer as a purchaser to perform his part of the contract, which is inferred by scrutinising the conduct of the Respondent No.1-buyer /purchaser, including attending circumstances.

18. Continuous readiness and willingness on the part of the Respondent No.1-buyer /purchaser from the date of execution of Agreement to Sell till the date of the decree, is a condition precedent for grant of relief of specific performance. This Court in various judicial pronouncements has held that it is not enough to show the readiness and willingness up to the date of the plaint as the conduct must be such as to disclose readiness and willingness at all times from the date of the contract and throughout the pendency of the suit up to the decree. A few of the said judgments are reproduced hereinbelow:-

A. In *Gomathinayagam Pillai and Ors. vs. Palaniswami Nadar*, (1967) 1 SCR 227, it has been held as under:-

"6. But the respondent has claimed a decree for specific performance and it is for him to establish that he was, since the date of the contract, continuously ready and willing to perform his part of the contract. If he fails to do so, his claim for specific performance must fail. As observed by the Judicial Committee of the Privy Council in *Ardeshir Mama v. Flora Sassoon* 1928 SCC OnLine PC 43:

"In a suit for specific performance, on the other hand, he treated and was required by the Court to treat the contract as still subsisting. He had in that suit to allege, and if the fact was traversed, he was required to prove a continuous readiness and willingness, from the date of the contract to the time of the hearing, to perform the contract on his part. Failure to make good that averment brought with it the inevitable dismissal of his suit."

The respondent must in a suit for specific performance of an agreement plead and prove that he was ready and willing to perform his part of the contract continuously between the date of the contract and the date of hearing of the suit."

(emphasis supplied)

B. In *Vijay Kumar and Others vs. Om Parkash*, 2018 SCC OnLine SC 1913, it has been held as under:-

"6. In order to obtain a decree for specific performance, the plaintiff has to prove his readiness and willingness to perform his part of the contract and the readiness and willingness has to be shown throughout and has to be established by the plaintiff."

(emphasis supplied)

C. In J.P.Builders and Another vs. A. Ramadas Rao and Another, (2011) 1 SCC 429, it has been held as under:-

"27. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time.

"Readiness and willingness" to perform the part of the contract has to be determined/ascertained from the conduct of the parties."

(emphasis supplied)

D. In Umabai and Another vs. Nilkanth Dhondiba Chavan (Dead) By LRs. and Another, (2005) 6 SCC 243, it has been held as under:-

"30. It is now well settled that the conduct of the parties, with a view to arrive at a finding as to whether the plaintiff-respondents were all along and still are ready and willing to perform their part of contract as is mandatorily required under Section 16 (c) of the Specific Relief Act must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in- chief would not suffice. The conduct of the plaintiff-respondents must be judged having regard to the entirety of the pleadings as also the evidence brought on records."

(emphasis supplied)

E. In Mehboob-Ur-Rehman (Dead) through Legal Representatives v. Ahsanul Ghani (supra), it has been held as under:-

"16. Such a requirement, of necessary averment in the plaint, that he has already performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him being on the plaintiff, mere want of objection by the defendant in the written statement is hardly of any effect or consequence. The essential question to be addressed to by the Court in such a matter has always been as to whether, by taking the pleading and the evidence on record as a whole, the plaintiff has established that he has performed his part of the contract or has always been ready and willing to do so."

(emphasis supplied)

F. In C.S. Venkatesh v. A.S.C. Murthy (Dead) by Legal Representatives & Ors. (supra), it has been held as under:-

"16. The words "ready and willing" imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of performance. If the plaintiff fails to either aver or prove the same, he must fail.

To adjudge whether the plaintiff is ready and willing to perform his part of contract, the court must take into consideration the conduct of the plaintiff prior, and subsequent to the filing of the suit along with other attending circumstances. The amount which he has to pay the defendant must be of necessity to be proved to be available. Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.

17. In N.P. Thirugnanam v. R. Jagan Mohan Rao [N.P. Thirugnanam v. R. Jagan Mohan Rao, (1995) 5 SCC 115], it was held that continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant of the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief.

If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior to and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must necessarily be proved to be available.

18. In Pushparani S. Sundaram v. Pauline Manomani James [Pushparani S. Sundaram v. Pauline Manomani James, (2002) 9 SCC 582], this Court has held that inference of readiness and willingness could be drawn from the conduct of the plaintiff and the totality of circumstances in a particular case. It was held thus: (SCC p. 584, para 5)

"5. So far these being a plea that they were ready and willing to perform their part of the contract is there in the pleading, we have no hesitation to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of Section 16(c) of the Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance

about willingness or readiness of the plaintiff. This at the most could be the desire of the plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But Section 16(c) of the said Act makes it clear that mere plea is not sufficient, it has to be proved."

(emphasis supplied)

19. Consequently, the readiness and willingness of the buyer to go ahead with the sale of the property at the time of the institution of the suit loses its relevance, if the Respondent No.1-buyer is unable to establish that the readiness and willingness has continued throughout the pendency of the suit.

20. After examination of the pleadings and evidence in the present suit as well as the conduct of the Respondent No.1-buyer, this Court is unable to agree with Respondent No.1-buyer that she was willing to perform the Agreement to Sell dated 25th January, 2008 and go ahead with the purchase of the property. This Court says so because admittedly, as noted above, the five demand drafts dated 7th February 2008 for Rs. 2,11,000/- (Rupees Two Lakh Eleven Thousand) were encashed by the Respondent No.1-buyer in July, 2008.

The conduct of the Respondent No.1-buyer in encashing the demand drafts establishes beyond doubt that the Respondent No.1-buyer was not willing to perform her part of the Agreement to Sell and proceed with execution of the sale deed; for the Respondent No.1-buyer would not have encashed the demand drafts if she was indeed willing to perform the contract and have a sale deed executed. Consequently, once it is established that the Respondent No. 1-buyer is not willing to perform the contract, the fact that the entire advance consideration/earnest money had not been returned to Respondent No.1-buyer is irrelevant and immaterial.

THE AGREEMENT TO SELL DATED 25TH JANUARY 2008 STOOD CANCELLED / TERMINATED.

21. This Court is also of the view that the act of the Respondent No.1- buyer in encashing the demand drafts leads to an irresistible conclusion that the agreement in question stood cancelled.

22. The contention of the learned counsel for the Respondent No. 1- buyer that the Agreement to Sell dated 25th January 2008 could not have been cancelled unilaterally is contrary to facts as the letter dated 07th February 2008 along with the refund of the demand drafts and two postdated cheques was nothing but repudiation of the Agreement to Sell dated 25th January 2008 by the seller and the encashment of the demand drafts was acceptance of such repudiation by the Respondent No.1-buyer, leading to cancellation of the Agreement to Sell dated 25th January 2008.

23. The contention that the demand drafts were encashed under protest is misconceived on facts as there is nothing on record to show that the demand drafts were encashed under protest. In fact, PW-2, who is the husband of the Respondent No.1-buyer, has deposed that upon receipt of the demand drafts and cheques, the Respondent No.1-buyer had not issued any letter to the seller stating that the amounts received by them were less than the earnest money paid by them.

ABSENT A PRAYER FOR DECLARATORY RELIEF THAT CANCELLATION OF THE AGREEMENT IS BAD IN LAW, A SUIT FOR SPECIFIC PERFORMANCE IS NOT MAINTAINABLE

24. This Court further finds that the seller had admittedly issued a letter dated 7th February 2008 cancelling the Agreement to Sell dated 25th January 2008, prior to the filing of the subject suit on 5th May 2008. Even though the demand drafts enclosed with the letter dated 07th February, 2008 were subsequently encashed in July, 2008, yet this Court is of the view that it was incumbent upon the Respondent No.1-buyer to seek a declaratory relief that the said cancellation is bad in law and not binding on parties for the reason that existence of a valid agreement is sine qua non for the grant of relief of specific performance.

25. This Court in I.S. Sikandar (Dead) By LRs. v. K. Subramani and Others, (2013) 15 SCC 27 has held that in absence of a prayer for a declaratory relief that the termination of the agreement is bad in law, the suit for specific performance of that agreement is not maintainable. Though subsequently, this Court in A. Kanthamani Vs. Nasreen Ahmed, (2017) 4 SCC 654 has held that the declaration of law in I.S. Sikander (Dead) By LRs. v. K. Subramani (supra) regarding non-maintainability of the suit in the absence of a challenge to letter of termination is confined to the facts of the said case, yet the aforesaid issue has been recently considered in R. Kandasamy (Since Dead) & Ors. v. T.R.K. Sarawathy & Anr. (supra) authored by brother Justice Dipankar Datta and the conflict between the judgment of I.S. Sikander (Dead) By LRs. v. K. Subramani (supra) and A. Kanthamani Vs. Nasreen Ahmed (supra) has been deliberated upon.

In R. Kandasamy (Since Dead) & Ors. v. T.R.K. Sarawathy & Anr. (supra), it has been clarified that the appellate court would not be precluded from examining whether the jurisdictional fact exists for grant of relief of specific performance, notwithstanding the fact that the trial Court omitted or failed to frame an issue on maintainability of the suit. The relevant portion of the judgment in R. Kandasamy (Since Dead) & Ors. v. T.R.K. Sarawathy & Anr. (supra) is reproduced hereinbelow:

"25. What follows from A. Kanthamani (supra) is that unless an issue as to maintainability is framed by the Trial Court, the suit cannot be held to be not

maintainable at the appellate stage only because appropriate declaratory relief has not been prayed.

43. In *Shrisht Dhawan (Smt) v. Shaw Bros.*, (1992) 1 SCC 534, an interesting discussion on 'jurisdictional fact' is found in the concurring opinion of Hon'ble R. M. Sahai, J. (as His Lordship then was). It reads:

"19. What, then, is an error in respect of jurisdictional fact? A jurisdictional fact is one on existence or non-existence of which depends assumption or refusal to assume jurisdiction by a court, tribunal or an authority. In Black's Legal Dictionary it is explained as a fact which must exist before a court can properly assume jurisdiction of a particular case. Mistake of fact in relation to jurisdiction is an error of jurisdictional fact.

No statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or tribunal exercises the jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order ultra vires and bad (*Wade*, Administrative Law. In *Raza Textiles* [(1973) 1 SCC 633] it was held that a court or tribunal cannot confer jurisdiction on itself by deciding a jurisdictional fact wrongly.

(emphasis supplied)

44. Borrowing wisdom from the aforesaid passage, our deduction is this. An issue of maintainability of a suit strikes at the root of the proceedings initiated by filing of the plaint as per requirements of Order VII Rule 1, CPC. If a suit is barred by law, the trial court has absolutely no jurisdiction to entertain and try it. However, even though a given case might not attract the bar envisaged by section 9, CPC, it is obligatory for a trial court seized of a suit to inquire and ascertain whether the jurisdictional fact does, in fact, exist to enable it (the trial court) to proceed to trial and consider granting relief to the plaintiff as claimed.

No higher court, much less the Supreme Court, should feel constrained to interfere with a decree granting relief on the specious ground that the parties were not put specifically on notice in respect of a particular line of attack/defence on which success/failure of the suit depends, more particularly an issue touching the authority of the trial court to grant relief if the 'jurisdictional fact' imperative for granting relief had not been satisfied.

It is fundamental, as held in *Shrisht Dhawan* (supra), that assumption of jurisdiction/refusal to assume jurisdiction would depend on existence of the jurisdictional fact. Irrespective of whether the parties have raised the contention, it is for the trial court to satisfy itself that adequate evidence has been led and all facts including the jurisdictional fact stand proved for relief to be granted and the

suit to succeed. This is a duty the trial court has to discharge in its pursuit for rendering substantive justice to the parties, irrespective of whether any party to the lis has raised or not.

If the jurisdictional fact does not exist, at the time of settling the issues, notice of the parties must be invited to the trial court's prima facie opinion of nonexistent jurisdictional fact touching its jurisdiction. However, failure to determine the jurisdictional fact, or erroneously determining it leading to conferment of jurisdiction, would amount to wrongful assumption of jurisdiction and the resultant order liable to be branded as ultra vires and bad.

45. Should the trial court not satisfy itself that the jurisdictional fact for grant of relief does exist, nothing prevents the court higher in the hierarchy from so satisfying itself. It is true that the point of maintainability of a suit has to be looked only through the prism of section 9, CPC, and the court can rule on such point either upon framing of an issue or even prior thereto if Order VII Rule 11 (d) thereof is applicable. In a fit and proper case, notwithstanding omission of the trial court to frame an issue touching jurisdictional fact, the higher court would be justified in pronouncing its verdict upon application of the test laid down in *Shrisht Dhawan* (supra).

46. In this case, even though no issue as to maintainability of the suit had been framed in course of proceedings before the Trial Court, there was an issue as to whether the Agreement is true, valid and enforceable which was answered against the sellers. Obviously, owing to dismissal of the suit, the sellers did not appeal. Nevertheless, having regard to our findings on the point as to whether the buyer was 'ready and willing', we do not see the necessity of proceeding with any further discussion on the point of jurisdictional fact here."

26. Since in the present case, the seller had issued a letter dated 07th February, 2008 cancelling the agreement to sell prior to the institution of the suit, the same constitutes a jurisdictional fact as till the said cancellation is set aside, the respondent is not entitled to the relief of specific performance. 27. Consequently, this Court is of the opinion that absent a prayer for declaratory relief that termination/cancellation of the agreement is bad in law, a suit for specific performance is not maintainable.

APPELLANT HAS THE LOCUS STANDI TO FILE THE APPEAL

28. The preliminary objection raised by the Respondent No.1-buyer that the issue of her readiness and willingness should not be examined by this Court as the appellant lacked the locus standi to file the present appeal as she did not have any right, interest or title over the subject property is misconceived on facts. The appellant was impleaded as defendant no. 3 in the subject suit as she is a

beneficiary under the Will dated 23rd September 2002 executed by the original owner/seller, whereby the subject property has been bequeathed in her favour.

Consequently, the appellant, being a necessary and interested party to the lis, has the locus to file the present appeal. Further, the onus to establish readiness and willingness is on the Respondent No.1-buyer and the failure to establish the same disentitles the Respondent No.1-buyer from the equitable and discretionary relief of specific performance.

SUPPRESSION OF MATERIAL FACTS DISENTITLES THE BUYER FROM THE EQUITABLE AND DISCRETIONARY RELIEF OF SPECIFIC PERFORMANCE

29. A perusal of the record shows that not only did the Respondent No. 1-buyer fail to seek a declaratory relief, but also it failed to disclose in the plaint that the seller had issued the cancellation letter dated 7th February 2008 enclosing therewith the demand drafts dated 7th February 2008 and two of the three post-dated cheques. The failure of the Respondent No. 1- buyer to disclose the same in her plaint amounts to suppression of material fact, disentitling her from the discretionary relief of specific performance. This Court in Citadel Fine Pharmaceuticals v. Ramaniyam Real Estates Private Limited and Another, (2011) 9 SCC 147 has held as under:

"57. There is another aspect of the matter also. In the instant case by asking for specific performance of the contract, the plaintiff purchaser is praying for a discretionary remedy. It is axiomatic that when a discretionary remedy is prayed for by a party, such party must come to court on proper disclosure of facts. The plaint which it filed before the court in such cases must state all the facts with sufficient candour and clarity. In the instant case the plaintiff purchaser made an averment in the plaint that the defendant vendor be directed to return the advance amount of Rs 10,00,000 with interest at the rate of 24% from the date of payment of the said amount till the realisation and an alternative prayer to that effect was also made in the prayer clause (c).

58. However, the fact remains that prior to the filing of the suit the defendant vendor returned the said amount of Rs 10,00,000 by its letter dated 4-9-1996 by an account payee cheque in favour of the plaintiff and the same was sent to the plaintiff under registered post which was refused by the plaintiff on 6-9-1996. The plaintiff suppressed this fact in the plaint and filed the suit on 9-9-1996 with a totally contrary representation before the court as if the amount had not been returned to it by the vendor. This is suppression of a material fact, and disentitles the plaintiff purchaser from getting any discretionary relief of specific performance by the court.

59. In this connection we may refer to the Principle of Equitable Remedies by I.C.F. Spry, (4th Edn., Sweet & Maxwell, 1990). Dealing with the question of "clean hands" the learned author opined that where the plaintiff is shown to have materially misled the court or to have abused its process, or to have attempted to do so, the discretionary relief of specific performance can be denied to him. In laying down this principle, the learned author relied on a decision of the English Court in *Armstrong v. Sheppard & Short Ltd.* [(1959) 2 QB 384 : (1959) 3 WLR 84 : (1959) 2 All ER 651 (CA)], QB at p. 397. (See Spry, *Equitable Remedies*, p. 243.)

60. This Court has also taken the same view in *Arunima Baruah v. Union of India* [(2007) 6 SCC 120]. At p. 125, para 12 of the Report, this Court held that it is trite law that to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of a material fact. This Court, of course, held that what is a material fact, suppression whereof would disentitle the suitor to obtain a discretionary relief, would depend upon the facts and circumstances of each case. However, by way of guidance this Court held that a material fact would mean that fact which is material for the purpose of determination of the lis.

61. Following the aforesaid tests, this Court is of the opinion that the suppression of the fact that the plaintiff refused to accept the cheque of Rs 10 lakhs sent to it by the defendant under registered post with acknowledgment due in terms of Clause 9 of the contract is a material fact. So on that ground the plaintiff purchaser is not entitled to any relief in its suit for specific performance."

CONCLUSION

30. Keeping in view the aforesaid findings, this Court is of the view that the Agreement to Sell cannot be specifically enforced. Accordingly, the present appeal is allowed and the impugned Judgment dated 27th April, 2018 as well as decrees dated 10th May, 2018 and 09th May, 2024 are set aside.

Further, the sale deed executed in favour of Respondent No.1-buyer in pursuance of the impugned judgments is declared as null and void and the Appellant is directed to refund the balance sale consideration amount of Rs.24,61,000/- (Rupees Twenty Four Lakh Sixty One Thousand) deposited by Respondent No.1-buyer in pursuance to the impugned judgment and decrees.

.....J. [Dipankar Datta]

.....J. [Manmohan]

New Delhi;

April 04, 2025.

IN THE SUPREME COURT OF INDIA

**State of Tamil Nadu
Vs.
The Governor of Tamil Nadu & Anr.
[Writ Petition (Civil) No. 1239 of 2023]**

HEADNOTE –

A. Set time limits for the decisions by the Governors under Article 200 of the Constitution on the bills sent to them by the State Legislative Assemblies.

B. The Constitution does not permit the Governor to exercise "absolute veto" or "pocket veto" by not taking any action on the bills indefinitely.

C. Declared the actions of the Tamil Nadu Governor, Dr RN Ravi, for sitting over the 10 Bills for months after it was re-enacted by the Tamil Nadu State Legislature and subsequently reserving it for the President's assent as illegal and erroneous in law, thus, Article 200 cannot be read in a manner which allows the Governor to indefinitely sit over bills.

D. Although there is no explicit time limit prescribed for the Governor to either give assent, withhold assent, or reserve it for the President, the use of the expression "as soon as possible" in the first proviso to Article 200 makes it clear that the decision must be taken expeditiously.

E. Like the Governor, even the President can also not exercise "absolute veto" by indefinitely sitting over the Bills. The President is required to take a decision on the bills reserved for his consideration by the Governor within a period of three months from the date on which such reference is received.

F. When a Governor reserves a Bill for the President's assent on grounds of perceived unconstitutionality, the President ought to seek the Supreme Court's opinion. Article 143 of the Indian Constitution grants the President the power to seek advisory opinions from the Supreme Court on matters of public importance. This advisory jurisdiction allows the President to consult the Supreme Court on questions of law or fact.

Timelines

Keeping in mind the constitutional significance of Article 200 and the role it plays in the federal polity of the country, the following timelines are being

prescribed. Failure to comply with the timelines will make the action of the Governor subject to judicial review:-

1. In case of withholding assent or reservation of the Bill for consideration of the President upon aid and advice of the State's Council of Ministers, the Governor is expected to take such actions forthwith subject to a maximum period of 1 month.
2. In case of withholding assent contrary to the advice of the State's Council of Ministers, the Governor must return the Bill together with a message within a maximum period of 3 months.
3. In case of reservation of Bills for consideration of the President, contrary to advice of the State Council of Ministers, the Governor shall make such reservation within a maximum period of 3 months or
4. In case of reservation of Bills after reconsideration in accordance with the first proviso, the Governor must grant assent forthwith subject to a maximum period of 1 month (This means that bills re-enacted by the Assembly after they were sent back by the Governor, must be assented by the Governor in the second round within one month).

JUDGMENT

J.B. Pardiwala, J.

For the convenience of the exposition, this judgment is divided in the following parts:

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H. CONCLUSION.....

1. While the framers of the Constitution set out with a vision that the Governor would be a "constitutional head, a sagacious counselor and adviser to the Ministry"¹, someone who can "pour oil over troubled waters", what has unfolded before us in the instant litigation has been quite the opposite, as this Court has been called upon to calm the troubled waters stirred by the ensuing long-drawn battle of a high constitutional order between the petitioner and the respondent.

2. The State of Tamil Nadu, being aggrieved by the action of the Governor on few issues of prime public importance, has invoked the jurisdiction of this Court under Article 32 of the Constitution seeking appropriate reliefs as prayed for in the writ petition. The petitioner is aggrieved by the action, or rather inaction, on part of the Governor of Tamil Nadu in discharge of the following functions:

(i) Withholding of assent to and reserving for consideration of the President, by the Governor of 10 Bills enacted by the Legislature for the State of Tamil Nadu.

(ii) Inaction on files submitted to the Governor for according sanction to prosecute public servants and investigate various crimes of corruption involving moral turpitude.

(iii) Pendency of a number of files submitted to the Governor for premature release of prisoners.

(iv) Pendency of proposals submitted to the Governor for appointment of members to the Tamil Nadu Public Service Commission under Article 316 of the Constitution.

A. FACTUAL MATRIX

i. Factual background with respect to assent to bills.

3. The Legislature for the State of Tamil Nadu, between 13.01.2020 and 28.04.2023, enacted and forwarded 12 Bills to the Governor for grant of assent as per Article 200 of the Constitution. Even though the present Governor took charge of the office with effect from 18.11.2021, yet he did not take the

necessary action on any of the said Bills forwarded to his office till October 2023. The petitioner, being aggrieved by the inaction on part of the Governor, had to ultimately file the present writ petition before this Court. The same was filed on 31.10.2023.

4. This Court issued notice to the respondents on 10.11.2023. The Governor, forthwith, took a decision on the 12 Bills on 13.11.2023 by withholding assent simpliciter to 10 bills i.e., he did not convey any message to the State Legislature for reconsideration of the said Bills as prescribed under the first proviso to Article 200, and by reserving two Bills for the consideration of the President. The 10 bills for which assent was withheld were returned to the State Legislature by the Governor.

5. The State Legislature, on 18.11.2023, convened a special session and repassed the 10 bills which were returned by the Governor after withholding of assent. The bills were passed without any material change and were forwarded to the Governor's Secretariat on the same day for his assent in accordance with the first proviso to Article 200. This Court, in its order dated 20.11.2023, noted that since the repassed 10 bills were pending with the Governor, the hearing of the writ petition be adjourned to 01.12.2023 and issued directions that this Court shall be apprised of the progress in the matter.

6. On 28.11.2023, the Governor, without the aid and advice of the Council of Ministers of the State, in exercise of his discretion, reserved the said repassed Bills for the consideration of the President. The letter of the Governor to the Union Government referring the said Bills for the consideration of the President mentioned that the Bills were re-considered and passed again by the State Legislature.

Interestingly, although the Governor noted that the Bills were intra-vires the competence of the State Legislature having been legislated under Entry 66 of List I, Entry 32 of List II and Entry 25 of List III, yet he reserved the said Bills for the consideration of the President in the second round on the ground that the Bills suffered from repugnancy on account of being contrary to Entry 66 of the Union List i.e., List I. These grounds have been taken by the Governor to reserve the 10 Bills for consideration of the President. For reference, we have extracted the relevant portion of the letter pertaining to the Tamil Nadu Fisheries University (Amendment) Bill, 2023 which reads thus:

"I am directed to state that the Tamil Nadu Legislative Assembly has passed the Tamil Nadu Fisheries University (Amendment) Bill, 2023 (LA Bill No.15 of 2023) on 21.4.2023 and sent to the Hon'ble Governor for assent. Hon'ble Governor has returned the Bill with the following remarks -

"I withhold assent".

2. The State Government have reconsidered the said Bill and again passed in the Tamil Nadu Legislative Assembly on 18.11.2023 and sent to Hon'ble Governor for assent.

3. In this regard, I am directed to inform that a Background Note on Reserving the Bills for the consideration of Hon'ble President regarding University Bills which has been approved by the Hon'ble Governor is enclosed, since, coordination. and determination of standards in institutions of higher education or research and scientific and technical institutions Is in Entry No.66 of the Union List of the Seventh Schedule of the Constitution, the Bills suffer from repugnancy. Hence, the Hon'ble Governor has reserved the Bill viz. Tamil Nadu Fisheries University (Amendment) Blii, 2023 (LA Bill No.15 of 2023) for the consideration of the Hon'ble President.

4. The Bill falls, mainly, within the scope of the following entries of the Union, State and Concurrent. Lists In the Seventh Schedule to the Constitution, namely-

UNION LIST

Entry 66 - Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

STATE LIST

Entry 32 - Incorporation, regulation and winding up of corporations, other than those specified in List-I and Universities;

CONCURRENT LIST

Entry 25 - Education, including technical education, medical education and universities and is intra-vires the State Legislature.

5. I am, therefore, directed. to request to take appropriate action for the Bill to have consideration of the Hon'ble President."

7. The Governor, on 04.12.2023, also sought to clarify that the 10 Bills to which he had withheld assent simpliciter were not returned to the Legislature for reconsideration as stipulated in the first proviso of Article 200. Despite that, the State Government had placed the Bills before the legislative assembly again. After the Bills were repassed by the legislative assembly, the State Government sent the same back to the Governor for assent. The Governor clarified that since the Bills suffered from repugnancy, he was reserving the said Bills for the consideration of the President. These clarifications were sent for all the 10 Bills.

For reference, we have extracted the relevant portion of the letter pertaining to the Tamil Nadu Fisheries University (Amendment) Bill, 2023 which reads thus:

"Kindly refer our letter dated 28.11.2023.

2. I am now directed to elaborate further on the circumstances under which the Bill was requested to be placed before the Hon'ble President for consideration. When the, The Tamil Nadu Fisheries University (Amendment) Bill, 2020 (LA Bill No. 2 of 2020) passed by the Tamil Nadu Legislative Assembly on 09.01.2020 was sent to the Hon'ble Governor for his assent, the Hon'ble Governor has exercised his substantive powers under Article 200 of the Constitution and took decision of withholding his assent to the Bill and the file was returned to the Law Department of the State Government, conveying the decision of the Governor "I Withhold assent". It is clarified that the Bills was not returned for re-consideration as stipulated in the proviso to Article 200 of the Constitution.

3. While withholding his assent, the Hon'ble Governor has relied on the position held by the five member bench (Constitution Bench) of the Hon'ble Supreme Court in Union of India and others Vs. Valluri Basavalah Chowdhary and others and Maharao Sahit Shri Bhim Singhi Vs. Union of India and others. (Civil Appeal No's 1896 of 1976, 265-300 of 1977, 29-38 of 1977 and 5 of 1977 and W.P. No. 350 of 1977, decided on May 1, 1979) where it has been stated In Para 19:

"The Governor is, however, made a component part of the legislature of a State under Article 168, because every Bill passed by the State Legislature has to be reserved for the assent under Article 200. Under that article, the Governor can adopt one of the three courses, namely (i) he may give his assent to it, in which case the Bill becomes a law; or (ii) he may, except In the case of a 'Money Bill', withhold his assent therefrom, In which case the Bill falls through unless the procedure indicated in the first proviso is followed, I.e. return the Bill to the Assembly for reconsideration with a message, or (iii) he may (subject to Ministerial advice) reserve the Bill for the consideration of the President, in which case the President will adopt the procedure laid down In Article 201".

4. However, State Government placed the Bill again in the Legislative Assembly and after getting Assembly's endorsement, sent them again to the Hon'ble Governor on 18.11.2023.

5. The Hon'ble Governor had not returned the Bills under the proviso to Article 200 for re-consideration, however, State Government has sent them back. Since the Bill suffers from repugnancy, Hon'ble Governor has reserved the same for the consideration of the Hon'ble President."

8. In view of the reservation of the 10 Bills for the consideration of the President, the petitioner filed the I.A. No. 259020 of 2023 on 11.12.2023, seeking amendment of the prayers of the present writ petition and prayed for insertion of the following prayer:

"Pass any writ/order or direction to declare that the action of the Governor of Tamil Nadu/ first Respondent of reserving the following Bills 1. Bill No 2/2020 namely "A Bill further to amend the Tamil Nadu Fisheries University Act, 2012", 2. Bill No 12/2020 namely "A Bill further to amend the Tamil Nadu Veterinary and Animal Sciences University Act, 1989", 3. Bill No 24/2022 namely "The bill to amend the Universities laws. The Vice-Chancellors of all Universities (except University of Madras)", 4. Bill No 29/2022 namely "A Bill further to amend the Tamil Nadu Dr. Ambedkar Law University Act, 1996", 5. Bill No 39/2022 namely "A Bill further to amend the Tamil Nadu Dr. M.G.R. Medical University, Chennai, Act, 1987", 6. Bill No 40/2022 namely "A Bill further to amend the Tamil Nadu Agricultural University Act, 1971", 7. Bill No 48/2022 namely "A bill further to amend the Tamil Nadu Universities Laws", 8. Bill No 55/2022 namely "A Bill further to amend the Tamil University Act, 1982", 9. Bill No 15/2023 namely "A Bill further to amend the Tamil Fisheries University Act, 2012", 10. Bill No 18/2023 namely "A Bill further to amend the Tamil Nadu Veterinary and Animal Sciences University Act, 1989" for the consideration of the President qua the Bills passed and forwarded by the Tamil Nadu State Legislature to him as unconstitutional, illegal, arbitrary, unreasonable besides malafide exercise of power and/or to quash the being ultra- vires Articles 14, 19 and 21 read with Article 200 of the Constitution and direct the Respondent-1 to declare assent to the same."

9. Thus, what was sought to be conveyed by the aforesaid I.A. was that the 10 Bills were reconsidered and passed again by the State Legislature and were thereafter forwarded to the Governor for his assent in terms of the first proviso to Article 200. However, the Governor reserved the said Bills for the consideration of the President. It was alleged that such action on the part of the Governor was violative of Article 200 and was done with a mala fide intention only with a view to circumvent the jurisdiction of this Court.

10. Upon the suggestion made by this Court, the Governor, on 12.12.2023 wrote to the Chief Minister for the State of Tamil Nadu inviting him to a meeting in an attempt to resolve the deadlock. The Governor and the Chief Minister met on 30.12.2023, pursuant to which the Chief Minister submitted a representation summarising the following issues:

a. The Bills could not have been reserved for the consideration of the President after the decision of this Court in *State of Punjab v. Principal Secretary to the Governor of Punjab* reported in (2024) 1 SCC 384, wherein it was held that once

the Governor decides to exercise the power of withholding assent to a bill, the operation of the first proviso to Article 200 has to necessarily follow.

b. Article 200 does not confer any power upon the Governor to exercise the option of reserving a bill for Presidential consideration after a bill has been reconsidered and repassed by the State Legislature. Since, the 10 Bills in the present case were reconsidered and passed again by the State legislature, the only constitutionally permissible option for the Governor was to grant assent.

c. The Governor also acted in contravention of the aid and advice of the Council of Ministers that "the Bill repassed by the Legislative Assembly should be assented to by the Hon'ble Governor without withholding assent", which is ultra vires of the Constitution.

11. In light of the above representation, the Chief Minister requested the Governor to: (i) Recall the 10 Bills reserved for the consideration of the President and grant assent expeditiously; (ii) In future, grant assent to Bills passed by the State Legislature within 30 days and avoid unnecessary reservation of the bills for the consideration of the President; (iii) Act in accordance with the aid and advice tendered by the Council of Ministers.

12. Out of the 10 Bills reserved for her consideration, the President withheld assent to seven Bills, granted assent to one Bill and is yet to consider the remaining two Bills.

13. The status of the Bills is summarized below:

S. No.	Bill Details	Forwarded to the Governor by the State Legislature	Action by the Governor	Re-enacted by the State Legislature	Action by the Governor	Action by the President
1.	Bill No. 2/2020 namely "A Bill further to amend the Tamil Nadu Fisheries University Act, 2012.	13.01.2020	Assent withheld on 13.11.2023.	18.11.2023	Reserved for consideration of the President on 28.11.2023.	Assent withheld on 26.02.2024.

2.	Bill No 12/2020 namely "A Bill further to amend the Tamil Nadu Veterinary and Animal Sciences University Act, 1989"	18.10.2020	Assent withheld on 13.11.2023 .	18.11.2023	Reserved for consideration of the President on 28.11.2023 .	Assent is awaited since 28.11.2023.
3.	Bill No 24/2022 namely "The bill to amend the Universities laws. The Vice Chancellors of all Universities (except University of Madras) to be appointed by the Government instead of Governor."	28.04.2022	Assent withheld on 13.11.2023 .	18.11.2023	Reserved for consideration of the President on 28.11.2023 .	Assent withheld on 26.02.2024.
4.	Bill No. 25/2022 namely "A bill to further amend the Chennai University Act."	28.04.2022	Reserved for consideration of the President on 13.11.2023 .	-	-	Status not on record.
5.	Bill No. 26/2022 namely "A	05.05.2022	Reserved for considerati	-	-	Status not on record. Ayurveda,

	Bill to provide for the Establishment and Incorporation of a University for Siddha Status not on record. Ayurveda, Unani, Yoga & Naturopathy and Homeopathy in the State."		on of the President on 13.11.2023 .			Unani, Yoga & Naturopathy and Homeopathy in the State."
6.	Bill No 29/2022 namely "A Bill further to amend the Tamil Nadu Dr. Ambedkar Law University Act, 1996".	16.05.2022	Assent withheld on 13.11.2023 .	18.11.2023	Reserved for consideration of the President on 28.11.2023 .	Assent withheld on 15.02.2024.
7.	Bill No 39/2022 namely "A Bill further to amend the Tamil Nadu Dr. M.G.R. Medical University, Chennai, Act, 1987".	16.05.2022	Assent withheld on 13.11.2023 .	18.11.2023	Reserved for consideration of the President on 28.11.2023 .	Assent withheld on 16.02.2024.
8.	Bill No 40/2022	16.05.2022	Assent withheld	18.11.2023	Reserved for	Assent withheld

	namely "A Bill further to amend the Tamil Nadu Agricultural University Act, 1971".		on 13.11.2023 .		consideration of the President on 28.11.2023 .	on 18.02.2024.
9.	Bill No 48/2022 namely "A bill further to amend the Tamil Nadu Universities Laws."	27.10.2022	Assent withheld on 13.11.2023 .	18.11.2023	Reserved for consideration of the President on 28.11.2023 .	Assent granted on 18.02.2024.
10.	Bill No 55/2022 namely "A Bill further to amend the Tamil University Act, 1982."	27.10.2022	Assent withheld on 13.11.2023 .	18.11.2023	Reserved for consideration of the President on 28.11.2023 .	Assent withheld on 18.03.2024.
11.	Bill No 15/2023 namely "A Bill further to amend the Tamil Nadu Fisheries University Act, 2012."	28.04.2023	Assent withheld on 13.11.2023 .	18.11.2023	Reserved for consideration of the President on 28.11.2023 .	Assent withheld on 26.02.2024.
12.	Bill No 18/2023 namely "A Bill further to amend the Tamil Nadu Veterinary and Animal	28.04.2023	Assent withheld on 13.11.2023 .	18.11.2023	Reserved for consideration of the President on 28.11.2023 .	Assent is awaited since 28.11.2023.

	Sciences University Act, 1989".					

ii. Factual background with respect to accord of sanction for investigation into cases of corruption against public servants.

14. Between 10.04.2022 and 15.05.2023, the Government of Tamil Nadu submitted to the Governor, four files relating to the prosecution of public servants involved in crimes of moral turpitude under the Prevention of Corruption Act, 1988, which at the time of filing of the writ petition remained pending with the Governor.

15. It is only upon the present writ petition being filed and issuance of notice that the Governor's office started acting upon the files. The Governor, on 01.12.2023, submitted the factual position regarding the bills, files and other cases pending with his office detailing the actions taken thereupon. The details of the files requesting for sanction to investigate and prosecute and the Governor's actions thereupon are summarised below:

S. No.	Department	Subject	Request sent by the State to the Governor	Status of the Files
1.	Tamil Development and Information Department	Request to accord sanction by the Hon'ble Governor/Chancellor for initiating preliminary enquiry under Section 17A(1)(b) of the Prevention of Corruption Act, 1988 against Thiru G. Bhaskaran, Former Vice-Chancellor, Tanjavur University.	11.05.2022	Sanction accorded on 18.11.2023.
2.	Public (S.C.) Department	Request to accord sanction by the Hon'ble Governor u/s 19(1) of the Prevention of Corruption Act, 1988 to prosecute Thiru K.C. Veeramani, former Minister.	12.09.2022	â—• A duly authenticated investigation report was sought from the Government on 07.07.2023. â—• The

				Government sent a reply dated 11.07.2023 stating that authenticated investigation report has been submitted. â—• The Governor sent back the file to the Government on 15.11.2023 with the observation that there was no duly authenticated investigation report in the file. â—• The Government resubmitted the file on 18.11.2023.
3.	Public (S.C.) Department	Request to accord sanction by the Hon'ble Governor for initiating prosecution u/s 19 of the Prevention of Corruption Act, 1988 against Thiru B.V. Ramana @ B. Venkataramana, former Minister for Commercial Taxes and Dr. C. Vijayabaskar, former Minister for Health & Family Welfare.	12.12.2022	Sanction accorded on 13.11.2023.
4.	Public (S.C.) Department	Request to accord necessary sanction by the Hon'ble Governor for initiating prosecution u/s 19(1)(b) of PC ACT, 1988	15.05.2023	Under consideration since May 2023.

		against Thiru M.R. Vijayabhaskar, former Minister.		

iii. Factual background with respect to the files pertaining to premature release of prisoners.

16. The petitioner forwarded 53 files pertaining to the premature release of prisoners to the Governor between June and August 2023 requesting approval thereof.

17. In response to the allegation of delay and pendency on the said files, the office of the Governor represented before this Court that since September 2021, i.e., from the date the present Governor assumed office, 580 proposals regarding premature release of prisoners were received out of which 362 files were approved, 165 files were rejected and 53 were under consideration.

18. The Governor informed in the backdrop of the factual position prevailing on 01.12.2023 that the 53 files that remained pending were recent proposals sent by the petitioner only between June and August 2023. This Court has not been apprised of the status of these files after 01.12.2023 by any of the parties.

iv. Factual background with respect to the appointments to the Tamil Nadu Public Service Commission (TNPSC).

19. It is the case of the petitioner that it was represented before the Governor by way of various representations that as per Regulation 3 of the Tamil Nadu Public Service Commission Regulations, 1954, the Commission shall consist of a Chairman and 14 Members. However, no heed was paid to such representations. The functioning strength of TNPSC was of four members on the date of filing of the present petition.

20. In regard to the aforesaid, the petitioner forwarded representations to the Governor's office seeking approval of the proposed names for the position of members in TNPSC and carrying out their appointments. The petitioner also sent reminders to the Principal Secretary to the Governor for acting on the files sent to the Governor's office in this respect.

21. The Governor, on 27.09.2023, returned the said files with a note raising some queries regarding transparency in the selection process, tenure of the members to be appointed and credentials of the proposed candidates. The Governor clarified that as the queries raised by his office were not addressed by the petitioner, the proposal for appointment of the recommended candidates was being returned and the same was no longer pending before him. This happened on 26.10.2023.

22. The petitioner, on the other hand, has averred in its writ petition that such queries were against the established practices to the selection of constitutional posts and that the availability of the chairman and members in the TNPSC was essential to monitor and expedite various recruitment processes as well as promotions. Delays in appointments to the TNPSC resulted in non-availability of sufficient members, which detrimentally affected the functioning of the Executive.

23. The petitioner explained this position and also addressed the queries raised by the Governor in its clarification note dated 07.10.2023. The files for approval of appointments were accordingly re-submitted on 10.10.2023, however, the same were returned by the Governor on 27.10.2023 without assigning any reasons.

v. Factual background with respect to dismissal of ministers and allocation of ministries.

24. On 29.06.2023, the Governor suo moto and contrary to the aid and advice of the State Council of Ministers recommended the dismissal and divestment of portfolio of Senthil Balaji, a minister in the Tamil Nadu Cabinet on the ground that he was arrested by the Enforcement Directorate and was in judicial custody. However, the Governor addressed another letter to the Chief Minister on the very same day informing that he had kept the dismissal of Senthil Balaji in abeyance till further communication in light of the advice of the Union Minister of Home Affairs that it would be prudent to seek the opinion of the Attorney General on the matter.

25. In a similar case, Dr. K. Ponmudy, a minister in the Government of Tamil Nadu was convicted and sentenced by the Madras High Court against which, he filed an appeal before this Court. This Court, vide order dated 11.03.2024, suspended the conviction of Dr. K. Ponmudy from its operation keeping in view Section 8(3) of the Representation of People's Act, 1951 and more particularly for the reason that he should not suffer disqualification from the office of Member of Legislative Assembly.

26. Accordingly, on 13.03.2024, the Speaker of the State Legislative Assembly declared that the disqualification ceased to operate with effect from 19.12.2023. The Election Commission also withdrew the notification of vacancy for his constituency.

27. The Chief Minister wrote to the Governor on 13.03.2024 to swear in Dr. K. Ponmudy as a Minister and allot to him the portfolio of Higher Education. However, the Governor vide the letter dated 17.03.2024, declined the request stating that the conviction order was suspended from its operation by way of 'interim relief' granted by this Court which meant that the conviction against Dr.

Ponmudy, though existent, had been made non-operative and not set aside. The Governor also stated that the re-introduction of Dr. K. Ponmudy in the Cabinet would be against "constitutional morality".

28. Consequently, the petitioner was constrained to file I.A. No. 69967 of 2024 on 18.03.2024 to amend its prayer in the present writ petition for including the relief of staying the operation of the Governor's letter dated 17.03.2024 and directing him to administer the oath of office and secrecy to Dr. K. Ponmudy. The amendment sought to be made reads thus:

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

a) Grant permission to amend the prayer in the above W.P. No. 1239 of 2023 and add the following prayer:

"f. Call for the records of the 1st Respondent pertaining to Letter No. 007/RBTN/2024 dated 17.03.2024 and quash the same and direct the 1st Respondent to act in accordance with the letter of the Hon'ble Chief Minister of Tamil Nadu in D.O. Letter No. 952/CMO/2024 dated 13.03.2024 and consequently to appoint Thiru K. Ponmudi, Member of Tamil Nadu Legislative Assembly as a Minister of the Government of Tamil Nadu by administering oath of office and secrecy with the portfolios specified in the letter of the Hon'ble Chief Minister of Tamil Nadu in D.O. Letter No. 952/CMO/2024 dated 13.03.2024 and consequently to change the portfolios among Hon'ble Ministers"

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

29. This Court heard the application on 22.03.2024 and expressed its displeasure at the reluctance of the Governor to accept the order of this Court dated 11.03.2024 suspending the sentence of Dr. K. Ponmudy. This prompted the Governor to swear in Dr. K. Ponmudy as Minister in the State Cabinet and the I.A. was disposed of accordingly recording the same.

30. In the aforesaid factual matrix, the petitioner have prayed for a declaration that the reservation of the bills by the Governor for the consideration of the President after they were repassed by the State Legislature and presented before him as illegal. Further, as a sequitur, the petitioner have prayed that the act of withholding of assent by the President be declared as void abinitio.

The petitioner have also prayed for a declaration that the simpliciter withholding of assent by the Governor without following the procedure prescribed in the first proviso to Article 200, be also declared to be illegal for being in contravention to the position of law as laid down in State of Punjab (supra). The petitioner have

also prayed for a direction to the Governor to accord sanction for prosecution, take prompt decision on the pending files pertaining to grant of remission and to clear the proposal for appointment of members to the TNPSC.

B. SUBMISSIONS OF THE PARTIES

i. Submissions on behalf of the Petitioner

31. Mr. Rakesh Dwivedi, the learned Senior Counsel appearing for the petitioner, made elaborate submissions on the following aspects:

a) Apparent Constitutional errors committed by the Governor.

i) Pocket veto is not available under the Indian constitutional scheme. The Governor could not have kept the Bills submitted to him between the years 2020 and 2023 in a cold storage without taking any decision on them. The fact that he entered no discussion with the State Government or the Chief Minister in relation to the Bills submitted to him further indicates that the Governor exercised pocket veto in relation to the said Bills, thereby bringing the constitutional machinery to a standstill. He submitted that the substantive part of Article 200 uses the expression "shall declare" which indicates that the function of the Governor is mandatory. The underlying objective of Article 200 is to make a Bill operative as an Act. Therefore, the scheme of Article 200 negates the possibility of engaging in inordinate delay or pocket veto.

ii) The Governor failed to take note of the decision of this Court in *State of Punjab (supra)*. Although the said decision held that the first proviso to Article 200 attaches to the option of withholding assent, yet the Governor recorded a simpliciter finding of withholding assent without conveying any message to the State Legislature, as provided under the first proviso. He submitted that simpliciter withholding of assent by the Governor is also violative of Article 14 which mandates that the exercise of Constitutional powers should be based on reason and transparency. The State Legislature must be told why the assent has been withheld so as to enable it to reconsider the Bill. He further submitted that in the absence of any message, it would be open to the State Legislature to understand that the Governor wishes the entire Bill to be reconsidered.

iii) On the facts of the present case, Mr. Dwivedi submitted that having recorded that the Bills submitted to him were intra vires of the State Legislature, it was not open to the Governor to reserve the Bills for the consideration of the President upon being repassed and presented again before him. He submitted that once the reservation of the Bills for the consideration of the President is found to be erroneous in law, any subsequent withholding of assent by the President would also be legally vitiated.

iv) He submitted that even the withholding of assent by the President under Article 201 was by way of a non-speaking order and thus does not comply with the first proviso to the Article. Similar to Article 200, the withholding of assent under Article 201 must necessarily result in a message under the first proviso. He summarised his arguments on this aspect by submitting that the acts of simpliciter withholding, reserving for the consideration of the President, delay by Governor, as well as simpliciter withholding of assent by the President are all unconstitutional, and hence null and void.

b) Justiciability and Judicial Review.

i) Mr. Dwivedi submitted that no constitutional power vested in any authority, howsoever high, is beyond the powers of judicial review of the constitutional courts. The scope of judicial review may vary, but no power is beyond the purview of the courts. The Courts may exercise restraint, but that is not to say that if the power has been exercised unconstitutionally, manifestly arbitrarily, in breach of fundamental rights enshrined in Part III or any other provision of the Constitution, or in a mala fide manner, the courts would be prohibited from striking down the exercise of such power.

ii) In furtherance of the aforesaid submission, he drew our attention to the decision in *S.R. Bommai v. Union of India* reported in (1994) 3 SCC 1 wherein the justiciability of a proclamation under Article 356 was propounded. He also relied upon the decisions of this Court in *Rameshwar Prasad v. Union of India* reported in (2006) 2 SCC 1 and *Kihoto Holohan v. Zachillhu* reported in 1992 Supp (2) SCC 651 wherein the exercise of power of the Governor to invite the leader of the majority party to form government and the power of the Speaker under the 10th Schedule to the Constitution were respectively held to be justiciable by this Court.

iii) In light of the aforesaid, he submitted that the position of law as on date, as explained by several Constitutional Bench decisions, is clear that no exercise of Constitutional power is outside the ambit of judicial review. No power is absolute and non-justiciable. Hence, the power exercised under Article 200 can also be examined by this court to discern any unconstitutionality.

c) Governor is required to act upon the aid and advice of the Council of Ministers.

i) Mr. Dwivedi submitted that the various provisions of the Constitution stand in harmony and are interdependent. They are not isolated silos. They share the ultimate objective of harmonious Parliamentary governance, seek welfare of the people and implement Parliamentary form of democracy within a federal system.

Therefore, interpretation of a Constitutional provision should accord with these fundamental principles and the basic structure of the Constitution.

ii) He submitted that this Court has been consistent in its approach while interpreting the constitutional provisions, more particularly those that pertain to the Governor or the President, in light of the fundamental principles of Parliamentary democracy and federalism. He placed reliance on the decisions of this Court in *Samsher Singh v. State of Punjab* reported in (1974) 2 SCC 831, *S.R. Bommai (supra)*, *Nabam Rebia & Bamang Felix v. Dy. Speaker, Arunachal Pradesh Legislative Assembly* reported in (2016) 8 SCC 1 in support of the aforesaid submission.

iii) He further submitted that the discretion of the Governor under the Indian Constitution is governed solely by Article 163(1) and the interpretation adopted by this Court has been such which does not make the Governor dominant over the Chief Minister, who is an elected representative of the people.

iv) Article 200 embodies an aspect of legislative procedure so as to make a Bill operative as an Act. Seen thus, it is imperative that the Governor acts upon the aid and advice of the Council of Ministers when exercising his power under Article 200.

v) Taking us through the historical background in which Article 200 came to be drafted, Mr. Dwivedi submitted that Section 75 was the provision corresponding to Article 200 in the Government of India Act, 1935. However, in Section 75 the expressions "Governor in his discretion" and "Governor may, in his discretion" were deployed in the substantive part and the proviso respectively. Later on, when the draft of the Constitution was prepared by the constitutional advisor, the expression "Governor in his discretion" was dropped from the substantive part of Article 147 (predecessor of draft Article 175), but the expression "Governor may, in his discretion" was retained in the proviso.

The same position continued in Article 175 of the Draft Constitution, 1948 (hereinafter, "the Draft Constitution") (predecessor of Article 200) presented before the Constituent Assembly. However, ultimately, the expression conferring discretion was dropped and Article 200 came to be adopted in its present form. He submitted that the reason for this was explained by Dr. Ambedkar who said that there can be no room for the Governor to act on his discretion in a responsible form of government. Further, it was explained by Mr. T.T. Krishnamachari that the returning of the Bill to the Legislature will only be upon the advice of the Council of Ministers and not on the personal discretion of the Governor.

vi) Mr. Dwivedi submitted that issues of repugnance of State legislation with a Central enactment are not of easy determination and the only method of discourse between the Governor and the State Legislature is provided in the first proviso to Article 200. Hence, simpliciter withholding of assent without taking recourse to the first proviso ought to be rejected by the Courts and compliance with the first proviso ought to be mandated in every case of withholding of assent. Furthermore, issues of repugnance should be left for the constitutional courts to decide.

vii) The interpretation of Article 200 must be done in line with the intent of the framers of the Constitution which is evident from the Constituent Assembly Debates. The only instance where this Court adopted an approach contrary to the one suggested by the Constituent Assembly pertained to the appointment of Judges to the High Court and this Court and that approach was adopted to preserve the independence of the judiciary, which is part of the basic structure. However, in the present case, there is no compelling need to diverge from the view adopted by the Constituent Assembly as that view supports the fundamental principles of federalism.

d) Option of withholding of assent is attached to the first proviso to Article 200.

i) He submitted that the exercise of power to withhold assent by the Governor is coupled with the duty of the Governor to comply with the procedure prescribed in the first proviso to Article 200 and the same has been recognised in the decision in State of Punjab (supra).

ii) On the use of the expression "shall declare" in the substantive part of Article 200, he submitted that this expression in the main part of Article 200 would, by necessary implication, require the Governor to mention the reasons for withholding the assent.

iii) He submitted that the expression "shall not withhold assent therefrom" in the first proviso to Article 200 takes away the option of reserving the Bill for the consideration of the President from the Governor when the Bill is repassed by the State Legislature and presented before him for assent. In support of his submission, he argued that the use of a negative expression renders the course of action prescribed as mandatory in nature. He further submitted that the phraseology of the first proviso to Article 200 is different from the proviso to Article 201 inasmuch as the latter does not oblige the President to mandatorily assent to the Bill after it has been repassed by the State Legislature and is presented before him again. Whereas, in contrast, the first proviso to Article 200 is couched in a negative language and thus prohibits the Governor from taking any other recourse than granting assent.

e) Reservation of bills for the consideration of the President.

i) Mr. Dwivedi submitted that the power to reserve the Bill for the consideration of the President is not open ended. If specific provision of the Constitution does not require Presidential assent to the Bill passed by State Legislature, then such a Bill cannot be reserved for the consideration of the President.

ii) He submitted that a further limitation on the power to reserve a Bill is that it can only be reserved on the aid and advice of the Council of Ministers and the Governor has no personal discretion in this matter. Articles 31A, 31C, 213, 254, 288, 304(b), 360 and 6th Schedule are the only provisions which expressly require assent of President. It is only when these articles are attracted that the Governor can reserve the Bills for consideration of the President. In the exclusive domain of Legislation under the State List or List- II of the 7th Schedule of the Constitution, no assent of President is needed.

iii) On the aspect of repugnancy, he submitted that the letter of the Governor informing that the Bills were being reserved for the consideration of the President fails to specify the Central law with which States Bills are repugnant. This indicates non-application of mind. He submitted that in *Kaiser-I-Hind Pvt. Ltd. and Anr. v. National Textile Corporation (Maharashtra North) Ltd. and Ors.* reported in (2002) 8 SCC 182, a Constitution Bench of this Court held that the Central law with which repugnance exists must be pointed out by the proposal of State government specifically. Even the nature of repugnance should be stated so as to enable the President to consider the nature, extent, feasibility, practicality and desirability of assenting.

iv) On the aspect of reading in a time limit within the scheme of Article 200, he submitted that an outer limit of 2 to 3 months needs to be stipulated by this court to obviate exercise of pocket-veto by the Governors. Delays of over 3 months needs to be curbed.

32. Dr. Abhishek Manu Singhvi, the learned Senior Counsel appearing for the petitioner, made detailed submissions broadly on the following aspects:

a) The Governor in exercise of his functions under Article 200 is required to act on the aid and advice tendered by the Council of Ministers.

i) The Governor is merely a titular or de jure head of the State and the task of governing the State is entrusted to the Chief Minister and his Council of Ministers who can be said to be the head of the State de facto. The powers vested in the Governor under the Constitution must be exercised on the aid and advice of the Council of Ministers headed by the Chief Minister.

ii) The Constituent Assembly Debates indicate that the framers of our Constitution envisaged the position of the Governor as that of a guide, philosopher and a friend of the Government and the people in general.

iii) The Constituent Assembly, in its wisdom and in consonance with the position of the Governor in the parliamentary form of Government, removed the phrase "in his discretion" from the substantive part and the first proviso to Section 75 of the Government of India Act upon which Article 200 was modelled.

iv) The Constitutional Scheme does not envisage that the Governor would have the power to veto Bills duly passed by the State Legislature and would be capable of supplanting the policies of the Government with his own discretion. The Governor cannot sit over the Bills enacted by the Legislature indefinitely as that would be against the interest of the people who elect the Government with the aspiration that the Government would legislate in their interest. Gubernatorial procrastination is a new phenomenon and requires judicial intervention for finding a new solution for it within the Constitutional framework.

v) Placing reliance on the Constitution Bench decision in *Samsher Singh* (supra), he submitted that although the executive power of the State is vested in the Governor yet it is actually carried on by the Ministers under the Rules of Business made under Article 166(3). Further, the President or the Governor act on the aid and advice of the Council of Ministers with the Prime Minister as the head in the case of the Union and the Chief Minister as the head in the case of States, in all matters which vest in the Executive, irrespective of whether those functions are executive or legislative in character.

) Referring to the observations made by a Constitution Bench of this Court in *Nabam Rebia* (supra), it was submitted that the Governor cannot be entrusted with such powers and functions as would assign to him a dominating position over the State Executive and the State Legislature. The Governor cannot be accepted as an all-pervading super-constitutional authority. It was submitted that an examination of the executive and legislative functions of the Governor in the context of the constitutional scheme clearly brings out that the Governor has not been assigned any substantive role either in the executive or the legislative functioning of the State.

vii) It was argued that this Court in *Nabam Rabia* (supra) has gone further to say that any exercise of discretionary powers of the Governor is limited to situations where a constitutional provision expressly provides that the Governor should act in his own discretion. Additionally, a Governor may exercise his functions in his own discretion in situations where the constitutional provision concerned cannot be construed otherwise and in situations where the clear intent underlying a constitutional provision so requires i.e., where the exercise of such power on the

aid and advice, would run contrary to the constitutional scheme, or would be contradictory in terms.

viii) In response to our specific question as regards the observations made by this Court in *B.K. Pavitra v. Union of India* reported in (2019) 6 SCC 129, that the eventuality in Article 254(2) does not exhaust the ambit of the power entrusted to the Governor under Article 200 to reserve a Bill for the consideration of the President, he submitted that the Governor may legitimately refer a bill for consideration at the end of the President upon entertaining a legitimate doubt about the validity of law. However, such reference of a bill can only be done with the aid and advice of the Council of Ministers and not upon the individual discretion of the Governor.

ix) He further submitted that the said observations in *B.K. Pavitra* (supra) should be interpreted to mean that even though the power under Article 200 is entrusted to the Governor, yet such exercise of power can only be done with the aid and advice of the Council of Ministers of the State. The Governor has no independent discretion under the substantive part of Article 200 for referring the bill for the consideration of the President.

As is crystal clear from the Constituent Assembly Debates, there is no independent discretion vested in the Governor in exercise of his functions under Article 200 of the Constitution. Although the power of reserving Bills for the consideration of the President is a necessary channel for references under Article 254(2) to save the competence of the State Legislatures from being unduly restricted by the operation of the rule of repugnancy embodied in Clause (1) of the Article 254, yet such power is also subject to the aid and advice of the Council of Ministers.

b) The Governor cannot reserve a bill for the consideration of the President when it is repassed by the State Legislature, with or without amendments, under the first proviso to Article 200?

i) Mr. Singhvi submitted that the relevant consideration at the end of the Governor when a bill is presented before him for assent broadly should be as follows:

1. The first step is to ascertain whether the Bill is a Money Bill - In cases of Money Bills, the Governor has to grant assent.
2. Thereafter, the Governor must ascertain whether the second proviso to Article 200 is attracted, that is, whether the Bill, if it became law, would derogate from the powers of the High Court - If the answer is yes, then the Governor must reserve the Bill for the consideration of the President.

3. In all other cases, the Governor has three options to choose from when the bill is presented before him for the first time - to either assent, or withhold assent, or reserve the Bill for the consideration of the President.

) He submitted that after the Governor has withheld assent to a bill and returned the same to the Legislative Assembly, it is not open to the Governor to reserve the said bill for the consideration of the President once the Legislative Assembly re-passes it with or without amendment. If the Governor wants to reserve any bill for the consideration of the President, he must do so in the first instance when the bill is presented to him for assent. The Governor can choose any one of the three options at the first instance but if he exercises the option to withhold assent, then the option of reserving the bill for the consideration of the President ceases to exist because the next step in such a case is to follow the procedure prescribed under first proviso to Article 200.

iii) Explaining the reason for the aforesaid, he submitted that upon exercising the second option, the third option no longer remains for the Governor as the first proviso to Article 200 comes into operation. Article 200 does not provide any scope to the Governor for the reservation of the bill once the second option has already been exercised. The decision of the Governor to go down the path of sending the bill back to the Legislature precludes him from reversing his constitutional election subsequently, by referring it to the President after the Bill is returned to him consequent to repassing by the Legislature.

c) The first proviso to Article 200 is attached to the option of withholding of assent provided in the substantive part of the article.

i) The concluding part of the first proviso stipulates that if the Bill is passed again by the Legislature either with or without amendments, the Governor shall not withhold assent therefrom upon presentation. The expression "shall not withhold assent therefrom" is a clear indicator that the exercise of the power under the first proviso is relatable to the withholding of the assent by the Governor to the bill in the first instance. This phrase constitutes a clear and unequivocal constitutional prohibition against the Governor. The role which is ascribed by the first proviso to the Governor is recommendatory in nature and it does not bind the State Legislature.

ii) The first proviso to Article 200 expands upon the second option to ensure that the object of the Article is not rendered otiose as without the first proviso, Article 200 would allow the Governor to indiscriminately veto bills by repetitively and sequentially withholding the assent and cripple an elected Government for political reasons.

iii) On the use of the expression "may" in the first proviso to Article 200, placing reliance on the decision of this Court in *State of Uttar Pradesh v. Jogendra Singh* reported in AIR 1963 SC 1618 the counsel submitted that in the said decision while adjudicating the duty of the Governor to refer the cases relating to Government servants to the Administrative Tribunal under Rules 4(2) of the Civil Service Rules which also used the expression "may" this Court had held that the word "may" is capable of meaning "must" or "shall" in the light of the context. He further submitted that where a discretion is conferred upon a public authority coupled with an obligation, the word "may" which denotes discretion should be construed to mean a command. Sometimes, the legislature uses the word "may" out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed.

iv) The first part of the first proviso is mandatory in nature. It authorises the Governor to, as soon as possible, after the presentation for Bill for assent, return the Bill together with a message requesting the House to reconsider the Bill with the desirability of introducing any such amendments as he may recommend in his message. He submitted that this interpretation was also followed by this Court in the decision in *State of Punjab (supra)* by stating that Governor must mandatorily follow the course of action indicated in the first proviso of communicating to the State Legislature "as soon as possible" a message warranting reconsideration of the Bill.

v) The Governor can only return the bill when he has withheld the assent. The Governor cannot be expected to keep the bill in his custody after withholding the assent as it would amount to a "pocket veto" or veto which is contrary to the intention of the makers of the Constitution. Any acceptance of such "suspended animation" doctrine of a Bill, supposedly kept indefinitely pending by a Governor, would be grossly violative of the Constitutional text, spirit and intent.

vi) The counsel while highlighting the facts of the case at hand, submitted that the Governor had returned the Bills with the remarks "I withhold assent" which amounts to a clear withholding as per the second option of the substantive part of Article 200. When these Bills were returned to the Legislative Assembly, the Bills only contained a signed endorsement by the Governor with the remarks "I withhold assent" and there was no message for reconsideration. In such a situation of simpliciter withholding of assent, the State Legislative Assembly cannot be precluded from re-considering the Bill and re-passing the Bill as the exercise of the option of withholding of assent brings into operation the first proviso whereby such Bills have to be returned to the State Legislative Assembly.

vii) Once the first proviso comes into operation, the State Legislature is bound to mandatorily reconsider the Bills and pass them with or without any amendments

as indicated by the expression "House or Houses shall reconsider the Bill accordingly" in the second part of the first proviso to Article 200.

d) A time-limit must be read into the expression "as soon as possible" appearing in the first proviso to Article 200 to curtail the prevalent practice of gubernatorial procrastination.

i) He submitted that the expression "as soon as possible" provided in first proviso to Article 200 does not provide any strict time limit to be followed by the Governor to decide upon the Bills presented for assent, but that should not and cannot mean that the Governor can keep a Bill duly passed by the State Legislative Assembly "pending" for indeterminate periods. This course of action is inconsistent with the phrase "as soon as possible".

ii) The counsel placed reliance on the following decisions of this Court in support of his submission:

- The State of Telangana v. Secretary to Her Excellency the Hon'ble Governor for the State of Telangana & Anr. reported in (2024) 1 SCC 405 has emphasized that the phrase "as soon as possible" has significant Constitutional content, and must be borne in mind by Constitutional functionaries.
- Ram Chand and Ors. v. Union of India and Ors. reported in (1994) 1 SCC 44 held that where for exercise of power no timelimit is fixed, it has to be exercised within a time which can be held to be reasonable.
- Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly and Ors. reported in (2021) 16 SCC 503 had postulated a "three months outer limit" for deciding disqualification petitions filed before the Speaker.
- M/s North Eastern Chemicals Industries (P) Ltd. & Anr. v. M/s Ashok Mills - CA No. 2669 of 2023 has held that where there is no time period prescribed by the statute, the Court must undertake a holistic assessment of the facts and circumstances, conduct of the parties, and the nature of the proceedings to examine the possibility of delay causing prejudice to a party.
- AG Perarivalan v. State, Through Superintendent of Police CBI/SIT/MMDA, Chennai, Tamil Nadu and Anr. reported in (2023) 8 SCC 257 wherein while dealing with the delay caused by the Governor in deciding remission matters, this Court exercised its powers under Article 142 of the Constitution directing that the prisoner was deemed to have served the sentence.

iii) Mr. Singhvi referred to Chapter V of the report of the Sarkaria Commission on Centre-State Administrative Relations wherein it was suggested that the Governor should make a declaration under Article 200 within one month from

the date on which the Bill is presented. He also referred to the Punchhi Committee Report on Centre-State Relations which recommended "maximum period of six months after Bill is presented" to be the time limit to be followed by the Governor under Article 200.

e) The observations made by this Court in its decision in Valluri Basavaiah Chowdhary are not applicable to the present case

i) Mr. Singhvi submitted that this Court in Valluri Basavaiah Chowdhary (supra) had no occasion to adjudicate upon the interpretation of the constitutional powers of the Governor under Article 200 of the Constitution. Therefore, the observations of the Court in Para 19 cannot be construed to be its ratio decidendi. At most, these observations could be considered as obiter dicta. Indeed, they may not even constitute obiter but are mere observations, totally unconnected to and unnecessary for that case.

ii) He relied upon the decision of this Court in Secunderabad Club v. Commissioner of Income-Tax reported in (2023) SCC OnLine SC 1004 to submit that in terms of Article 141 of the Constitution, only the ratio decidendi of a judgment, that is, the reason assigned in support of the conclusion, is binding. He submitted that this Court has held that what is binding, therefore, is the principle underlying a decision which must be discerned in the context of the question(s) involved in that case from which the decision takes its colour. In a subsequent case, a decision cannot be relied upon in support of a proposition that it did not decide. Therefore, the context or the question, while considering which, a judgment has been rendered assumes significance.

iii) He submitted that the obiter dictum of the Supreme Court is binding under Article 141 to the extent of the observations on points raised and decided by the court in a case. Although the obiter dictum of the Supreme Court is binding on all courts yet it only has persuasive authority as far as the Supreme Court itself is concerned.

iv) He further submitted that a decision is not an authority for what can be read into it by implication or by assigning an assumed intention of the judges and inferring from it a proposition of law which the judges have not specifically or expressly laid down in the pronouncement.

v) Lastly, he submitted that even if the decision in Valluri Basavaiah Chowdhary (supra) is interpreted as a binding precedent, still such interpretation of the Article 200 would fall foul of the intention envisaged by the Constituent Assembly.

f) Role of the President under Article 201.

i) On the aspect of the position of the President under Article 201, he submitted that the President is not required to mandatorily assent to the bill that is presented to him for his consideration after being repassed by the State Legislature, once such bill has been sent back by the President under the proviso to Article 201 in the first instance.

ii) It was submitted that Article 201 does not contain the expression "shall not withhold assent therefrom" in the proviso unlike the first proviso to Article 200. He further submitted that this Court in *Kaiser-I-Hind* (supra) had held that the assent of the President envisaged under Articles 31-A, 31-C, 254(2) and 304(b) of the Constitution respectively constitutes a distinct class and category of its own and is different from the assent envisaged under Articles 111 of the President or Article 200 of the Governor. A bare perusal of Article 201 indicates that even when the Houses of the State Legislature re-pass the Bill and present it for consideration in terms of the proviso to Article 201, there is no compulsion on the President to accord assent.

iii) Just as the Governor, the President is also bound by the aid and advice of his Council of Ministers under Article 201 of the Constitution. Such absence of compulsion of the President to grant assent to the Bill re-considered and repassed by the State Legislative Assembly is also subject to the aid and advice of the Council of Ministers. Whether the President should grant assent or not would be subject to the aid and advice by the Council of Ministers. There is no individual discretion vested in the President in granting or not granting the assent under Article 201.

g) Malice in law and malice in fact

i) He submitted that the Governor could be said to have committed violence to the constitutional framework by not adhering to the mandate under Article 200 of the Constitution and has also attempted to render the present Writ Petition infructuous during its pendency.

ii) It was submitted that when the Petitioner had approached this Court initially, the Governor had kept 12 Bills pending. Thereafter, the captioned Writ Petitions were heard by this Court on 10.11.2023 wherein it was observed that the present Writ Petition raised a matter of serious concern and issued notice to the Union of India represented by the Secretary to the Government in the Ministry of Home Affairs. In light of the aforesaid, the Governor hastily on 13.11.2023 referred two Bills for the consideration of the President and withheld assent simpliciter to the remaining 10 Bills. On 18.11.2023, a special session of Tamil Nadu Legislative Assembly was held and the 10 Bills were reconsidered and passed in the Assembly. These Bills were sent to the Governor for consideration on the same

day itself. However, the Governor, with a view to render the present petition infructuous, reserved the 10 Bills for the consideration of the President.

iii) In the last, the learned counsel submitted that the action of the Governor has been contrary to what was laid down by this Court in *S.R. Bommai* (supra) wherein it was stated that the Governor is a very high Constitutional functionary and he is supposed to act fairly and honestly, in a manner consistent with his oath. It is for this reason that Article 356 places such implicit faith on his report. If, however, in a given case his report is vitiated by legal mala fides, it is bound to vitiate the President's action as well.

33. Mr. P. Wilson, the learned Senior Counsel, made extensive submissions on behalf of the petitioner. For the sake of brevity, we are recording only those submissions which are in addition to the points already canvassed by Mr. Dwivedi and Mr. Singhvi respectively:

i) The Constituent Assembly after long and detailed debates decided to have a nominated Governor in place of an elected Governor and consciously deleted all expressions from the Draft Constitution which conferred individual discretion on the Governor. He referred to certain portions of the report of the Sarkaria Commission in support of his arguments.

ii) Article 91 of the Draft Constitution, 1948 which enumerated the assent to bills by the President, had postulated a time limit of six weeks for the President to provide his assent to the bills presented to him by the Houses of Parliament.

iii) Relying on the speech of Mr. T.T. Krishnamachari in the Constituent Assembly, he submitted that Article 200, as finally enacted, does not vest any discretion in the Governor to withhold a bill passed by the Legislature except on the express aid and advice of the Council of Ministers.

iv) He submitted that the Sarkaria Commission in its Report in Chapter V had observed that the Governor may reserve a bill for the consideration of President when it clearly violates Fundamental Rights or transgresses other Constitutional limitations. The power to reserve Bills could be used only in rare circumstances. In all other circumstances, the Governor needs to abide by the aid and advice of the Council of Ministers. Therefore, Article 200 does not confer general discretion on the Governor but mandates him to act in accordance with aid and advice of the Council of Ministers.

v) He submitted that the fear anticipated by Shri H.V. Kamath as regards the difficulties that may arise due to the use of the phrase "as soon as possible" during the discussion on draft Article 91 is exactly what has been happening in the States of Telangana, Punjab, Kerala as well as in the petitioner State. Thus, this Court must intervene and put the matter on quietus by declaring that it is

deemed that assent has been granted to the Bills and declare the action of reserving Bills for assent of the President as ultra vires.

vi) He submitted that the 10 Bills which are the subject matter of present Writ Petition were dealt with by the Governor during the pendency of the Writ Petition in the manner referred to in paragraph 13 and 14 respectively of the third Amendment application in I.A. No. 216164 of 2024. Therefore, all unconstitutional acts of the Governor remain for consideration by this Court as they are actions pendente lite and this Court has the power to turn the clock back and restore status quo ante.

ii. Submissions on behalf of the Respondents

34. Mr. R. Venkatramani, the learned Attorney General for India, appeared for the respondents and submitted as follows:

a. The Governor while acting under Article 200 is not acting in exercise of ordinary discretion but is acting under a constitutional responsibility. Thus, even if it is assumed that the Governor has no individual discretion, he may still withhold assent to a bill as per his constitutional obligation.

b. He submitted that having regard to the high level of responsibilities entrusted to the Governor in dealing with Bills presented for his consideration, the Governor may reach out to the Council of Ministers for advice, in order to know the legislative intent, and be benefited as well. However, when on the plain understanding of the bills, the Governor finds constitutional contraventions, or seriously debatable issues of the Constitution, he may apply his mind, with or without the aid of the Council of Ministers. This principle of an area of constitutional deliberation prior to the Governor taking any call under Article 200, cannot be subjected to or put into any strait-jacket formula.

c. He submitted that when new issues and concerns of legislation involving federal structure of the polity of the nation arise, it is important that the role of the Governor is neither stretched beyond a point, nor should be allowed to be diminished to a status of no consequence.

d. He submitted that in the instant case, the Governor was persuaded by the observations made in Valluri Basavaiah (supra), which suggest that when assent is withheld, the Bill will cease to exist. However, if the Governor chooses to follow the procedure under the first proviso, wherever it will be of relevance and of importance to follow, then the Governor would become bound by the mandatory stipulation enunciated in the first proviso.

e. He submitted that the single-minded focus of the Governor was to ensure that a repugnant law, if allowed to be on the statute book, would open the scope for

maladministration of universities and impede the avowed object and purpose of excellence in higher education, placing all power in the hands of the State Government as opposed to the Chancellor. It is only with a view to avoid such a situation that the Governor withheld assent to the Bills in question.

f. On the aspect of reservation of the bills for the consideration of the President, he submitted that there is nothing in Article 200 that suggests that the Governor ceases to have the authority to refer the matter to the President after he has withheld assent to the bill in the first instance. If this authority is available at the time of withholding of assent, the same cannot be taken away or not made available by the State Government acting on their own motion under the first proviso.

g. In furtherance of the aforesaid submission, he submitted that for all practical purposes, the Bills forwarded by the petitioner State on 18.11.2023 should not to be treated as sent by the Governor acting under the first proviso. Bills that are sent outside the procedure contemplated by the first proviso, would be open for consideration by the Governor for any further course of action including, reference to the President. The principle of power coupled with duty underlying Article 200 demands that recourse to reference to President even after initial withholding of assent by the Governor, be read into the Article, in order to make the power effective to achieve its purpose.

h. He submitted that on a proper reading of the substantive part and the first proviso to Article 200, it will be seen that four courses of actions are available to the Governor. The observations made in the State of Punjab (supra) decision may thus warrant a qualification, or an additional statement to fine-tune the scope of Article 200.

i. On the issue as regards whether the first proviso is attracted in all instances of withholding of assent, he submitted that the role for the first proviso is confined to cases where the bill may not be hit by any constitutional limitation, is within the competence of the legislature, but may admit of changes, amendments, etc. Such amendments or changes that the Governor may thus suggest within the scope of the first proviso, will not be relatable to matters such as repugnancy. With the perception of repugnancy, the focus of the Governor will be outside the first proviso.

He argued that even though this Court in State of Punjab (supra) has opined that the exercise of power under the first proviso is relatable to the withholding of the assent by the Governor, yet this view may require a further qualification that in the context of repugnancy, unlike any other reason for withholding of assent, the Governor need not necessarily proceed to act under the first proviso. The first proviso perhaps cannot be read to be pressed into service when both the

Governor and the State Government understand the repugnancy dimension. In the event the State Government desires to clear the repugnancy or any other hurdle, it may itself seek the assent of the President. In such an event the State Government may also ask the Governor to refer the matter to the President for consideration.

j. He submitted that that in the present case as the President has withheld assent to the Bills in question, therefore in terms of the statement of law in *Hoechst Pharmaceuticals (supra)*, the action of the President in withholding assent is not justiciable. What cannot be directly done by seeking such justiciability cannot be indirectly achieved by the claim that the action of the Governor in forwarding the bills in question to the President was beyond his authority.

k. He submitted that the exposition of Article 200 as done in *State of Punjab (supra)* is sub-silentio as the Court while making the said decision did not take into account the observations made by the Constitution Bench in *Valluri Basavaiah (supra)*.

l. In the last, he submitted that the matter may be referred to a larger Bench of this Court so as to harmonise the observations made in *B.K. Pavitra (supra)*, *Valluri Basavaiah (supra)* and *State of Punjab (supra)*.

35. Mr. Vikramjit Banerjee, the learned Additional Solicitor General, appeared for the respondents and submitted as follows:

a. A reading of Clause (1) of Article 163 categorically provides that the Governor ordinarily is aided and advised by the Council of Ministers headed by the Chief Minister, however, there is an express discretion vested with the Governor for exercising functions under the Constitution which permeates all of the provisions that require the Governor to exercise his/her power, including Articles 200 and 201.

b. Placing reliance on the decision of this Court in *M.P. Special Police (supra)*, he submitted that that the normal rule is that the Governor acts on the aid and advice of the Council of Ministers and not independently or contrary to it. But there are exceptions under which the Governor can act in his own discretion and the exceptions are not exhaustive or limited but differ as per the facts of each case. He further submitted that the aforesaid decision recognised that the concept of the Governor acting in his discretion or exercising independent judgment is not alien to the Constitution.

There may be situations where, by reason of peril to democracy or democratic principles, an action may be compelled which by its very nature is not amenable to Ministerial advice. An instance of a situation curiously similar to the present case is discussed where bias was inherent and manifest in the advice of the Council of Ministers as the proposed bills sought to fundamentally encroach into

the role of the Governor as the Chancellor by seeking to substitute "Chancellor" (who is the appointing authority of Vice Chancellors and also the disciplinary authority) with "Government".

The State Government has impugned the notifications issued by the Governor (in the capacity of the Chancellor) for constitution of Search Committees for appointment of Vice Chancellors for State Universities. Additionally, the Bills were effectively aimed at seeking to control the co-ordination and standards of higher and technical education/research which fall under Entry 66 of the Union List (under the Seventh Schedule of the Constitution).

c. Placing reliance on the decision of this Court in *Purushothaman Nambudiri v. State of Kerala* reported in 1961 SCC OnLine SC 361 he submitted that the idea of reading in a time limit in Articles 200 and 201 respectively had been deliberated upon and expressly rejected by this Court in the said decision.

C. ISSUES FOR CONSIDERATION

36. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions of paramount constitutional importance fall for our determination:

I) What courses of action are available to the Governor in exercise of his powers under Article 200 of the Constitution?

i. Whether the first proviso could be said to provide an independent course of action available to the Governor in addition to the three options provided under the substantive part of Article 200?

ii. In what manner the expression "the Bill falls through unless the procedure under the first proviso is followed", as used in *Valluri Basavaiah Chowdhary* (supra), should be construed?

iii. Whether the decision of this Court in *State of Punjab* (supra) could be said to be per incuriam for not having taken into consideration the observations made in previous decisions rendered by larger benches of this Court?

iv. Whether the scheme of Article 200 of the Constitution envisages the exercise of 'absolute veto' or 'pocket veto' of a bill by the Governor?

II) Whether the Governor can reserve a bill for the consideration of the President at the time when it is presented to him for assent after being reconsidered in accordance with the first proviso to Article 200, more particularly, when he had not reserved it for the consideration of the

President in the first instance and had declared withholding of assent thereto?

i. Whether the reservation by the Governor, for the consideration of the President of the ten Bills which were re-passed by the Tamil Nadu State Assembly and presented to the Governor on 18.11.2023, is erroneous in law and hence liable to be set aside?

III) Whether there is an express constitutionally prescribed time-limit within which the Governor is required to act in the exercise of his powers under Article 200 of the Constitution?

i. How is the absence of an express time-limit in Article 200 to be construed for ascertaining the manner in which the Governor is expected to exercise his powers under the said provision?

ii. What is the import of the expression "as soon as possible" appearing in the first proviso to Article 200?

iii. Whether a time-limit can be prescribed by this Court for ensuring that the exercise of power by the Governor under Article 200 is in conformity with the object of expediency underlying the scheme of the said provision?

IV) Whether the Governor in the exercise of his powers under Article 200 of the Constitution can only act in accordance with the aid and advice tendered to him by the State Council of Ministers? If not, whether the constitutional scheme has vested the Governor with some discretion in discharge of his functions under Article 200?

i. How has the role of the Governor been envisaged under the constitutional scheme?

ii. Whether the Governor enjoys a certain degree of discretion in discharge of his functions in contrast to the President? What is the source of such discretion, if any?

iii. Whether the deletion of the expression "in his discretion" from Article 175 of the Draft Constitution imply that the Governor has no discretion available in the exercise of his powers under Article 200?

iv. Whether the observations of this Court in B.K. Pavitra (supra) that "a discretion is conferred upon the Governor to follow one of the courses of action enunciated in the substantive part of Article 200" could be said to be per incuriam for having failed to notice the position of law as laid down by the larger Benches of this Court?

V) Whether the exercise of discretion by the Governor in discharge of his functions under Article 200 could be said to be subject to judicial review? If yes, what are the parameters for such judicial review?

i. Whether the discharge of functions by the Governor under Article 200 of the Constitution in his discretion could be said to be immune from judicial review?

ii. Whether the withholding of assent by the President under Article 201 of the Constitution could also be said to be beyond the scope of judicial scrutiny?

iii. If the aforesaid discharge of functions is subject to judicial review, whether such discharge of functions could be said to be nonjusticiable in light of the decisions of this Court in *Hoechst (supra)*, *Kaiser-I-Hind (supra)*, and *B.K. Pavitra (supra)*?

VI) What is the manner in which the President under Article 201 of the Constitution is required to act once a bill has been reserved for his consideration by the Governor under Article 200 of the Constitution?

i. Whether the decision of the President to withhold assent under Article 201 of the Constitution could be said to be justiciable? If yes, what is the extent of justiciability that the courts can embark upon while undertaking judicial review of the exercise of powers by the President under Article 201 of the Constitution?

D. ASSENT TO BILLS - HISTORICAL BACKGROUND

37. Article 200 appears in Chapter III of Part VI of the Constitution under the heading Legislative Procedure. Part VI deals with the States and Chapter III deals with the State Legislature. The marginal note attached to Article 200 reads "Assent to Bills" and the article reads as follows:

"200. Assent to Bills.-

When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill

accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom:

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill."

38. Section 75 of the Government of India Act, 1935 (for short, "the GoI Act, 1935") upon which the Article 200 has been substantially modelled is reproduced hereinbelow:

"75. Assent to Bills.-

A Bill which has been passed by the Provincial Legislative Assembly or, in the case of a Province having a Legislative Council, has been passed by both Chambers of the Provincial Legislature, shall be presented to the Governor, and the Governor in his discretion shall declare either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the consideration of the Governor General:

Provided that the Governor may in his discretion return the Bill together with a message requesting that the Chamber or Chambers will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the Chamber or Chambers shall reconsider it accordingly."

39. A perusal of both the aforesaid provisions indicates that Article 200 of the Constitution corresponds to Section 75 of the GoI Act, 1935 except for the following differences:

- a. The expression "in his discretion" has been omitted from both the substantive part of Article 200 as well as the first proviso thereto.
- b. The Governor under Article 200 assents to the bill in his own name unlike Section 75 wherein the assent was to be granted in the name of the Crown.
- c. The expression "if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom" has been added to the first proviso to Article 200.
- d. The second proviso is a further addition to Article 200 and did not exist in Section 75 referred to above.

40. D.D. Basu in his Commentary on the Constitution of India (pp. 6311, 8th Ed., 2009) has observed that the omission of the expression "in his discretion" from Article 200 signifies that the Governor must exercise his power under the Article according to the advice of his ministers. Further, the addition of the expression "shall not withhold assent therefrom" indicates that the Governor has no power to veto a reconsidered bill and must assent to it whether it is passed in the original form or with amendments.

41. Article 200 is divided into three parts - the substantive part and two provisos. A perusal of the substantive part of Article 200 indicates that the presentation of a bill to the Governor is mandatory after it is passed by the State legislature. The same is made evident from the use of the expression "it shall be presented to the Governor". In the same breath, Article 200 makes it mandatory for the Governor to make one of the following declarations:

- a. That he assents to the bill; or
- b. That he withholds assent to the bill; or
- c. That he reserves the bill for the consideration of the President.

42. It is important to note that the expression "shall" has been used to qualify the three types of declarations that the Governor can make upon presentation of the bill to him. Further, the three options provided in the substantive part of Article 200 are connected by the conjunction "or" which signifies that the three options are mutually exclusive of each other, and the Governor can only choose one of them at a time. In other words, the Governor cannot assent to a bill and also reserve it for the consideration of the President at the same time. Similarly, the Governor cannot declare that he withholds assent and also reserve the bill for the consideration of the President at the same time. Patanjali Sastri, Chief Justice (as he then was), observed to this effect in *State of Bihar v. Kameshwar Singh* reported in (1952) 1 SCC 528 as follows:

"20. It is significant that the article does not contemplate the Governor giving his assent and thereafter, when the Bill has become a full-fledged law, reserving it for the consideration of the President. Indeed, the Governor is prohibited from giving his assent where such reservation by him is made compulsory. The Constitution would thus seem to contemplate only "Bills" passed by the House or Houses of Legislature being reserved for the consideration of the President and not "laws" to which the Governor has already given his assent.

Similarly, Article 31(3) must, in my judgment, be understood as having reference to what, in historical sequence, having been passed by the House or Houses of the State Legislature and reserved by the Governor for the consideration of the President and assented to by the latter, has thus become a law. If it was intended

that such a law should have the assent of both the Governor and the President, one would expect to find not only a more clear or explicit provision to that effect, but also some reference in Article 200 to the Governor's power to reserve a measure for the consideration of the President after himself assenting to it. On the other hand, as we have seen, where reservation by the Governor is made obligatory, he is prohibited from giving his assent."

(Emphasis supplied)

43. The first proviso to Article 200 has no application to Money Bills. For all other bills, it provides that the Governor may, as soon as possible after the presentation of the bill to him for assent, return the bill to the House or Houses along with a message requesting the House or the Houses to reconsider the bill in totality or certain provisions thereof. He may also recommend the introduction of certain amendments to the bill. The first proviso further states that when a bill is returned with such a message, then the House or the Houses must reconsider the bill accordingly and if the bill is passed with or without amendments and presented to the Governor for assent, he shall not withhold assent therefrom.

44. The second proviso to Article 200 provides that if the Governor is of the opinion that a bill which is presented to him for assent would, upon becoming law, so derogate from the powers of the High Court as to endanger the position which that Court is designed to fill by the Constitution, then he must reserve the bill for the consideration of the President and not grant assent to it.

45. The heart of the controversy before us lies in the interpretation of the substantive part of Article 200 and the first proviso to it. The arguments advanced before us coupled with the factual situation which we are confronted with, and the broader constitutional and political consequences that an interpretation of Article 200 entails, has opened up before us a treasure trove of questions hidden in the seemingly innocuous and plain language used in Article 200.

46. For a better understanding of Article 200, it is necessary that we should first understand the concept of assent to bills, how it has evolved over the centuries and its importance in parliamentary democracies across the globe. We are undertaking this exercise as Article 200 cannot be understood fully without having regard to the context in which it came to be included in the Constitution. While fidelity to the text of the provision holds paramount consideration in its interpretation, the context is equally, if not more, important, more so in light of the fact that Article 200, as it stands today, bears striking resemblance to Section 75 of the GoI Act, 1935 and other important historical documents which were being drafted by Indians during the course of the freedom struggle.

47. In Westminster styled polities, the Parliament consists of a lower House, an upper House and the head of state. The Indian Constitution has also broadly adopted a similar structure, which becomes evident from Articles 79 and 168 respectively. Article 79 provides that the Parliament shall consist of the President and two Houses - the Council of States and the House of the People. Article 168 provides that each State shall have a Legislature which shall comprise of the Governor and either one or two House(s), as the case may be. In the Westminster system, for a law to be passed by the Parliament, it must receive the approval of all the three elements - the Lower House, the Upper House and the Head of the State.

48. Jessica J. Richardson² in her paper titled "Modernisation of Royal Assent in Canada", has traced the historical origins of the practice of granting assent to bills enacted by the Parliament in the United Kingdom. She has explained that the practice of signifying royal assent to bills passed by Parliament began during the reign of Henry VI (1422-71), when the practice of introducing bills in the form of petitions was replaced by bills in the form of complete statutes. This was a time when assent was granted in person. The Sovereign would attend the Parliament in the House of Lords and give his consent in person.

This practice continued until 1541, when the task of signifying royal assent was assigned to a Royal Commission in order to spare King Henry VIII the indignity of having to give royal assent to the Bill of Attainder, which provided for the execution of his wife Catherine Howard. It was after this occurrence that the practice of appointing Lords Commissioners responsible for giving royal assent developed. In the United Kingdom, the last instance of a monarch giving royal assent in person was in 1854 when Queen Victoria personally assented to several bills prior to proroguing the Parliament.

However, in Canada, King George VI gave royal assent in person to bills passed by the Canadian Parliament in 1939 during a visit to Canada. The use of a royal assent ceremony continued in the United Kingdom until 1967, when the British Parliament passed the Royal Assent Act, 1967. The said legislation repealed the Royal Assent by Commission Act, 1541 and allowed a simple report of royal assent by the Speakers of the two Houses to give a bill the force of law.

49. In the Canadian context, she explains that the royal assent ceremony was inherited from the United Kingdom tradition and was used prior to Confederation in both Lower and Upper Canada and closely resembled the original ceremony used in the United Kingdom. Prior to adoption of the new procedure in 2002, Canada was the only remaining Commonwealth country to still use the traditional ceremony for royal assent. However, taking inspiration from the practice prevailing in other Commonwealth countries including Australia and New

Zealand, as well as several Canadian provinces, the royal assent procedure was modernised by adopting a written declaration procedure.

50. One of the first instances where the concept of assent to bills appears in a documented form in the Indian context is the Constitution of India Bill, 1895 which is also popularly referred to as the Swaraj Bill. The Bill, which is also termed by the academics as the first articulation of a constitutional imagination by Indians, besides incorporating ideas of free speech, equality before law, right to property, etc., also envisaged a machinery of governance and separation of powers, albeit within the British Empire.

As regards the legislative structure, the Bill proposed that the Sovereign of Great Britain shall reign and rule over India and the Viceroy shall be the representative of the Sovereign in India. It further envisaged that the Viceroy would be the President of the Parliament and would have the power to veto any law enacted by the Indian Parliament and initiate legislation. Article 97 of the Bill provided that no bill would become law until it received the sanction of the Sovereign. The said provision is reproduced hereinbelow:

"97. No Bill shall become law unless it has passed by majority through the Lower House three times and the Upper House three times and unless it has obtained the sanction of the Sovereign."

51. A few years after the ideation of the Swaraj Bill, the demand for selfgovernment further found expression in the Congress-League Scheme of 1916 which was a result of deliberations of the committees constituted jointly by the Indian National Congress and the All India Muslim League. The document envisioned a federal polity - with Provincial Legislative Councils for the provinces and an Imperial Legislative Council at the national level.

It is pertinent to note that as per the scheme, the Governor was envisaged as the head of the provincial government and any bill passed by the provincial legislature had to mandatorily receive his assent before it became law. Further, the document also conferred upon the Governor-General the power of vetoing any law passed by the provincial legislature. Any bill passed by the Imperial Legislative Council had to receive the assent of the Governor-General before it became law. The relevant provisions in the said document are reproduced hereinbelow:

"I. Provincial Legislative Councils

9. A Bill, other than a Money Bill, may be introduced in Council in accordance with rules made in that behalf by the Council itself and the consent of the Government should not be required therefor.

II. Provincial Governments

1. The head of every Provincial Government shall be a Governor who shall not ordinarily belong to the Indian Civil Service or any of the permanent services.

III. Imperial Legislative Council

9. All Bills passed by the Council shall have to receive the assent of the Governor-General before they become law."

52. In the backdrop of the growing demand for self-government by the Indian National Movement and the Montagu-Chelmsford Report, the Government of India Act, 1919 (for short, "the GoI Act, 1919") was enacted and received assent of the British Crown in December, 1919. The legislation introduced dyarchy at the provincial level, by the introduction of the transferred list and the reserved list. The reserved list consisted of the subject matters on which the Governor enjoyed exclusive legislative powers.

However, what we wish to draw attention to is the provision contained in the said legislation as regards assent to bills. Section 12 provided that the Governor had four options to choose from when a bill was presented to him for assent - to declare assent, to withhold assent, to return the bill to the council for reconsideration or to reserve the bill for the consideration of the Governor-General. Notably, there was no requirement for the Governor to mandatorily assent to a bill upon its presentation after reconsideration.

Further, the Governor had the power to veto any bill passed by the legislative council by a declaration simpliciter of withholding of assent. There was also a provision for the lapse of a bill reserved for the consideration of the Governor-General if assent was not granted within a period of six months. Thus, the concept of both absolute and pocket veto could be said to have been available to the Governor and the Governor-General under the provisions of the GoI Act, 1919. The relevant provision is reproduced hereinbelow:

"12. Return and reservation of Bills.-

(1) Where a Bill has been passed by a local legislative council, the governor, lieutenant-governor or chief commissioner may, instead of declaring that he assents to or withholds his assent from the Bill, return the Bill to the council for reconsideration, either in whole or in part, together with any amendments which he may recommend, or, in cases prescribed by rules under the principal Act may, and if the rules so require shall, reserve the Bill for the consideration of the Governor-General.

(2) Where a Bill is reserved for the consideration of the Governor-General, the following provisions shall apply:-

(a) The governor, lieutenant-governor or chief commissioner may, at any time within six months from the date of the reservation of the Bill, with the consent of the Governor-General, return the Bill for further consideration by the council with a recommendation that the council shall consider amendments thereto:

(b) After any Bill so returned has been further considered by the council, together with any recommendations made by the governor, lieutenant-governor or chief commissioner relating thereto, the Bill, if re-affirmed with or without amendment, may be again presented to the governor, lieutenant-governor, or chief commissioner:

(c) Any Bill reserved for the consideration of the Governor-General shall, if assented to by the Governor-General within a period of six months from the date of such reservation, become law on due publication of such assent, in the same way as a Bill assented to by the governor, lieutenant-governor or chief commissioner, but, if not assented to by the Governor-General within such period of six months, shall lapse and be of no effect unless before the expiration of that period either-

(i) the Bill has been returned by the governor, lieutenant-governor or chief commissioner, for further consideration by the council; or

(ii) in the case of the council not being in session, a notification has been published of an intention so to return the Bill at the commencement of the next session.

(3) The Governor-General may (except where the Bill has been reserved for his consideration), instead of assenting to or withholding his assent from any Act passed by a local legislature, declare that he reserves the Act for the signification of His Majesty's pleasure thereon, and in such case the Act shall not have validity until His Majesty in Council has signified his assent and his assent has been notified by the Governor-General."

53. A reading of the aforesaid provision also indicates that at the time of drafting Article 200, the framers of the Constitution not only had before them Section 75 of the GoI Act, 1935 but also Section 12 of the GoI Act, 1919 as well as other possible variations about which we shall discuss in the following paragraphs. However, certain features of Article 200, namely, the absence of automatic lapse upon not receiving approval, mandatory requirement for the Governor to not withhold assent to a bill which is presented to him after being reconsidered by the legislature and absence of the expression "in his discretion", must be viewed in

the context of gradual dilution of the role and powers of the Governor in provincial governance as the country neared independence.

i. Concept of assent to bills as envisaged by certain historical documents drafted during the freedom struggle.

54. The concept of assent by the Sovereign found mention in Section 75 of the GoI Act, 1935 and Article 200 as it stands today is predominantly modelled according to the version which existed therein. However, before we proceed to discuss Section 75 of the GoI Act, 1935 and how it eventually evolved into Article 200 of the Constitution, we deem it appropriate to briefly shed light on how other aspirational constitutional documents, drafted during the course of the freedom struggle, imagined the practice of assent to bills and made certain modifications to the practice that prevailed in the United Kingdom.

55. The Commonwealth of India Bill, 1925 that was drafted by the National Convention had a lasting impact on the eventual framing of our Constitution as regards the idea of royal assent. Article 39 of the said Bill provided that a bill passed by the Parliament would be presented to the Viceroy for obtaining the King's assent. Similarly, for the provinces, Article 83 provided that the bills passed by the provincial legislature would be presented to the Governor for obtaining the King's assent. However, what is relevant to note is that the provisions were not elaborate as regards the procedure and scope of powers of the Sovereign while taking a decision on the aspect of assent.

56. However, the Nehru Report of 1928 shortly followed the Commonwealth of India Bill, 1925 and was drafted in response to the dissatisfaction with the Simon Commission. The Report sought to negate the challenge posed by the British that a constitutional document, which is agreeable to all, could not be drawn by Indians, and contained elaborate provisions providing the mechanism for the purpose of assent to bills.

57. As regards the bills passed by the Parliament, it was stipulated in the Nehru Report that a bill would not become an Act until assent was granted by the Governor-General. The Governor-General was provided with three options - to signify assent, to withhold assent or to reserve the bill for consideration by the British Crown. Notably, there was no obligation on the Governor-General to signify assent after a bill was repassed with or without the amendments suggested by him. The relevant provision is reproduced hereinbelow:

"21. (i) So soon as any bill, shall have been passed, or deemed to have been passed by both Houses, it shall be presented to the Governor-General for the signification by him, in the King's name, of the King's assent, and the Governor-

General may signify such assent or withhold the same or he may reserve the bill for the signification of the King's pleasure.

(ii) A bill passed by both Houses of Parliament shall not become an Act until the Governor-General signifies his assent thereto in the King's name or in the case of a bill reserved for the signification of the King's pleasure until he signifies by speech or message to each House of Parliament, or by proclamation that it has received the assent of the King in Council. Provided that the Governor-General may, where a bill has been passed by both Houses of Parliament and presented to him for the signification by him of the King's assent, or has been reserved by him for the signification of the King's pleasure, return the bill for reconsideration by Parliament with a recommendation that Parliament shall consider amendments thereto.

(iii) Any bill so returned shall be further considered by Parliament together with the amendments, recommended by the Governor-General, and if re-affirmed with or without amendments, may be again presented to the Governor-General for the signification in the King's name of the King's assent."

58. As regards the provincial legislature, a bill passed by the provincial legislature had to be assented to by the Governor before it would become an Act. The Governor had two options - to declare assent or to withhold assent. Notably, the Governor did not have the option to reserve the bill for the consideration of the Governor-General. However, every bill after receiving the assent of the Governor had to be mandatorily referred to and assented by the Governor-General failing which the Act would have no validity. Even after receiving the assent of the Governor-General, the Act could be disallowed by the King and would thereupon become void. The relevant provisions are reproduced hereinbelow:

"37. When a bill has been passed by a local Legislative Council, the Governor may declare that he assents to or withholds his assent from the bill.

38. If the Governor withholds his assent from any such bill, the bill shall not become an Act.

39. If the Governor assents to any such bill, he shall forthwith send an authentic copy of the Act to the Governor-General, and the Act shall not have validity until the Governor-General has assented thereto and that assent has been signified by the Governor-General to, and published by the Governor.

40. Where the Governor-General withholds his assent from any such Act, he shall signify to the Governor in writing his reason for so withholding his assent.

41. When an Act has been assented to by the Governor- General it shall be lawful for His Majesty in Council to signify his disallowance of the Act.

42. Where the disallowance of an Act has been so signified, the Governor shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification shall become void accordingly."

59. In 1944, the All India Hindu Mahasabha adopted the Constitution of Hindustan Free State Act as an aspirational constitutional document. As regards the procedure of assent by Governor in provinces, the document contained the following provision:

"93. (1) So soon as any bill shall have been passed by both Chambers it shall be presented to the Governor for the signification of his assent, and he may signify such assent or withhold the same.

(2) A bill passed by both Chambers shall become an Act if the Governor signifies his assent thereto, and that assent has been published by him.

(3) In case where the Governor withholds his assent to a bill passed by both Chambers, he shall return the bill for reconsideration with his own recommendations thereto.

(4) A bill so returned shall be further considered by both Chambers together with the recommendations made by the Governor, and if it is reaffirmed with or without amendments by both Chambers, it shall be deemed to have been assented to by the Governor, but it shall not become an Act unless and until the President of the Hindusthan Free State has assented thereto and that assent has been signified by the President to and published by the Governor."

60. A perusal of the above indicates that the Governor had the option of either assenting to or withholding a bill presented before him. However, in the latter case, the Governor was under an obligation to return the bill for reconsideration with his own recommendations, whereupon the provincial legislature was required to reconsider the bill in light of the recommendations made. Upon being passed again, with or without amendments, the bill would be deemed to have been assented to by the Governor.

However, it would become an Act only upon being assented to by the President, who would signify his assent to the Governor. Thus, the President was vested with the power to veto any bill which had not been assented to by the Governor and was passed again after reconsideration with or without the amendments recommended by the Governor. This was in contrast to the position with respect to the Federal Legislature, wherein no veto power was conferred on the President. The relevant provision read as follows:

"30. (1) So soon as any bill shall have been passed by both Chambers, it shall be presented to the President for the signification of his assent, and he may signify such assent or withhold the same.

(2) A bill passed by both chambers shall not become an Act unless and until the President signifies his assent thereto.

(3) In case where the President withholds his assent to a bill passed by both Chambers, he shall return the bill for reconsideration to the originating Chamber with his own amendments thereto.

(4) A bill so returned shall be further considered by both Chambers together with the amendments recommended by the President, and if it is reaffirmed with or without amendments by both Chambers, it shall be deemed to have been assented to by the President and shall become an Act."

61. One more document that we would like to refer to is the "Constitution of Free India: A Draft" authored by M.N. Roy in 1944. The document proposed a radically different version of assent to bills as distinguished from the scheme prevailing under the GoI Act, 1935 or other contemporaneous aspirational constitutional documents. The document vested no authority in the Governor to withhold assent to a bill passed by the provincial legislature or to veto the same.

However, the document vested power in the Supreme People's Legislature, which was a joint sitting of both the chambers of the Federal Legislature, to veto any provincial legislation. However, this veto power was subject to judicial review and the provincial government was given the right to challenge the veto before the Supreme Federal Court. The relevant provisions are reproduced hereinbelow:

"Article

62.

The Supreme People's Council will have the right to veto any provincial legislation in the Federal Union on the ground that it is repugnant to the Federal Constitution or contradicts any particular Federal law. Either on the advice of the Council of Ministers or on his own initiative, the Governor General will recommend the vetoing of a Provincial legislation. The Provincial Government concerned will have the right to appeal to the Supreme Federal Court against the veto.

Article

91.

The Governor shall sign and promulgate all laws made by the Provincial People's Council."

62. What is interesting to note is that the imagination of a provision as regards assent to bills, when the country was on the brink of becoming independent from the British rule, was significantly different from the previous versions envisaged

in times when the freedom struggle was focused more on obtaining greater degree of self-rule while being under the sovereignty of the British Crown, as can be seen in the versions used in the Nehru Report and the Constitution of India Bill, 1925.

The two documents which were drafted in 1944, and are referred to above, indicate that the Governor was vested with lesser powers and discretion, and there was a clear inclination towards a more unitary arrangement insofar as assent to bills was concerned. The ideas of judicial review of exercise of veto by the President against a state legislation, mandatory return of the bills for reconsideration upon withholding of assent, and deemed assent upon reconsideration were being experimented with among others in the immediate lead up to the framing of our Constitution.

63. Besides the aspirational constitutional documents referred to above, it is also pertinent to discuss how assent was envisaged by one of the first indigenous constitutional documents that was implemented in practice as well. Section 15 of the Aundh State Constitution Act, 1939 that was purportedly enacted to grant self-rule to the people of the Aundh princely state, laid down the procedure for assent to bills. The relevant provision read as follows:

"15. (a) All bills shall be passed by a majority of members of the Legislative Assembly present and voting and shall become law only on receiving the assent of Shrimant Rajasaheb.

(b) If Shrimant Rajasahab, in his discretion, withholds his assent to a bill which has been duly passed by the Legislative Assembly, he shall return it to the Legislative Assembly together with a message requesting that the Legislative Assembly will reconsider the Bill in the light of his recommendations, and when a bill is so returned, the Legislative Assembly shall consider it accordingly.

(c) If the Legislative Assembly accepts the recommendations, the bill shall forthwith become law; but if it rejects the recommendations of Shrimant Rajasaheb, he shall have the right to postpone his assent to the bill till the next session of the Legislative Assembly. He can so postpone the said bill for not more than three times. If the said bill, in its original form, is passed by a simple majority of the members present on all the three times, it is sent for reconsideration, it shall forthwith become law."

64. What is interesting to note in the aforesaid provision is that although it vested Shrimant Rajasaheb, the King, with the discretion to either assent to a bill passed by the legislature or to withhold assent thereto, yet it made it mandatory for him to return the bill to the legislature with a message requesting them to reconsider the bill in light of his recommendations if he opted for withholding assent.

Further, after a maximum of three rounds of reconsideration, the bill would become law upon being passed with a majority, regardless of receiving assent of the King or not.

65. On the contrary, the Government of Mysore Act, 1940, gave the King unfettered powers to veto any bill passed by the Legislative Council. The relevant provision reads as follows:

"28. (1) When a Bill has been passed by the Legislative Council, it shall be submitted through the Dewan to His Highness the Maharaja for assent with a statement of the opinion expressed by the Representative Assembly on the principles of the Bill or its general provisions.

(2) No such Bill shall become law until it has received the assent of His Highness the Maharaja."

66. Having discussed in detail the inception of the concept of assent to bills in the Indian context and its interaction with the indigenous thought prevailing at the time, we shall now proceed to discuss the provisions pertaining to assent as contained in the GoI Act, 1935 and how it was moulded by the Constituent Assembly into Article 200 of the Constitution.

67. Under the GoI Act, 1935, the Governor was required to act on the aid and advice of the Council of Ministers responsible to the Provincial legislature. However, the Governor continued to have some special responsibilities and he also possessed discretionary powers to act in situations such as prevention of grave menace to the peace or tranquility of the province, safeguarding the legitimate interests of minorities and so on. The Governor could also act in his discretion in specified matters. He functioned under the general superintendence and control of the Governor-General, whenever he acted in his individual judgement or discretion.

68. It is interesting to note that while the framing of the Constitution was being undertaken by the Constituent Assembly, the GoI Act, 1935 as adapted by the India (Provisional Constitution) Order, 1947 was made applicable for the administration of the country. By way of paragraph 3 of the said order, the expressions "in his discretion", "acting in his discretion" and "exercising his individual judgement" were removed/deleted from wherever they occurred in the GoI Act, 1935. Paragraph 3 read thus:

"3.(1) As from the appointed day, the Government of India Act, 1935, including the provisions of that Act which have not come into force before the appointed day, and the India (Central Government and Legislature) Act, 1946, shall, until other provision is made by or in accordance with a law made by the Constituent Assembly of India, apply to India with the omissions, additions, adaptations and

modifications directed in the following provisions of this paragraph and in the Schedule to this Order.

(2) The following expressions shall be omitted wherever they occur, namely, "in his discretion", "acting in his discretion" and "exercising his individual judgment".

69. Article 147 of the Draft Constitution, prepared by the constitutional adviser, Shri B.N. Rau, dealt with assent to bills passed by the provincial legislature and read as follows:

"147. A Bill which has been passed by the Provincial Legislature or, in the case of a Province having a legislative Council, has been passed by both Houses of the Provincial Legislature shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

Provided that where there is only one House of the Legislature of a Province and the Bill has been passed by that House the Governor may, in his discretion, return the Bill together with a message requesting that the House will reconsider the Bill or any specified provisions thereof and, in particular, will reconsider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned the House shall reconsider it accordingly and if the Bill is passed again by the House with or without amendments and presented to the Governor for assent, the Governor shall not withhold assent therefrom."

70. Article 147 as reproduced aforesaid made significant departure from Section 75 of the GoI Act, 1935 as follows:

a. The expression "in his discretion" was removed from the substantive part of the provision. However, the said expression continued to be present in the proviso to the substantive part.

b. While Section 75 of the GoI Act, 1935 provided for the sending back of a bill for reconsideration by the legislature in the provinces having both unicameral and bicameral legislatures, Article 147 only provided for such reconsideration in the provinces with a unicameral legislature.

c. Under Section 75, there was no mandate upon the Governor to mandatorily assent to a bill when the bill was presented to him for reconsideration. However, in Article 147, the expression "shall not withhold assent therefrom" was added in the first proviso.

71. Four months after the Draft Constitution was submitted by Shri B.N. Rau, the Drafting Committee under the chairmanship of Dr. B.R. Ambedkar submitted the Draft Constitution to the President of the Constituent Assembly in February, 1948. Article 147 of the Draft Constitution submitted by the constitutional advisor was adapted with certain structural modifications as Article 175 of the Draft Constitution, however, in essence the provision remained the same.

ii. Debates of the Constituent Assembly on Article 200 of the Constitution

72. When Article 175 of the Draft Constitution, 1948 was taken up for consideration by the Constituent Assembly, certain amendments were moved by Dr. B.R. Ambedkar that came to be accepted, leading to the adoption of the draft Article 175 as Article 200 of our Constitution. The amendments were:

- a. To remove the expression "in his discretion" appearing in the first proviso to Article 175;
- b. To exclude Money Bills from the purview of the first proviso;
- c. To enable the Governor to return the bills in all the States irrespective of whether there was a unicameral or a bicameral legislature.

73. With a view to better understand the intention of the framers of the Constitution, it is of utmost importance that we turn the pages of the debates that took place in the Constituent Assembly.

74. On the 30th of July, 1949, Dr. B.R. Ambedkar moved an amendment, as discussed aforesaid, for the substitution of the first proviso under draft Article 175, which later came to be successfully adopted by the Constituent Assembly. While moving for the substitution and highlighting that predominantly three key changes were sought to be made to the first proviso, he remarked that the words "in his discretion" under the draft Article 175 were sought to be deleted because it was felt that "in a responsible government, there can be no room for the Governor acting on discretion"³.

Shri. Brajeshwar Prasad was not whole-heartedly in favor of the changes suggested to the first proviso and contended that they would strip the Governor of the power to veto a bill or reserve it for the consideration of the President, in his own discretion or initiative and he would be able to do so only when so advised by his Cabinet of Ministers. In his opinion, the change also meant that the Governor would not be able to veto a bill that has been passed twice by the Legislative Assembly, which he felt was not acceptable.

75. Shri. Brajeshwar Prasad acknowledged that there are two classes of cases in which a bill can be reserved for the consideration of the President - One, where a

certain Article of the Constitution requires the same and two, when the Governor is advised by his Ministry to do so. However, he advocated for a third category i.e., where the Governor would possess the power, in his discretion, to veto a bill passed by the Legislature, irrespective of whether it was passed once or twice by it. He supported the vesting of discretion in the hands of the Governor so that he could veto unjust and unsound legislation while also ensuring that there is a check on potentially disruptive legislative tendencies.

From his standpoint, the fear of disruptive legislation was not imaginary but real in our country and he advocated that his proposal was in consonance with the traditions of the centralized system of Government that existed in our country until independence. He was of the view that the parliamentary form of polity was a new experiment to the facts of life in our country and it was required to be moderated and regulated. Expressing his lack of confidence in the provincial Ministers, he contended that empowering the Governor to act in his discretion would not be so objectionable since the Governor is also the representative of the Government of India and it is by virtue of this position that his views must prevail over those of the State legislature.

76. On the other hand, during the course of the debate, Shri. Shibban Lal Saxena, addressed the practical realities of assigning such a discretion to the Governor who is a nominee of the President, especially when the party in power in the province may not be the same as the party in power at the Centre. In such a scenario, it was his opinion that, "it will introduce a very wrong principle to give the Governor this power to go against the express wish of the Assembly and even of the council"⁴.

77. Shri. T.T. Krishnamachari also emphasized that under the newly proposed draft Article 175, more specifically the first proviso, the Governor will not be exercising his discretion in the matter of referring a bill back to the House with a message. The Governor would exercise his power under the first proviso only upon the advice of his Council of Ministers. According to him, the first proviso was to be exercised in situations wherein the House has already accepted and endorsed a provision, but the Ministry was of the opinion that certain modifications are required to be made in the said provision.

It is only when such an occasion arises that the procedure envisaged under the first proviso would be resorted to. The Council of Ministers would use the Governor to hold up further proceedings of the bill and remit it to the Lower House with the message informing the legislature about the modifications sought to be made to the bill by the Ministry. He drew attention to the words of Dr. Ambedkar on this aspect and stated as follows:

"If he construes that this Amendment is worse than the proviso in the draft Article and that it makes for further dilatoriness in the proceedings of the legislatures in the provinces or the States as the case may be, I would ask him to remember one particular point to which Dr. Ambedkar drew pointed attention, viz., that the Governor will not be exercising his discretion in the matter of referring a Bill back to the House with a message. That provision has gone out of the picture. The governor is no longer vested with any discretion.

If it happens that as per Amendment No.17 the Governor sends a Bill back for further consideration, he does so expressly on the advice of his Council of Ministers. The provision has merely been made to be used if an occasion arises when the formalities envisaged in Article 172 which has already been passed, do not perhaps go through, but there is some point of the Bill which has been accepted by the Upper House which the Ministry thereafter finds has to be modified. Then they will use this procedure; they will use the governor to hold up the further proceedings of the Bill and remit it back to the Lower House with his message."⁵

78. The first proviso, according to him, was therefore a saving clause which vested power in the hands of the Ministry to remedy a hasty action that they might have undertaken with respect to the bill in question, or, it could also be seen as providing some scope to the Ministry to take certain additional actions that the Ministry feels should be taken in order to meet the popular opinion reflected outside the House in some form or another. Therefore, the operation of the first proviso does not abridge the power of the Legislature or the Ministry responsible to it, rather, it further curtails the Governor's power from the position that was envisaged in the original first proviso, which is now sought to be supplanted.

79. In light of the debate which took place as regards the substitution of the first proviso to draft Article 175, the amendment was put to vote and the same was successfully adopted by the Constituent Assembly.

80. On 17th of October, 1949, T.T. Krishnamachari moved an amendment that a second proviso to Article 175 also be added, which later came to be adopted by the Constituent Assembly. Dr. B.R. Ambedkar elucidated that the second proviso that was proposed to be moved, was a part of the Instrument of Instructions issued to the Governor of the provinces under the GoI, 1935. Paragraph 17 of the Instrument of Instructions read as follows:

"Without prejudice to the generality of his powers as to reservation of Bills our Governor shall not assent in our name to, but shall reserve for the consideration of our Governor-General any Bill or any of the clauses herein specified, i.e. (b) any Bill which in his opinion would, if it became law so derogate from the

powers of the High Court as to endanger the position that that Court is, by the Act, designed to fulfil."

81. Such a clause was initially supposed to be included in the Fourth Schedule that separately contained instructions to the Governors of the States. However, since it was considered unnecessary to have such a separate Schedule, this particular aspect was sought to be brought in as second proviso to the draft Article 175. A need to incorporate the second proviso was felt because the High Courts were placed under the legislative competence of the Centre as well as the States. In so far as the organization and territorial jurisdiction of the High Court was concerned, the power remained with the Centre.

However, with regard to the pecuniary jurisdiction and the jurisdiction in relation to any of the matters which are mentioned under List II, the power rests with different States. Therefore, there could arise a scenario wherein the State legislature would enact a bill which would derogate from the powers of the High Court. For example, passing a bill that reduces the pecuniary jurisdiction of the High Court by raising the value of the suit that may be entertained by the High Court. This would be one method whereby the State legislature would diminish the authority of the High Court.

Furthermore, a bill could also affect the subjectmatter jurisdiction of a High Court. For example, in enacting any measure under any of the entries contained in List II, say, debt cancellation, it would be open for the provinces or States to say that the decree made by any such Court or Board shall be final and conclusive, and that the High Court should not have any jurisdiction in the matter at all. In light of such possibilities, it was felt that the second proviso to draft Article 175 must be added.

82. It was the opinion of Dr. B.R. Ambedkar that any such bill or Act as illustrated above would amount to a derogation from the authority that the Constitution confers or intends to confer upon the High Court. This is why it was felt necessary that before such a law becomes final, the President must be given an opportunity to examine whether such a law should be permitted to take effect or not. Such a shield was considered imperative keeping in mind the important constitutional position that the High Courts hold in adjudicating disputes. Dr. B.R. Ambedkar had emphasized on the importance of the second proviso as follows:

"I, therefore, submit that in view of the fact that the High Court is such an important institution intended by the Constitution to adjudicate between the Legislature and the Executive and between citizen and citizen such a power given to the President is a very necessary power to maintain an important institution

which has been created by the Constitution. That is the purpose for which this amendment is being introduced."6

E. ARTICLE 200 OF THE CONSTITUTION - DEVELOPMENTS POST THE COMMENCEMENT OF THE CONSTITUTION.

If we could roll back History

A century, let's say,

And start from there,

I'm sure that we

Would find things as to-day:

In all creation's cosmic range

No vestige of a change"

~ Robert William Service

83. We are tempted to preface this part of our judgment with the enlightening words of Robert William Service, keeping in mind the history of our country which has been fraught with instances of friction in the federal polity from its inception, with the Governor occupying the center stage in this ongoing saga.

84. As the democratic polity of the country unfolded post-independence, the predominance of a single party at the union and provincial level gave way to emergence of new political factions and regional parties. As a consequence, the position of the Governor, which had mostly been latent during the era of single-party dominance, started to assume importance. Allegations also came to be levelled by a number of State Governments that the Governor in a number of States was acting as an agent of the Central Government and the objectivity that was expected of the Governor was not being displayed, more particularly when it came to reservation of bills for the consideration of the President or recommendation for the imposition of emergency under Article 356.

In light of the aforesaid, certain commissions came to be constituted which submitted their reports after undertaking exhaustive analysis of the working of the constitutional machinery prescribed for Centre-State relations. One of the key foci of these reports was the working of Articles 200 and 201 of the Constitution respectively and the scope of exercise of discretion by the Governors, which we deem appropriate to discuss hereinafter.

i. First Administrative Reforms Commission, 1966.

85. The First Administrative Reforms Commission (the "ARC") was established in January 1966 by a resolution of the Ministry of Home Affairs to examine the public administration of the country and make recommendations for reform and reorganization where necessary. An aspect of this exercise was the examination of Centre-State relations particularly with respect to the need for national integration, and for maintaining efficient standards of administration throughout the country.

86. While examining the various facets of Centre-State relations, the Commission found it apposite to discuss the role of the Governor in the political context which existed back then. Taking note of the skirmishes between the State governments and Governors, the Commission was of the view that the Governor's office ceased to be merely ornamental and ceremonial. This changed role demanded a scrutiny of the discretionary powers of the Governor.

87. As the discretionary powers of the Governor affect some of the vital issues in the functioning of democratic governments in the States, the ARC underscored the importance of evolving guidelines to enable the exercise of such discretionary powers for the purpose of preserving and protecting democratic values. It was noted that such guidelines would serve the purpose of securing uniformity in action and eliminate all suspicions of partisanship and arbitrariness.

88. The ARC, therefore, recommended the following:

"Recommendation 9:

We recommend:

Guidelines on the manner in which discretionary powers should be exercised by the Governors should be formulated by the Inter-State Council and on acceptance by the Union issued in the name of the President. They should be placed before both Houses of Parliament."

89. However, no such guidelines have been formulated by the Inter-State Council till date and none of the Commissions on Centre-State relations constituted thereafter made any recommendations on the issuance of guidelines for exercise of discretion by the Governor.

ii. Rajamannar Commission, 1971

90. The Rajamannar Commission was set up by the Government of Tamil Nadu in 1969 under the chairmanship of Dr. P.V. Rajamannar to look into the question regarding the relationship that should subsist between the Centre and States in a

federal set-up. The Commission noted that in the changed political circumstances, there can be no dispute regarding the fact that the Governors have a positive role to play in the stability and progress of States. This requires that the authority of the Governor should be clearly spelt out and the Governors should no longer consider themselves to be instruments of the Centre under compulsion to act on its directions and in its political interests.

91. One of the questions on which the Commission addressed itself was whether the Constitution provides for the exercise of any power by the Governor in his discretion that is, whether the Governor could exercise any of his functions without consulting the Ministry or contrary to the aid and advice tendered by the Council of Ministers.

92. To answer this question, the Commission adverted to the history of the making of the Constitution and concluded that the Constitution does not provide for the issue of any instructions to the Governor, nor does it vest any discretionary powers in express terms in the Governor, except in relation to certain specified matters. While referring to certain judicial pronouncements of this Court as well as Granville Austin's seminal work on the Indian Constitution, the Commission opined that the discretion of the Governor must be limited to those matters in respect of which there are express provisions in the Constitution. The relevant portion of the report is reproduced below:

"6. The question as to the discretionary functions of the Governor was considered by the Supreme Court in *Ram Jawaya v. State of Punjab* (A.I.R. 1955 8.C. 549 at page 556). The Supreme Court held that the Governors were constitutional heads of the executive, and that real executive power was vested in the Council of Ministers. A similar view has been expressed by the Supreme Court in *T. M. Kannian v. 1.T.O., Pondicherry* (A.I.R. 1968 S.C. 687). Again, Granville Austin in his book *The Indian Constitution- Cornerstone of a Nation* has categorically stated that the Governor occupies the same position as the English Monarch and that the Governor has to act in accordance with the advice of his Cabinet in all matters. To place the matter beyond doubt, Article 163 (1) may be modified making it clear that the reference to discretion is only in relation to the matters in respect of which there are express provisions, e.g., Assam."

(Emphasis supplied)

93. The Commission observed that while exercising his functions, the Governor should not be under any pressure from an external authority. To explain the position of discretionary powers of the Governor, the Commission referred to the speech of the former Vice President of India, Shri G.S. Pathak, which reads thus:

"He is the constitutional head of the State to which he is appointed, and, in that capacity, he is bound by the advice of the Council of Ministers of the State except in the sphere where he is required by the Constitution, expressly or impliedly, to exercise his discretion. In the sphere in which he is bound by the advice of the Council of Ministers, for obvious reasons, he must be independent of the Centre. There may be cases where the advice of the Centre may clash with the advice of the State Council of Ministers. In the sphere in which he is required by the Constitution to exercise his discretion, it is obvious again that it is His discretion and not that of any other authority and therefore his discretion cannot be controlled or interfered with by the Centre."

(Emphasis supplied)

94. However, in the same vein, it was also noted that the Governor has to function in a dual capacity as (1) the appointee of the central government; and (2) the constitutional head of the State. This is because the Central Government retains the power to appoint and remove the Governor, therefore, the Governor cannot but look to the Central Government for guidance in the discharge of his duties.

95. The Commission was of the opinion that it is necessary to indicate at least a broad outline of the principles that should guide the Governor in the exercise of discretion, if any, vested in him. It was observed that the evolution of rules and guidelines in this respect is especially important in order to reconcile the actions of the Governor in his capacity as an agent of the Centre and the head of the State Executive.

96. Having discussed the discretion of the Governor in matters of constitutional decision-making at length, the Commission recommended that a specific provision should be inserted in the Constitution to enable the President to issue Instruments of Instructions to the Governors laying down guidelines or principles with reference to which the Governor should act including the occasions for the exercise of discretionary powers.

iii. Sarkaria Commission

97. In June 1983, the Central government headed by the former Prime Minister of India, Ms. Indira Gandhi, formally constituted a commission to examine and review the working of the arrangements between the Union and States in regard to powers, functions and responsibilities in all spheres and to recommend such changes or other measures as may be deemed appropriate. The said commission was formed under the chairmanship of a former judge of this Court, Justice R.S. Sarkaria and hence, came to be known as the Sarkaria Commission.

98. The Sarkaria Commission was enjoined with the task of reviewing the Centre-State relationship and consider the importance of unity and integrity of the country for promoting the welfare of the people. One of the facets of such review was to discuss the scope of the role of the Governor and its impact on the federal polity of India.

99. For a number of years after the independence of India, the political scene was dominated by a single party and there was little occasion for strife between the central and state governments. The role of the Governor, therefore, remained latent. However, post-1967, the emergence of new regional political parties led to a discord between the central government and those state governments that came to be led by such new regional parties. These developments engendered political instability in several states, as a result of which, the Governors were called upon to exercise their discretionary powers more frequently, particularly in recommending President's rule and in reserving State bills for the consideration of the President.

100. The role of the Governor in giving assent to State bills, withholding assent therefrom or reserving such bills for the consideration of the President, thus, assumed importance. By virtue of Articles 200 and 201 of the Constitution respectively, the office of Governor became a major stakeholder for the maintenance of a cordial relationship between the central and state governments. The Sarkaria Commission was, therefore, tasked with providing recommendations regarding the interpretation of the said Articles and amendments therein to strengthen the federal polity of India.

101. To the limited extent of studying the issues arising from the exercise of powers under Articles 200 and 201 respectively, the Commission addressed itself on the following broad points:

- (i) Scope of Governor's discretion under Article 200;
- (ii) Interplay of Articles 200 and 254 respectively of the Constitution;
- (iii) Scope of Union Executive's discretion under Article 201;
- (iv) Impropriety of conditional assent by the President;
- (v) Essentials for a "reference" of State bills to the President for his consideration;
- (vi) Delays in disposal of State bills;
- (vii) Withholding of assent by the President.

102. A discussion of the recommendations of the Commission in this regard would be beneficial to our examination of Articles 200 and 201 respectively and the role of the Governor in the contemporary federal polity.

a. Scope of Governor's Discretion Under Article 200

103. The Commission observed that the rule is that the Governor shall perform his functions on the aid and advice of the Council of Ministers of the State and the exercise of discretionary powers by him is the exception. The Commission envisaged that discretionary powers of reservation of a bill under Article 200 should be exercised by the Governor only in rare cases where a bill is patently unconstitutional in his opinion. However, the Governor should not act contrary to the aid and advice of the Council of Ministers merely because he, in his personal capacity, does not favour the policy embodied in the bill. The relevant observations of the Commission are reproduced below:

"5.6.13 We are, therefore, of the view that:

(i) Normally, in the discharge of the functions under Article 200, the Governor must abide by the advice of his Council of Ministers. However, in rare and exceptional case, he may act in the exercise of his discretion, where he is of opinion that the provisions of the Bill are patently unconstitutional, such as, where the subject-matter of the Bill is ex-facie beyond the legislative competence of the State Legislature, or where its provisions manifestly derogate from the scheme and framework of the Constitution so as to endanger the sovereignty, unity and integrity of the nation; or clearly violate Fundamental Rights or transgress other constitutional limitations and provisions.

(ii) In dealing with a State Bill presented to him under Article 200, the Governor should not act contrary to the advice of his Council of Ministers merely because, personally, he does not like the policy embodied in the Bill."

104. According to the Commission, the scheme of the Constitution indicates that the Governor's opinion at best, is persuasive. The Governor cannot, in any circumstance, exercise dictatorial powers to override or veto the decisions or proposals of his Council of Ministers. The scope of discretionary powers should be construed in the context of a parliamentary democracy with a responsible government. In such a form of government, the role of a formal head of the State cannot be enlarged at the cost of the real executive, which enjoys the confidence of the people as it is responsible to the State legislature.

105. Discretion, in exercise of powers under Article 200, therefore, should be dictated by reason, actuated by good faith and tempered by caution. Discretionary functions should be performed in public interest and cannot be discharged at the

dictation of any outside authority unless so authorized by and under the Constitution.

106. While addressing suggestions of some State governments that the discretionary powers of the Governor must be curtailed or removed as it presents a potential threat to the autonomy of the States, the Commission observed that the makers of the Constitution advisedly refrained from putting such discretionary powers in a straitjacket rigid definition. It noted that the Constitution is ever evolving and the ways in which its provisions and principles may be tampered with or circumvented, cannot be foreseen. Therefore, the office of the Governor should be afforded enough flexibility to react in any situation and his discretion to approach a matter cannot be pre-determined. b. Interplay of Articles 200 And 254 respectively of the Constitution.

107. Article 246(2) endows the Parliament as well as the State legislatures with the competence to legislate on entries under List III i.e., the concurrent list. The provision under Article 254 is appurtenant to the concurrent exercise of legislative competence by the Parliament and State legislature insofar as there is any inconsistency or repugnancy between the laws of the respective legislatures.

108. Article 254(1) saves the power of the State legislatures to make laws with respect to matters in the concurrent list from being automatically superseded by the operation of the doctrine of repugnancy. Article 254(2) allows a law enacted by the State legislature and repugnant to the central law on the same subject-matter, to operate and prevail in that State provided that such State law receives the assent of the President.

109. The Commission highlighted that clause (2) of Article 254 is applicable only when the following two conditions are cumulatively met:

(a) There is a valid Union law on the same subject-matter occupying the same field in the Concurrent List to which the State legislation relates.

(b) The State legislation is repugnant to the Union law. That is to say, there is a direct conflict between the provisions of the two laws, or the Union law is intended to be an exhaustive code on the subject-matter in question. It is upon satisfaction of both these conditions that the Governor can reserve a bill for Presidential consideration under Article 254(2).

110. It was noted by the Commission that the assent by the President to the State bills had been withheld on certain occasions on the ground that the Union was contemplating a more comprehensive legislation on the same subject matter. However, withholding of assent on such a premise at the level of the Union may unnecessarily delay or defeat the measures sought to be taken by the State legislature. Since the Parliament retains the power to amend, vary or repeal such

a State legislation, even after its enactment, by passing a subsequent law inconsistent therewith, the Commission recommended that Presidential assent should not ordinarily be withheld on the ground that the Union is contemplating a comprehensive law in future on the same subjectmatter.

c. Scope of Union Executive's Discretion under Article 201

111. As per the report of the Commission, a State bill, once reserved for the consideration of the President (upon the aid and advice of the Council of Ministers), is made subject to the procedure prescribed under Article 201 and the Union Executive is entitled to examine it from all angles such as, inter alia, conformity to legislative or executive policy of the Union, harmony with the scheme and provisions of the Constitution, vires of the bill, etc.

112. On the question of the Union Executive's discretion to withhold assent to a State bill on the ground of non-conformity with its policy, the Commission sounded a note of caution saying that policy considerations should not ordinarily be treated as a valid ground for withholding Presidential assent. Article 201 confers supervisory powers on the Union Executive to enable it to secure a broad uniformity across central and state legislations in the interests of the social and economic unity of the country. However, the said provision cannot act as a measure for the Union Executive to bring to a grinding halt a State bill by withholding assent thereto if such a bill does not conform to its policy in general.

113. Further, the Union Executive is required to exercise utmost caution, circumspection and restraint in the exercise of supervisory powers under Article 201, especially in respect of the bills on subject matters that fall within the State List. In this regard, the Commission recommended that as a matter of convention, the President should not withhold assent only on consideration of policy differences on matters relating, in pith and substance, to the State List, except on the grounds of patent unconstitutionality.

114. The Commission did not make any specific prescription in respect of Article 143 of the Constitution, which enables the President and by extension, the Union Council of Ministers to seek the opinion of the Supreme Court in respect of bills which may be deemed to be unconstitutional and left the decision up to the President to make such a reference in appropriate cases.

d. Impropriety of Conditional Assent by the President

115. The Commission noted that the scheme of the Constitution providing for reservation of State legislations for the consideration and assent of the President, is intended to subserve the broad purpose of cooperative federalism in the realm of Union-State legislative relations. Therefore, the practice of according assent to a State bill by the President on the reciprocal assurance that the changes

suggested by him (or the Union Executive) will be carried out by way of an ordinance, was not considered to be ideal especially when there exists a constitutional remedy under the proviso to Article 201 itself.

116. Since, conditional assent may become a tool for the Centre to dictate its policies to the States by attaching conditions to Presidential assent, the Commission, in cognizance of the impropriety of such a practice, recommended that in cases where the Union Government is of the opinion that some amendments to a State bill are essential before it becomes a law, such bill should be returned through the Governor to the State legislature for reconsideration in terms of the proviso to Article 201.

e. Essentials for a "Reference" of State Bills to the President for his Consideration

117. The Commission, cognizant of the misgivings and irritations in Union-State relations due to delays in the process of securing Presidential assent, recommended that the procedure of making a reference to the President by the State Government through the Governor and the consideration thereof by the Union Government must be streamlined. It was also endorsed that the Governments at both the Centre and State level may benefit from a prior consultation at the stage of drafting of the bill itself and prescribing timelimits for disposal, which ought to be made convention and practice.

118. As regards the suggestion of streamlining the procedures involved in reserving a State bill for consideration of the President, the Commission recommended that every reference from the State should be complete and clearly established. Such reference should set out precise material facts, points for consideration and the reason for making a reference to the President. Accordingly, the Commission recommended the following information to be necessarily provided for ensuring that the reference to the President is self-contained:

"5.15.01- To facilitate its speedy examination by the Union Executive, every reference of a State Bill from the State should be self-contained, setting out precisely the material facts, points for consideration and the ground on which reference has been made. It should contain information on the following points:

- a. The relevant provisions of the Constitution attracted or applicable, with reasons.
- b. If the reference is made under Article 254(2), clear identification of the provisions of the Bill which are considered repugnant to, or inconsistent with, the specific provisions of a Union law or an existing law.

c. Urgency, if any, of passing the law within a certain time-limit.

d. A clear statement that the Bill is being reserved as per the advice of the Council of Ministers, or in the exercise of his discretion by the Governor, with reasons for the same.

e. A lucid explanatory note on the intended policy behind the legislation instead of merely referring to the objects and reasons of the Bill.

f. An indication whether the Bill was sent for prior scrutiny of the Union Government, and if so, deviations, if any, from the prior reference."

(Emphasis supplied)

f. Delays in Disposal of State Bills

119. The question whether there was a requirement of introducing time-limits in Article 201 was necessary or not was also looked into by the Commission. It was reiterated that streamlining the procedure of reserving a State bill for Presidential consideration and enabling a mechanism for high-level discussions between the Union and State at the stage of drafting such bill may effectively reduce procedural delays at the level of the Union Government. Nevertheless, it was recommended that the Union and State Governments should adopt definite timelines for processing State bills and disposing of their references to the President.

120. With regard to prescription of such timelines, the Commission proposed the following timelines to be treated as salutary conventions:

	STAGE OF THE BILL	PROPOSED TIMELINE
i.	Reserving the bill for consideration of the President, by the Governor under Article 200 (on the aid and advice of the State Council of Ministers).	Immediately upon presentation of the bill to the Governor.
ii.	Reserving the bill for consideration of the President, by the Governor under Article 200 (in exercise of his discretion in exceptional circumstances).	Within one month from the date on which the bill is presented to the Governor.
iii.	Decision on the bill by the President under Article 201 (in case the proviso to Article 201 is not being exercised).	Within four months from the date on which the reference is received by the Union Government.
iv.	Returning the bill for consideration of the State legislature in case the proviso to Article 201 is exercised by the President.	Within two months from the date on which the original reference is received by the Union

		Government.
v.	Decision on the bill by the President, once received with clarifications from the State legislature under proviso to Article 201.	Within four months of the date on which the reconsidered bill is received by the Union Government.

121. With a view to ensure that the timelines so suggested are not frustrated by lack of clarity and comprehensiveness in a reference, the Commission underscored the importance of a self-contained communication by the President to the State legislature for clarification or reconsideration of the bill. It was emphasized that clarifications to be sought by way of the proviso to Article 201 should not be piecemeal.

122. While the Commission noted the significance of clear timelines for the exercise of powers under Articles 200 and 201 respectively, it did not recommend any amendments to the said Articles for introducing concrete time periods within the constitutional scheme and left its recommendations in this regard at the stage of conventions only.

g. Withholding of Assent by the President

123. As regards the withholding of Presidential assent, the Commission laid great emphasis that the Union Government ought to communicate to the State government, the reasons therefor. It was noted that the Union Government should enter into the practice of discussing the issues present in the bill with the State Government and making an effort to present its point of view to the State Government with reasons.

h. Recommendations given by the Commission

124. Before concluding the discussion on the aspect of reservation of bills by the Governor for consideration of the President, the Commission noted that needless reservation of bills should be avoided. The constitutional scheme does not envisage indiscriminate reservation of bills, especially when it is being done in his discretion, as the same would be subversive of the federal principle and the supremacy of the State legislature.

125. The Commission classified State bills to be reserved for the consideration of the President as follows:

"5.1.05 State Bills reserved for President's consideration under the Constitution, may be classified as follows:-

i. Bills which must be reserved for President's consideration In this category come Bills-

(i) which so derogate from the powers of the High Court, as to endanger the position which that Court is by this Constitution designed to fill (Second Proviso to Article 200);

(ii) which relate to imposition of taxes on water or electricity in certain cases, and attract the provisions of Clause (2) of Article 288; and

(iii) which fall within clause (4) (a) (ii) of Article 360, during a Financial Emergency.

ii. Bills which may be reserved for President's consideration and assent for specific purposes

(i) To secure immunity from operation of Articles 14 and 19. These are Bills for-

(a) acquisition of estates, etc. [First Proviso to Article 31A(I)];

(b) giving effect to Directive Principles of State Policy (Proviso to Article 31C).

(ii) A Bill relating to a subject enumerated in the Concurrent List, to ensure operation of its provisions despite their repugnancy to a Union law or an existing law, by securing President's assent in terms of Article 254(2).

(iii) Legislation imposing restrictions on trade and commerce requiring Presidential sanction under the Proviso to Article 304(b) read with Article 255.

iii. Bills which may not specifically fall under any of the above categories, yet may be reserved by the Governor for President's consideration under Article 200."

(Emphasis supplied)

126. The Commission recommended that bills should be reserved only if required for specific purposes falling in the first two classes as extracted hereinabove.

iv. Punchhi Commission

127. Another Commission on Centre-State relations was constituted by the Government of India in 2007 under the chairmanship of Justice Madan Mohan Punchhi, the former Chief Justice of India. The Commission was tasked with the mandate of reviewing the existing arrangements between the Union and States as per the Constitution of India in regard to powers, functions and responsibilities in all spheres including legislative relations, administrative relations, role of Governors, emergency provisions, etc. and recommending such changes as may be appropriate keeping in view practical difficulties, growing challenges of

ensuring good governance and the need for strengthening the unity and integrity of the country.

128. The Commission, inter alia, looked at the original scheme of the Centre-State relations as laid down by the Constitution, examined the friction points in the working thereof and reviewed the adequacy of the constitutional arrangements for promoting social welfare and good governance. One aspect of this study involved looking minutely into the role of the Governor in the federal polity of India. The Commission noted that the role of the Governor became important as he had to balance the political considerations between the Centre and State and be as impartial as possible.

129. However, as regional political powers grew at the State level, the role of the Governor came to be a point of contention between the Centre and States with the latter leveling allegations of partiality and lack of objectivity in exercise of the Governor's discretionary powers. As a result, the Commission was enjoined with the task of providing recommendations for better working of the office of the Governor.

a. Role of the Governor

130. The Commission observed that the nature and scope of rights and powers of the Governor should be understood in the context of a Cabinet system of government. Under such system, the Governor performs a multi-faceted role. First, as constitutional head of the State, he has a right to be consulted, to warn and encourage. In performance of this role, the Constitution makers ideated the office of Governor to perform the role of a "a friend, philosopher and guide" to his Council of Ministers. Secondly, the Governor functions as a sentinel of the Constitution and acts as the Union's representative in the State. As observed by this Court in *Rameshwar Prasad & Ors. v. Union of India* reported in (2006) 2 SCC 1, the Governor discharges "dual responsibility" to the Union and State.

131. Further, the Constitution affords the Governor only a persuasive role and not dictatorial powers to override or veto the decisions or proposals of his Council of Ministers. The Commission observed that the Governor, at best, has powers of giving advice or counselling for further reflection of the decision taken by the Council of Ministers. The Governor only flags a need for caution for the purpose of bridging the understanding between the Government and opposition (if there are different governments at the central and state level).

132. The Governor is not amenable to the directions of the Union government, nor does the Constitution make him accountable to the Centre for the manner in which he carries out his functions and duties. The office of Governor is an independent constitutional office. The Governor, by virtue of Article 163,

however, is bound by the aid and advice of the State Council of Ministers. Therefore, in the event of a conflict between the aid and advice of the State Council of Ministers and the dictates of the Central Government, the scheme of the Constitution indicates that the Governor must adhere to the former.

133. With the broad tenets of the role of the Governor under the constitutional scheme, the Commission, while appraising the existing framework of Centre-State relations, observed that a major point of friction between the Centre and States is the power of the Governor to reserve any State bill for the consideration of the President, sometimes even for an indefinite period.

b. Discretionary Powers of the Governor

134. Upon a perusal of Article 163(2), the Commission was of the view that the said provision gives the impression that the Governor has a wide and undefined area of discretionary powers. However, the scope of the discretionary powers of the Governor has to be narrowly construed. The language of Article 163(2) cannot be taken to mean that the Governor has a general discretionary power to act against the aid and advice of the Council of Ministers.

135. In continuation to the Sarkaria Commission's views on the question of discretionary powers of the Governor, the Punchhi Commission report also asserts that the area for the exercise of discretion is limited and even in this limited area, the Governor's choice of action should neither be nor appear to be arbitrary or fanciful. It must be a choice dictated by reason, actuated by good faith and tempered with caution.

136. The Commission further emphasized the necessity of prescribing time limits for the exercise of powers under Articles 200 and 201 respectively in order to ensure that discretionary powers are not exercised by the Governor or the President in a manner that undermines the State legislature and the will of the people.

c. Expediency in Disposal of Bills - Timelines Suggested by the Report of the Commission

137. The Commission suggested that definite timelines ought to be adopted as salutary conventions for the Governor to either provide assent or reserve the bill for the consideration of the President. Similarly, there should be a time limit for the President to take a decision on the State bill under Article 201 of the Constitution. The Commission was of the view that concrete timelines are sine qua non for the exercise of powers under Articles 200 and 201 respectively so as to avoid dissensions between the Central and State governments.

138. The Commission noted that the substantive part of Article 200 does not stipulate time period within which the Governor has to either assent, withhold assent or reserve the bill for Presidential consideration. The requirement of expediency is incumbent upon the Governor only when he decides to return the bill to the State legislature for reconsideration. The same was considered to be evident from the expression "as soon as possible".

139. The Commission noted that while the expression "as soon as possible" is mentioned in Article 200 albeit only in the first proviso thereof, there is no such compulsion on the President under Article 201. As a result, the President or the Union Government may kill the bill by not taking a decision on the same, sometimes for the entire duration of the State legislature.

This increases the scope for abuse of discretion by the Union government based on political considerations particularly when the ruling party in the State concerned is different from the one enjoying power at the Union level. The lack of a reasonable timeline allows the executive fiat to make inroads into the legislative power of the State thereby thwarting the democratic will of the State legislature. Such invasion of the powers of the State legislature by the Union Executive is questionable in the context of 'basic features' of the Constitution.

140. Therefore, the Commission suggested that a period of six months should be prescribed in Article 201 for the President to decide on assenting or withholding assent to a bill reserved for consideration of the President. In case the President on the aid and advice of the Union Council of Ministers, is unable to give assent to a State bill under Article 201, it is desirable for him to make a reference to the Supreme Court under Article 143 for an opinion. Such reference should be done as a matter of practice in order to avoid allegations of political bias, while securing the dignity and authority of the State legislature.

d. Recommendations

141. Having considered the challenges in the exercise of powers under Articles 200 and 201 respectively, the Commission reiterated the recommendations of the National Commission to Review the Working of the Constitution ("NCRWC"), which are reproduced hereinbelow:

"After considering the suggestions given by the Sarkaria Commission, the National Commission to Review the Working of the Constitution gave the following recommendations:

(a) Prescribe a time-limit - say a period of four months - within which the Governor should take a decision whether to grant assent or to reserve it for the consideration of the President;

(b) Delete the words "or that he withholds assent therefrom". In other words, the power to withhold assent, conferred upon the Governor, by Article 200 should be done away with;

(c) If the Bill is reserved for the consideration of the President, there should be a time-limit, say of three months, within which the President should take a decision whether to accord his assent or to direct the Governor to return it to the State Legislature or to seek the opinion of the Supreme Court regarding the constitutionality of the Act under Article 143 (as it happened in the case of Kerala Education Bill in 1958);

(d) When the State Legislature reconsiders and passes the Bill (with or without amendments) after it is returned by the Governor pursuant to the direction of the President, the President should be bound to grant his assent;

(e) To provide that a "Money Bill" cannot be reserved by the Governor for the consideration of the President;

(f) In the alternative it may be more advisable to delete altogether the words in Article 200 empowering the Governor to reserve a Bill for the consideration of the President except in the case contemplated by the second proviso to Article 200 and in cases where the Constitution requires him to do so. Such a course would not only strengthen the federal principle but would also do away with the anomalous situation, whereunder a Bill passed by the State Legislature can be 'killed' by the Union Council of Ministers by advising the President to withhold his assent thereto or just by cold-storing it."

(Emphasis supplied)

142. The report of the Punchhi Commission advocated for the immediate implementation of the above-mentioned recommendations by way of a Constitutional Amendment.

F. INTERNATIONAL JURISPRUDENCE ON ASSENT TO BILLS

143. The tenets of parliamentary democracy demand that while the head of state must act on the advice of ministers, the ministers, in turn, must uphold their responsibility to the people when providing that advice. Indeed, the very *raison d'être* of a democratic government is to uphold the primacy of the Parliament by ensuring executive accountability. This has been aptly put forth by Nicholas Barber, Professor of Constitutional Law and Theory at the Oxford University, in his work 'Can Royal Assent Be Refused on the Advice of the Prime Minister?' wherein he argues:

"The point of the convention on royal assent is to uphold the primacy of the democratic element of the constitution in the making of law. But just as it would be undemocratic to allow one person - the Monarch - to veto legislation, so too it would be undemocratic to give this power to the Prime Minister. In short, when presented with a bill that has passed through Parliament in a proper manner, the duty of the Monarch is to give assent - irrespective of the advice of her Ministers. There is no room for discretion. On its best interpretation, this is what the convention requires: if the Monarch were to accept the advice of her Prime Minister on this issue, she would be acting unconstitutionally."

a. United Kingdom

144. The position in the United Kingdom is that once a bill has passed through all parliamentary stages in both Houses, it is poised for the conferment of 'royal assent'. Historically, the Sovereign granted assent to bills in person in the House of Lords, attended by the Lords Commissioners. This formal ceremony was known as the 'Royal Assent ceremony'. The Royal Assent ceremony continued until 1967, when the British Parliament passed the Royal Assent Act wherein the requirement of grant of assent in person by the monarch was made voluntary.

Although granting assent is a personal prerogative of the monarch, yet it has long been an established convention that the monarch does not withhold it for a bill that has received approval from both Houses. The process of Royal Assent comprises two stages: first, the signification of the royal assent to a bill via the Royal Sign Manual on Letters Patent issued under the Great Seal of the Realm; and secondly, the communication of the King's Assent to both Houses of Parliament. In the United Kingdom (UK), royal assent is regarded as a formality and has not been refused to a bill since Queen Anne's reign in 1707.

145. In Parliament of the UK, the procedure for obtaining Royal Assent begins with officials in the Public Bill Office of the House of Lords that manages and assists the processes relating to the House's consideration of public legislation. First, a list of bills is prepared by the Clerk of the Parliaments. Thereafter, once a date for Royal Assent has been set, all the bills approved by both Houses are presented before the monarch for assent. In this regard, the monarch has no power to withhold assent to a bill, regardless of any instructions from the Government or anyone else.⁸ In Scotland, a period of four weeks is allowed before a bill is presented to the Queen for assent, during which any legal objections may be raised.

146. The only ground on which assent may be withheld, that too solely on ministerial advice, is if the bill has failed to comply with mandatory procedural requirements or if there has been a change in government between the bill's approval and its presentation for assent. Section 4 of the Judicial Committee Act,

1833 provides that the Sovereign may refer a bill to the Judicial Committee of the Privy Council for an advisory opinion on whether such bill contravenes a fundamental constitutional principle. However, the position in the UK does not clarify whether the Sovereign can initiate such a referral independently.

b. Canada

147. Canada's Royal Assent ceremony traces its origins to the United Kingdom. Traditionally, once a bill was passed in identical form by both the Senate and the House of Commons, the Governor General, as the Crown's representative, attended the Parliament to provide Royal Assent to such bill. In absence of the Governor General, a Justice of the Supreme Court of Canada acting as Deputy to the Governor General is presented the bills for Royal Assent. The Governor General signs a Declaration of Royal Assent, witnessed by the Clerk of the Parliaments.

148. Section 3 of the Royal Assent Act, 2002 (Can) provides that assent may be given 'in Parliament assembled' or through a written declaration, provided it is witnessed by more than one member from each House. The Act stipulates that the Royal Assent must be given in the Senate Chamber at least twice a year and for the first appropriation bill of each session of the Parliament. In all other cases, such assent may be granted by the Governor General or her Deputy by written consent. At the provincial level, assent is given by the Lieutenant Governor, who is appointed by the Governor General. As per Section 57 of the Constitution Act, 1867, when bills are reserved for Queen's pleasure, she acts upon ministerial advice rather than the advice of the Houses.

149. The Supreme Court of Canada in Reference Re Amendment of the Constitution of Canada, reported in 1981 SCC OnLine Can SC 77, recognized that, by convention, neither the Queen nor the vice-regal representative (equivalent of a Governor in India) may, on their own, refuse assent to a bill passed by both Houses of the Parliament on the grounds of opposition to or disapproval of its policy. The relevant portion of the judgment in reference reads thus:

"As a matter of law, the Queen, or the Governor General or the Lieutenant Governor could refuse assent to every bill passed by both Houses of Parliament or by a Legislative Assembly as the case may be. But by convention they cannot of their own motion refuse to assent to any such bill on any ground, for instance because they disapprove of the policy of the bill. We have here a conflict between a legal rule which creates a complete discretion and a conventional rule which completely neutralizes it. But conventions, like laws, are sometimes violated.

And if this particular convention were violated and assent were improperly withheld, the courts would be bound to enforce the law, not the convention. They would refuse to recognize the validity of a vetoed bill. This is what happened in *Gallant v. The King*, a case in keeping with the classic case of *Stockdale v. Hansard* where the English Court of Queen's Bench held that only the Queen and both Houses of Parliament could make or unmake laws. The Lieutenant Governor who had withheld assent in *Gallant* apparently did so towards the end of his term of office.

Had it been otherwise, it is not inconceivable that his withholding of assent might have produced a political crisis leading to his removal from office which shows that if the remedy for a breach of a convention does not lie with the courts, still the breach is not necessarily without a remedy. The remedy lies with some other institutions of government; furthermore it is not a formal remedy and it may be administered with less certainty or regularity than it would be by a court."

150. In *Galati v. Governor-General of Canada*, reported in [2015] FC 91, the Federal Court of Canada was faced with the question of whether the grant of royal assent by the Governor General to the Strengthening Canadian Citizenship Act, 2014 could be set aside by the court on the ground that enactment of the same was outside the legislative competence of the Parliament.

It was contended by the applicants that the Governor General exceeded the scope of his discretion as well as his authority under the Royal Assent Act of Canada by assenting to the said bill. The Federal Court, however, dismissed the application and held that the Governor General's act of affixing royal assent to the bill was a legislative act. Therefore, the issue of whether the Governor General exceeded his constitutional authority in granting royal assent to the said bill was not justiciable. The relevant portion of the judgment is reproduced below for ready reference:

"The courts exercise a supervisory jurisdiction once a law has been enacted. Until that time, a court cannot review, enjoin or otherwise engage in the legislative process unless asked by way of a reference framed under the relevant legislation. To conclude otherwise would blur the boundaries that necessarily separate the functions and roles of the legislature and the courts.

To review the Governor General's act of granting royal assent, as the applicants request, would conflate the constitutionally discreet roles of the judiciary and the legislature, affecting a radical amendment of the Constitution Act, 1867 and the conventions which underlie our system of government, notably the right of Parliament to consider and pass legislation. The applicants' arguments turn this principle on its head. On the theory advanced, the judiciary would adjudicate on

the constitutionality of proposed legislation before it became law. That line, once crossed, would have no limit."

151. The views of the Federal Court in *Galati* (supra) that the grant of royal assent by the Governor-General was a legislative act and hence, nonjusticiable was in line with the view of the Court in *Gallant v. The King*, [1949] 2 DLR 425 wherein it was noted that the Lieutenant-Governor is a part of the legislature and the act of providing royal assent is also a legislative action.

c. United States of America

152. The Constitution of the United States, more particularly, Article I, Section 7, Clause 2 thereof states that once a bill has been passed by the House of Representatives and the Senate, it must be presented to the President. If the President approves, he may sign the bill; otherwise, he may return it with his objections for reconsideration. If, after reconsideration, two-thirds of both the Houses passes the bill, it becomes law. Further, if the President does not sign a bill within ten days of presenting the same, while Congress is in session, the bill automatically becomes law. Therefore, in this limited circumstance, the concept of pocket veto is not available to the President. However, if Congress adjourns while the bill is awaiting assent and the President does not sign the bill within ten days, the bill does not become law.

d. New Zealand

153. The colonial legislative framework of New Zealand under the Constitution Act, 1852, vested structured discretion in provincial authorities while maintaining the supremacy of the Crown. Section 27 of the Constitution Act, 1852 stipulated that every bill passed by the Provincial Council must be presented to the Superintendent who was an elected head of each Provincial Council, for the assent of the Governor who was the representative of the monarch.

The Superintendent, in his discretion, could have either granted assent on behalf of the Governor or withheld assent or reserved the bill for the Governor's pleasure. For a bill to become law, Superintendent had to signify Governor's assent. Further, her Majesty, with the advice of her Privy Council could issue instructions to the Governor to guide him in exercise of his powers to assent to, dissent from, or reserve bills for her Majesty's pleasure. The Governor was required to act in obedience to these instructions.

154. By the introduction of the Constitution Act, 1986, the Sovereign began to act on the advice of the Executive Council which is the part of the executive branch of government. It states that a bill passed by the House of Representatives becomes law when the Sovereign or the Governor-General grants assent. Section

3 of the Act states that the power conferred on the Governor-General are royal powers exercised on behalf of the Sovereign.

These powers may be exercised either by the Sovereign in person or by the Governor-General. Additionally, any reference in an Act to the Governor-General in Council also includes the Sovereign acting with the advice and consent of the Executive Council. The Prime Minister-designate is appointed as the Executive Councillor and he advises the Governor-General to appoint other Councillors. Section 3A removes any discretion of the Sovereign or the Governor-General, stating that they may exercise a power on the advice and with the consent of the Executive Council.

e. Australia

155. The structure of governance in Australia reflects a nuanced distribution of the Queen's powers through her representatives at both national and state levels. The Queen of Australia is the formal Head of State. At the national level, the Queen's powers and functions qua the Government of Australia are exercised by the Governor-General of Australia. At the State level, her powers are exercised by the Governor of the State.

As per Section 2(1) of the Constitution Act, 1889, the legislative powers were vested in the Sovereign and exercised by her colonial Governors, subject to the advice of legislators. At the national level, Governor-General is not given ministerial advice on assent, the Presiding Officer of the House requests for assent and the Attorney General provides a certificate to the Governor-General regarding whether the bill needs to be reserved for the Queen's assent or regarding any corrections.⁹

156. It is said that the role of the Governor-General is to ensure due process - that the bill was passed in Houses following the procedure. He is not concerned with the contents of the legislation as the act of the Governor-General is executive. However, in the context of Governor (state level), the Court of Appeal in *Eastgate v. Rozzoli*, reported in (1990) 20 NSWLR 188, noted that while giving assent the Australian State Governor acts as a constituent part of the Parliament. If a bill is reserved for Queen's pleasure, she acts upon the advice of Australian Commonwealth Ministers. The power to refer bills back to Parliament can be exercised only upon ministerial advice. At the states, the parliamentary officers seek State Governor's assent. Ordinarily, the State Governors assent to bills without any ministerial advice, only South Australia endeavors to provide executive advice to the Governor.

f. Ireland

157. Ireland's constitutional order provides a unique provision enabling the President to refer bills to the Supreme Court for its view on the constitutionality of the bills. Article 26 of the Constitution of the Ireland confers a power on the President, who, after consultation with the Council of State, may refer any bill to the Supreme Court for a decision on whether any provisions of the bill are repugnant to the Constitution. Such reference must be within seven days from the presentation of the bill to the President. If the Supreme Court holds that any provision of the bill is repugnant to the Constitution, the President declines to sign such bill.

g. Republic of Singapore

158. The Constitution of Singapore establishes a structured framework for the exercise of presidential discretion, setting clear time limits for decisionmaking while also ensuring safeguards against legislative overreach. Article 21A of the Constitution stipulates the general time limit for the President to exercise his discretionary powers. It provides that when the Constitution grants the President discretion in granting or refusing assent, concurrence, approval, or confirmation, he must signify his decision within the specified period after it is sought. The time period specified for granting assent ranges from thirty days to six weeks. However, it may be extended contingent upon any agreement between the President and the Cabinet.

159. Article 22H applies in cases where the bill or any provision seeks to curtail discretionary powers of the President. If, within thirty days, the President neither withholds assent nor refers the bill to the tribunal for its opinion on whether the bill curtails the President's discretionary powers, then the President is deemed to have assented. Even when the tribunal is of the opinion that the bill does not curtail the discretionary powers conferred on the President, the President is still deemed to have assented.

h. Democratic Socialist Republic of Sri Lanka

160. The Constitution of Sri Lanka, more particularly, Article 154H, stipulates that upon the presentation of a statute enacted by the Provincial Council, the Governor shall either assent to it or return it for reconsideration as soon as possible. The Provincial Council may then pass the statute with or without amendments. If the statute is presented to the Governor again, he may reserve it for reference by the President to the Supreme Court within one month of its second time, seeking a determination as to whether is inconsistent with the Constitution.

If the Supreme Court holds the statute to be consistent, the Governor must grant assent. If it is held inconsistent, the Governor may withhold assent. It can be

concluded that, upon the first presentation of a bill, the Governor has only two options: granting assent or returning it for reconsideration. On the second presentation, the Governor may only reserve the bill, referring it to the President for submission to the Supreme Court. He does not have the discretion to withhold assent independently.

i. Republic of Kiribati

161. The constitutional framework of Kiribati is similar to the Democratic Socialist Republic of Sri Lanka. It provides powers to withhold assent only in exceptional situations. Section 66 of the Constitution of Kiribati allows the Beretitenti, that is the head of the state and head of the government, to withhold assent to a bill only if he believes the bill to be inconsistent with the Constitution.

In such a case, the bill is returned to the Parliament for amendment, and if it is presented again and the Beretitenti still believes that the bill is inconsistent with the Constitution, he is required to refer it to the High Court for a declaration. If the Court declares that the bill is not consistent with the Constitution, the Beretitenti must grant assent forthwith. If the Court declares the bill to be inconsistent, it is sent back to Parliament. The Constitution of Zimbabwe under Section 131 provides a time period of twenty-one days to either assent to the bill or refer it for reconsideration.

j. Republic of Fiji

162. The Constitution of Fiji, 2013 also does not vest discretionary power in the President. While Section 53 of the Fiji Independence Order, 1970 and Constitution of Fiji granted the Governor-General the power to grant assent or withhold assent, the Constitution of Fiji, 2013, removed any discretion on the part of the President. Section 48 of the Constitution stipulates that once a bill is passed, the Speaker must present it to the President for assent, which must be granted within seven days; otherwise, the bill is deemed to have received assent.

k. Solomon Islands & Antigua and Barbuda

163. Both the Solomon Islands and Antigua and Barbuda have constitutional provisions that mandate the Governor-General to grant assent to bills passed by Parliament. In the Solomon Islands, Section 59(2) of the Constitution of the Solomon Islands provides that when a bill has been passed by the Parliament it shall be presented to the Governor-General who shall assent to it forthwith on behalf of the Head of the State. Whereas Section 52(2) of the Constitution of Antigua and Barbuda states that when a bill is presented to the Governor-General for assent in accordance with this Constitution, he shall signify that he assents thereto.

I. Islamic Republic of Pakistan

164. In our neighboring country, Article 75 of the Constitution of the Islamic Republic of Pakistan provides that when a bill is presented to the President, he must either assent within ten days or return it to Parliament with a request for reconsideration. If the bill is passed again by a majority, whether amended or not, the President must grant assent within ten days, failing which it will be deemed to have received assent. Whereas Article 105 stipulates that the Governor shall act in accordance with the advice of the Cabinet or the Chief Minister. The Governor may, however, require the Cabinet or the Chief Minister to reconsider the advice. Following such reconsideration, the Governor must act in accordance with the advice tendered within ten days.

m. Federal Republic of Germany

165. The legislative process in Germany is governed by both federal and state constitutional provisions. Article 76 of the Basic Law for the Federal Republic of Germany states that bills are to be introduced in Bundestag (house elected by the people) by the Federal Government or by the Bundesrat (federal council). The provision grants the Bundesrat a period of six weeks to comment on bills for Federal Government bills.

The Federal Government submits the bills, alongwith its views, to the Bundestag within six weeks alongwith its views. Article 78 provides that a bill adopted by the Bundestag become the law if the Bundesrat consents to it. Laws enacted in accordance with the provisions of the Basic Law, after being countersigned, are certified by the Federal President. Furthermore, Section 60, Section V, the Constitution of Berlin stipulates that the bills shall be signed by the President of the House of Representatives without delay and then promulgated by the Governing Mayor within two weeks.

n. Italian Republic

166. The legislative process in Italy is shaped by constitutional provisions that define the President's role in the promulgation of laws and the scope of legislative urgency. Article 73 of the Constitution of the Italian Republic mandates that laws be promulgated by the President within one month of their approval. However, if the Chambers (the Parliament consists of the Chamber of Deputies and the Senate of the Republic), by a majority vote, declare a bill to be urgent, it shall be promulgated within the time specified by the bill itself. Article 74 empowers the President to request a new deliberation by means of a message stating the reasons for such a request. It is important to take note that if the Chambers pass the bill once again, then the law must to be promulgated.

o. French Republic

167. In France, the promulgation of legislation is subject to defined constitutional timelines. Article 10 of the Constitution of October 4, 1958, stipulates that the President of the Republic must promulgate Acts of Parliament within fifteen days after the final passage of an Act. It also empowers the President to request Parliament to reopen the debate on the Act, or any specific sections thereof, and such a request for reopening of debate shall not be refused.

p. Japan

168. As per the Japanese constitutional framework, the Diet (Parliament of Japan) is the sole law-making organ of the State. Article 59 envisages that if a bill passed by the House of Representatives is rejected by the House of Councillors, it becomes a law when passed a second time by the House of Representatives by a two-thirds majority of the members present. Article 74 states that all laws and cabinet orders must be signed by the competent Minister of State and countersigned by the Prime Minister.

G. ANALYSIS

i. What courses of action are available to the Governor in exercise of his powers under Article 200 of the Constitution?

169. A plain reading of Article 200 of the Constitution indicates that when a bill is passed by the legislature of a State, it is mandatorily required to be placed before the Governor for his assent. This is because without receiving the assent of the President, a bill cannot become an Act. However, when a bill is presented to the Governor for his assent, the Governor is required to make a declaration from the three options available to him under the substantive part of Article 200, that is, to assent, to withhold assent, or to reserve the bill for the consideration of the President.

170. The first proviso prescribes a mechanism whereby the Governor may return a bill, which is not a Money Bill, back to the State legislature requesting them to reconsider the bill or certain provisions thereof or consider the possibility of making certain amendments to it. Once a bill is so returned by the Governor, the State legislature is required to take note of the suggestions made by the Governor and reconsider the bill accordingly. If the bill, after such reconsideration by the State Legislature is again passed and presented to the Governor, then in such circumstances as per the first proviso, the Governor would then be prohibited from withholding his assent to the bill.

171. The second proviso provides for a specific situation wherein the Governor is mandated to reserve a bill for the consideration of the President if, in his opinion, the bill upon becoming law, would so derogate from the powers of the High

Court as to endanger the position which the High Court has been designed to fill by the Constitution.

172. One of the principal contentions advanced by the learned Attorney General before us was that the first proviso to Article 200 provides an independent fourth course of action to the Governor besides the three other options available to him under the substantive part of the Article. To put it differently, his argument was that the Governor may either withhold assent to a bill simpliciter, as provided under the substantive part of Article 200, or he may invoke the procedure prescribed under the first proviso and return the bill back to the State legislature along with such a message as is mentioned in the first proviso. In other words, he contended that where the Governor declares a simpliciter withholding of assent, the same would be an absolute veto of the bill, and the State legislature would have no occasion to reconsider the bill in such a scenario. As a corollary the first proviso would have no applicability and the State legislature would not be entitled to reconsider the bill on its own motion.

173. He argued that in cases where the bill suffers from some gross and manifest unconstitutionality, the Governor need not invoke the procedure mentioned in the first proviso and it would be sufficient if he declares a simpliciter withholding of the bill. As a corollary, he submitted that the procedure prescribed under the first proviso may be followed by the Governor when he is of the belief that the bill, which is otherwise constitutional, may benefit from certain amendments and in such a case he may send a message to the State legislature suggesting certain amendments to the bill.

174. In other words, his contention was that simpliciter withholding is to be opted for by the Governor in his position as a custodian of the Constitution in the State, while the procedure prescribed in the first proviso is to be followed by him in his role as a friend, philosopher and guide of the State Government, with a view to improve an otherwise constitutionally innocuous piece of legislation.

175. The aforesaid contention of the Attorney General was met by the petitioner by placing reliance on the recent decision of this Court in State of Punjab (supra) wherein it was held that the option of withholding of assent under the substantive part of Article 200 is attached with the first proviso. The petitioner contended that in light of the said observation, it is not open for the Governor to undertake any simpliciter withholding of a bill presented to him and he must mandatorily resort to the procedure indicated in the first proviso if he decides to withhold assent to a bill.

176. The Attorney General, on the other hand, raised doubts as regards the correctness of the decision in State of Punjab (supra) and argued that the said decision was rendered without having regard to the earlier decisions given by

larger Benches of this Court. In particular, he placed reliance on certain observations made by the Constitution Bench in Valluri Basavaiah Chowdhary (supra) to support his contention.

177. In response, the petitioner argued in favour of the decision in State of Punjab (supra) and submitted that the observations made in Valluri Basavaiah Chowdhary (supra) were made in a case where this Court was not dealing with the interpretation of Article 200 of the Constitution. Thus, the observations made therein as regards Article 200 could be said to be obiter dicta at best. Mr. Dwivedi went to the extent of submitting that the observations of this Court being relied upon by the Attorney General cannot be construed as obiter dicta as they were mere passing remarks irrelevant to the lis before the Court in that case.

178. It is in this backdrop that we are called upon to ascertain whether the observations made in Valluri Basavaiah Chowdhary (supra) can be reconciled with the decision of this Court in State of Punjab (supra). The consequence of this inquiry would be that it would determine whether the constitutional scheme of Article 200 envisages a simpliciter withholding of assent by the Governor. In other words, if the decision in State of Punjab (supra) is found to be per incuriam, it would mean that the Governor under Article 200 has the power of exercising an absolute veto upon any bill which is presented to him for assent.

179. Before going into the question of whether the observations made in Valluri Basavaiah Chowdhary (supra) could be said to be the ratio, obiter or irrelevant to the lis, we deem it necessary to reproduce the observations relied upon by the Attorney General in support of his submission:

"19. The Governor is, however, made a component part of the legislature of a State under Article 168, because every Bill passed by the State legislature has to be reserved for the assent under Article 200. Under that article, the Governor can adopt one of the three courses, namely (i) he may give his assent to it, in which case the Bill becomes a law; or (ii) he may, except in the case of a "Money Bill", withhold his assent therefrom, in which case the Bill falls through unless the procedure indicated in the first proviso is followed i.e. return the Bill to the Assembly for reconsideration with a message, or (iii) he may (subject to Ministerial advice) reserve the Bill for the consideration of the President, in which case the President will adopt the procedure laid down in Article 201.

The first proviso to Article 200 deals with a situation where the Governor is bound to give his assent when the Bill is reconsidered and passed by the Assembly. The second proviso to that article makes the reservation for consideration of the President obligatory where the Bill would, "if it becomes law", derogate from the powers of the High Court. Thus, it is clear that a Bill passed by a State Assembly may become law if the Governor gives his assent to

it, or if, having been reserved by the Governor for the consideration of the President, it is assented to by the President.

The Governor is, therefore, one of the three components of a State legislature. The only other legislative function of the Governor is that of promulgating Ordinances under Article 213(1) when both the Houses of the State legislature or the Legislative Assembly, where the legislature is unicameral, are not in session. The Ordinance-making power of the Governor is similar to that of the President, and it is co-extensive with the legislative powers of the State legislature."

(Emphasis supplied)

180. The crux of the controversy as regards whether the first proviso provides an independent course of action to the Governor lies in the use of the expression "in which case the Bill falls through unless the procedure indicated in the first proviso is followed". However, what is interesting to note is that this expression did not come to be used for the first time in *Valluri Basavaiah Chowdhary* (supra). Much prior to the said decision, Justice S.R. Das (as his lordship then was), in a concurring opinion in *State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga* reported in (1952) 1 SCC 528 observed as follows:

"235. The procedure to be followed after a Bill is passed by the State Assembly is laid down in Article 200. Under that article the Governor can do one of three things, namely, he may declare that he assents to it, in which case the Bill becomes a law, or he may declare that he withholds assent therefrom, in which case the Bill falls through unless the procedure indicated in the proviso is followed, or he may declare that he reserves the Bill for the consideration of the President, in which case the President will adopt the procedure laid down in Article 201. Under that article the President shall declare either that he assents to the Bill in which case the Bill will become law or that he withholds assent therefrom, in which case the Bill falls through unless the procedure indicated in the proviso is followed.

Thus it is clear that a Bill passed by a State Assembly may become a law if the Governor gives his assent to it or if, having been reserved by the Governor for the consideration of the President, it is assented to by the President. In the latter event happening, the argument of the learned counsel for the petitioners will require that what has become a law by the assent of the President will, in order to be effective, have to be again reserved for the consideration of the President a curious conclusion I should be loath to reach unless I am compelled to do so. Article 200 does not contemplate a second reservation by the Governor."

(Emphasis supplied)

181. The same expression also came to be used by a three-Judge Bench in Hoechst (supra) wherein it was observed thus:

"85. The constitutional position of a Governor is clearly defined.

The Governor is made a component part of the legislature of a State under Article 168 because every Bill passed by the State legislature has to be reserved for the assent of the Governor under Article 200. Under that Article, the Governor can adopt one of the three courses, namely:

(1) He may give his assent to it, in which case the Bill becomes a law; or

(2) He may except in the case of a 'Money Bill' withhold his assent therefrom, in which case the Bill falls through unless the procedure indicated in the first proviso is followed i.e. return the Bill to the Assembly for consideration with a message; or

(3) He may "on the advice of the Council of Ministers" reserve the Bill for the consideration of the President, in which case the President will adopt the procedure laid down in Article 201. The first proviso to Article 200 deals with a situation where the Governor is bound to give his assent and the Bill is reconsidered and passed by the Assembly."

(Emphasis supplied)

182. This Court in State of Punjab (supra) wherein one of us (J.B. Pardiwala J.) was part of the Bench, observed that the second proviso to Article 200 is in the form of an exception as it restricts the choice that the Governor otherwise has under the substantive part of Article 200. It observed that the use of the expression "shall not assent to, but shall reserve for the consideration of the President" makes it abundantly clear that the Governor has no choice but to reserve a bill for the consideration of the President if the bill is of the description given in the second proviso.

This Court further held that unlike the second proviso, which is in the form of an exception, the first proviso is in the form of an explanation and the same is made clear from the use of the expression "may" in the first proviso. The Court observed that the expression "may" has been used because the first proviso attaches with the option of withholding of assent and it is a matter of choice for the Governor if he wants to withhold assent to a bill or if he wishes to exercise the other two options available to him, namely, declaring assent or reserving the bill for the consideration of the President.

Taking note of the expression "shall not withhold assent therefrom" used in the first proviso, the Court observed that the expression signified that the first

proviso was attached to the option of withholding of assent alone. In lieu of this, the Court held that upon withholding of assent to a bill, the Governor is mandatorily required to follow the procedure prescribed in the first proviso. The relevant observations are reproduced hereinbelow:

"20. The present case turns upon how the first proviso is to be construed. In construing the first proviso, it needs to be noted that the substantive part of Article 200 provides the Governor with three options : an option to assent; an option to withhold assent; and an option to reserve the Bill for the consideration of the President. The first proviso opens with the expression "the Governor may" in contrast to the second proviso which begins with the expression "the Governor shall not assent". The "may" in the first proviso is because the first proviso follows the substantive part which contains three options for the Governor.

The first proviso does not qualify the first option (where the Governor assents to the Bill) nor the third option reserving the Bill for consideration of the President. The first proviso attaches to the second option (withholding of assent) and hence begins with an enabling expression, "may". By the mandate of the second proviso, there is an embargo on the Governor assenting to a Bill which derogates from the powers of the High Court under the Constitution. The Governor is by the mandate of the Constitution required to reserve such a Bill for consideration of the President.

21. The second proviso impacts upon the option which is provided by the substantive part of Article 200 to the Governor to reserve a Bill for the consideration of the President by making it mandatory in the situation envisaged there. The option of reserving a Bill for the consideration of the President is turned into a mandate where the Governor has no option but to reserve it for the consideration of the President. The second proviso is, therefore, in the nature of an exception to the option which is granted to the Governor by the substantive part of Article 200 to reserve any Bill for the consideration of the President.

22. A proviso, as is well settled, may fulfil the purpose of being an exception. Sometimes, however, a proviso may be in the form of an explanation or in addition to the substantive provision of a statute. The first proviso allows the Governor, where the Bill is not a Money Bill to send it back to the legislature together with a message. In terms of the message, the legislature may be requested by the Governor to reconsider the entirety of the Bill. This may happen for instance where the Governor believes that the entirety of the Bill suffers from an infirmity.

Alternatively, the Governor may request the legislature to reconsider any specific provision of the Bill. While returning the Bill, the Governor may express the desirability of introducing an amendment in the Bill. The desirability of an

amendment may arise with a view to cure an infirmity or deficiency in the Bill. The concluding part of the first proviso however stipulates that if the Bill is passed again by the legislature either with or without amendments, the Governor shall not withhold assent therefrom upon presentation.

The concluding phrase "shall not withhold assent therefrom" is a clear indicator that the exercise of the power under the first proviso is relatable to the withholding of the assent by the Governor to the Bill in the first instance. That is why in the concluding part, the first proviso indicates that upon the passing of the Bill by the legislature either with or without amendments, the Governor shall not withhold assent. The role which is ascribed by the first proviso to the Governor is recommendatory in nature and it does not bind the State Legislature.

23. This is compatible with the fundamental tenet of a parliamentary form of Government where the power to enact legislation is entrusted to the elected representatives of the people. The Governor, as a guiding statesman, may recommend reconsideration of the entirety of the Bill or any part thereof and even indicate the desirability of introducing amendments. However, the ultimate decision on whether or not to accept the advice of the Governor as contained in the message belongs to the legislature alone. That the message of the Governor does not bind the legislature is evident from the use of the expression "if the Bill is passed again with or without amendments".

24. The substantive part of Article 200 empowers the Governor to withhold assent to the Bill. In such an event, the Governor must mandatorily follow the course of action which is indicated in the first proviso of communicating to the State Legislature "as soon as possible" a message warranting the reconsideration of the Bill. The expression "as soon as possible" is significant. It conveys a constitutional imperative of expedition. Failure to take a call and keeping a Bill duly passed for indeterminate periods is a course of action inconsistent with that expression. Constitutional language is not surplusage.

In *State of Telangana v. Governor of Telangana* [State of Telangana v. Governor of Telangana, (2024) 1 SCC 405] this Court observed that "The expression 'as soon as possible' has significant constitutional content and must be borne in mind by constitutional authorities." The Constitution evidently contains this provision bearing in mind the importance which has been attached to the power of legislation which squarely lies in the domain of the State Legislature. The Governor cannot be at liberty to keep the Bill pending indefinitely without any action whatsoever.

25. The Governor, as an unelected Head of the State, is entrusted with certain constitutional powers. However, this power cannot be used to thwart the normal course of lawmaking by the State Legislatures. Consequently, if the Governor

decides to withhold assent under the substantive part of Article 200, the logical course of action is to pursue the course indicated in the first proviso of remitting the Bill to the State Legislature for reconsideration. In other words, the power to withhold assent under the substantive part of Article 200 must be read together with the consequential course of action to be adopted by the Governor under the first proviso.

If the first proviso is not read in juxtaposition to the power to withhold assent conferred by the substantive part of Article 200, the Governor as the unelected Head of State would be in a position to virtually veto the functioning of the legislative domain by a duly elected legislature by simply declaring that assent is withheld without any further recourse. Such a course of action would be contrary to fundamental principles of a constitutional democracy based on a Parliamentary pattern of governance. Therefore, when the Governor decides to withhold assent under the substantive part of Article 200, the course of action which is to be followed is that which is indicated in the first proviso. The Governor is under Article 168 a part of the legislature and is bound by the constitutional regime.

26. Insofar as Money Bills are concerned, the power of the Governor to return a Bill in terms of the first proviso is excluded from the purview of the constitutional power of the Governor. Money Bills are governed by Article 207 in terms of which the recommendation of the Governor is required for the introduction of the Bill on a matter specified in subclauses (a) to (f) of clause (1) of Article 199."

(Emphasis supplied)

183. Placing reliance on the expression "unless the procedure indicated in the first proviso is followed" the learned Attorney General submitted that the decision as regards whether the procedure prescribed under the first proviso is to be invoked or not, is the discretion of the Governor. It is only when the Governor decides to return the withheld bill along with a message that the first proviso would come into play. In other words, if the Governor believes that the bill is constitutionally infirm and beyond any remedial changes, then he may choose not to return the bill along with a message and may simply declare that he is withholding assent to the bill, in which case the bill would "fall through" or lapse.

184. Although the argument is seemingly lucrative and appealing, and the petitioner also could not provide a concrete reply to the same during the course of the arguments and instead took shelter under the semantics of obiter-dicta and ratio-decidenti, yet we deem it necessary to explain how the argument is short-sighted, half-baked and suffers from an inherent fallacy.

185. As the observation made by this Court in the three decisions referred to above holds that the Bill would fall through unless the procedure prescribed in the first proviso is followed, we first need to understand the procedure that is prescribed in the first proviso. The proviso stipulates that when any bill, other than a Money Bill, is presented to the Governor for assent, he may, as soon as possible, return it to the State legislature, together with a message.

As regards the contents of the message, the proviso stipulates that the Governor may request the House(s) of the State legislature to reconsider the bill or certain parts of it, and also explore the desirability of introducing certain amendments as may be suggested by the Governor in the message. Once the bill is so returned together with the message, the House(s) are required to reconsider the bill in accordance with the recommendations contained in the message of the Governor. If the bill is then passed again by the House(s), with or without amendments, and presented to the Governor, then the Governor cannot withhold assent from such a bill.

186. A close reading of the first proviso reveals that the action of returning the bill to the State legislature by the Governor is qualified by the expression "as soon as possible". However, once the bill has been returned to the State legislature by the Governor, there is no such expediency required on part of the State legislature in reconsidering the bill. Further, once the bill is reconsidered and passed again by the State legislature, there is again a mandate on the Governor not to withhold assent to such a bill. The only obligation upon the State legislature is to mandatorily take into consideration the suggestions contained in the message sent by the Governor along with the bill. However, the State Legislature is not under an obligation to mandatorily introduce any amendments suggested by the Governor and it may proceed to repass the bill without any amendments.

187. Since there is no obligation on the State legislature to repass the bill returned by the Governor under the first proviso, the expression "falls-through" can only refer to those situations where the State legislature elects not to pass the bill for reconsideration again, and in such circumstances causing the bill to lapse. There is nothing in the first proviso which gives the Governor the discretion to initiate the procedural machinery described therein. Therefore, the first proviso, cannot be treated as an independent course of action severable from the option of withholding of assent. The use of the expression "as soon as possible" in the first proviso makes it clear that the Constitution has imposed a sense of urgency upon the Governor and expects him to act with expediency if he decides to declare the withholding of assent.

At the same time, that the use of the expression "may" in the first proviso, as explained in State of Punjab (supra) does not confer a discretion upon the

Governor to decide whether to act in accordance with the procedure prescribed in the first proviso. On the contrary, it only denotes that the first proviso would be applicable only when the option of withholding of assent is exercised. In other words, the expression "may" is used keeping in mind that there are three options that the Governor may choose from when a bill is presented to him for assent.

Therefore, there is no requirement for construing the expression "may" as "shall" as was vehemently urged on behalf of the petitioner, and the interpretation provided in State of Punjab (supra) and further explained by us does not merit construing the use of "may" as "shall", as it would result in a logical absurdity insofar as it would make the compliance with the procedure laid down in the first proviso mandatory in the exercise of all three options available to the Governor under the substantive part of Article 200 of the Constitution.

188. It is also remarkable to take note of the expression "if the bill is passed again" which signifies that the ultimate discretion to decide whether the State legislature wants to repass the bill or not continues to remain the prerogative of the State legislature alone. Similarly, the use of the expression "with or without amendment" denotes that even if the State legislature decides to reconsider the bill, the discretion to repass it with or without the amendments suggested by the Governor again continues to be their sole prerogative. In order to obviate any further confusion, we deem it appropriate to clarify that the use of the expression "shall reconsider the bill accordingly" does not indicate that it is obligatory for the State legislature to take up the bill for reconsideration.

The word "shall" used in this expression must be read in conjunction with the word "accordingly". The use of "shall" in this context is only for the limited purpose that if the State legislature in its discretion does decide to not allow the bill to "fall through" by taking it up for reconsideration, then the scope of such reconsideration must at the very least encompass the suggestions communicated by the Governor in his message. The word "shall" used herein cannot be singled out and construed devoid of its context.

189. The structure of Article 200 is also helpful in discerning the meaning of the content that it holds. There is a substantive part of the provision and there are two provisos to the substantive part. In the substantive part, there are three options for the Governor to choose from, each separated by the conjunction "or" thereby indicating the mutual exclusivity of the three options. If the Governor opts for the first option and grants assent to the bill presented to him, the first proviso doesn't come into consideration. Similarly, if the Governor chooses the third option and reserves the bill for the consideration of the President, there is no occasion for the operation of first proviso. The second proviso is overarching in nature and provides that in the situation as described therein, the Governor can only exercise one option, that is, reserve the bill for the consideration of the President.

190. The use of the expression "shall declare" in the substantive part of Article 200 indicates that the Governor is required to make a declaration from the three choices provided to him under the substantive part and there cannot be any fourth course of action. As soon as assent is granted, the bill becomes an Act and there is no scope thereafter for reservation for the consideration of the President or returning back to the State legislature. If reservation for the consideration of the President is declared then thereafter no returning of the bill to the State legislature can take place, unless the President so directs under the proviso to Article 201. Thus, it is only upon the declaration of withholding of assent that the first proviso is animated into action.

191. Another important aspect that may be pointed out is that the observations made in *Valluri Basavaiah Chowdhary* (supra) and *Hoechst* (supra), respectively state that except in the case of a Money Bill, the Governor may withhold assent. A bare reading of Article 200 indicates that there is no restriction in the substantive part that prohibits the Governor from declaring that he withholds assent to a Money Bill, and it is only under the first proviso that such a restriction can be found. Therefore, it is only when the option of the withholding of assent in the substantive part of Article 200 is read along with the first proviso that Money Bills could be said to be excluded from the purview of withholding of assent under the substantive part of Article 200.

Thus, rather than fortifying the argument of the learned Attorney General, the observations made in *Valluri Basavaiah Chowdhary* (supra) and reiterated in *Hoechst* (supra) only reinforce the intricate and inseparable connection between the exercise of the option of withholding of assent by the Governor and coming into operation of the procedure prescribed in the first proviso. The dictum of the above mentioned two decisions in no way renders the decision in *State of Punjab* (supra) per-incuriam, and rather bolsters the line of reasoning adopted by this Court therein.

192. Therefore, the use of the expression "the Bill falls through unless the procedure indicated in the first proviso is followed" should be construed in the context of the entire procedure described in the first proviso. Seen thus, it would mean that the bill would fall-through if the bill, having been returned by the Governor, is not passed again by the State legislature and presented again to the Governor for his assent. The fallacy of the argument canvassed by the learned Attorney General lies in the very fact that he has construed the observations of this Court, pertaining to compliance with the procedural requirement under the first proviso, to mean that the mechanism under the first proviso can only be initiated upon the desire and discretion of the Governor.

193. This Court in *Nambudiri* (supra) explained as to how the State legislature may cause a bill to fall through with which they no longer intend to proceed by

not reconsidering and repassing it, once it has been returned by the Governor with the deceleration of withholding of assent. This Court held that the stage of assent could only be arrived at after the stage of reconsideration and repassing by the State legislature has been successfully crossed. The relevant observations read as under:-

"16. Similarly, when it is said that if the Bill is passed again the Governor shall not withhold assent therefrom it does not postulate the existence of the same House because even if it is the successor House which passes it it is true to say that the Bill has been passed again because in fact it had been passed on an early occasion. Besides, if the effect of Article 196 is that the Bills pending assent do not lapse on the dissolution of the House then the relevant provisions of Article 200 must be read in the light of that conclusion.

In our opinion, there is nothing in the proviso to Article 201 which is inconsistent with the basic concept of democratic Government in asking a successor House to reconsider the Bill with the amendments suggested by the President because the proviso makes it perfectly clear that it is open to the successor House to throw out the Bill altogether. It is only if the Bill is passed by the successor House that the stage is reached to present it to the Governor or the President for his assent, not otherwise."

194. There is one another way of looking at Article 200. The procedure, as prescribed under the scheme of the provision, involves and envisages the actual motion of a bill from one constitutional authority to another. The Article starts with the requirement of the bill having to be mandatorily presented to the Governor after it has been passed by the State legislature. Thereafter, there is an obligation on the Governor to make a choice from one of the three options provided in the substantive part of the Article and also declare such a decision. Here, if assent is declared, then the bill becomes an Act and the Government may thereafter take steps to notify the same in the official Gazette.

If the Governor declares that bill is being reserved for consideration of the President as per the second proviso or otherwise, then the bill travels from the Governor to the President, whereupon Article 201 comes into play. The mechanism provided in the first proviso also envisages the movement of the bill from the Governor to the State legislature and then back to the Governor upon being passed again. The expression "as soon as possible" appearing in the first proviso infuses a sense of urgency and expediency in the mechanism of returning of bills by the Governor.

It goes without saying that the scheme of Article 200 is characterized by the movement of the bill from one constitutional authority to another and that too with a sense of expediency. It is trite to say that Article 200 occupies an

important role of giving the bills passed by the State legislature the authority of an Act. Without the procedure envisaged under Article 200, the bills remain mere pieces of paper, skeletons without any flesh or lifeblood flowing through their veins, mere documentation of the aspirations of the people without any possibility of bringing them to fruition.

The only way by which the option of withholding of assent provided in the substantive part of Article 200 can be reconciled with the scheme permeating the remainder of the provision is by reading it in conjunction with the first proviso. It is only when the withholding of assent is tempered with the requirement of following the procedure prescribed in the first proviso that the constitutional object of ensuring that the law-making machinery at the State level keeps on running unhindered can be fulfilled.

195. Any other reading of the provision that construes the option of withholding of assent without attaching it to the mechanism prescribed in the first proviso would render the very idea of smooth functioning of the law-making process nugatory and would vest with the Governor untrammelled powers of thwarting the legislative machinery and in effect the will and aspirations of the people whose voices the legislature represents.

196. Thus, in light of the aforesaid discussion, it becomes clear that there are only three courses of action available to the Governor to choose from when a bill is presented to him for assent under Article 200. The first proviso is not an independent fourth course of action but intrinsically attached to the option of withholding of assent. In other words, the first proviso is clarificatory and only elaborates the procedure to be followed in case the option of withholding of assent is invoked by the Governor.

197. The use of the expression "shall" in the substantive part of Article 200 read with the expression "as soon as possible" used in the first proviso indicates that there is no pocket veto available to the Governor while he is exercising the powers under Article 200. As we have also discussed in the subsequent parts of this judgment, inaction on part of the Governor to take a decision when a bill is presented to him under Article 200 is grossly violative of the constitutional scheme of expediency which permeates the provision.

198. The Governor, in exercise of his powers under Article 200, also does not possess any absolute veto. He is mandated to take a decision from among the three options that are provided in the substantive part of the Article 200. In case of withholding of assent, the Governor is bound to follow the procedure prescribed under the first proviso and assent to the bill if it is ultimately presented to him for assent after being repassed by the State legislature.

The Governor may also reserve certain bills for the consideration of the President. However, in no case has the Governor been conferred with the power to veto a bill which is presented to him. He is envisaged as an intermediary stop in the journey of the bill towards becoming an Act. When a bill comes to the Governor, he may forthwith assent to it, or postpone the grant of assent by exercising the option of withholding of assent but only for so long till the bill comes back to him after reconsideration, or he may forward the bill to the President whereupon the procedure prescribed under Article 201 is to be followed. Thus, in none of these cases can the Governor permanently keep a bill with him without according assent to it, nor can he declare a simpliciter withholding of assent thereby killing the bill.

ii. Whether the Governor can reserve a Bill for the consideration of the President when it is presented to him for assent after being reconsidered in accordance with the first proviso to Article 200, more particularly, when he had not reserved it for the consideration of the President in the first instance?

199. As discussed in the preceding issue, the Governor, in exercise of his powers under Article 200, has three options to choose from. The use of the conjunction "or" between the three options signifies that the options are mutually exclusive and once one of the options is exercised by the Governor, the other options become unavailable to choose from. Kameshwar Singh (supra) held that there can be no reservation for the consideration of the President once assent is declared and similarly, there is no requirement for the Governor to assent to the bill, once the bill, having been reserved for the consideration of the President, has received his assent.

200. We have also discussed in line with the decision in State of Punjab (supra) that the option of withholding of assent is attached with the first proviso and once the Governor declares the withholding of assent, the entire mechanism which is laid down in the first proviso itself has to follow suit. Thus, the first proviso to Article 200 is a complete code in itself as regards the procedure which is to be followed once the Governor withholds assent and the rest of the article has no applicability thereafter.

201. It is also interesting to note that the expression "withhold assent" has been employed in the substantive part of Article 200. The literal meaning of the expression 'withhold' as defined in a number of dictionaries is to keep back; to keep in one's possession what belongs to or is due to others; to hinder; to prevent; to defer; to postpone; to detain; to keep under control; to retain; to keep from doing something; to refrain from doing something.

Thus, it would not be incorrect to construe that the option of withholding of assent has been provided to the Governor under the substantive part only with a view to defer or to postpone the grant of assent to a bill. Withholding of assent cannot be construed to be the same as denying of assent or as conferring a power in the Governor to veto a legislation passed by the State legislature, which would be against the very fundamentals of a representative democracy.

202. Further, the scope of this deferment of assent by the Governor has been made subject to the procedure laid down in the first proviso. The procedure laid down in the first proviso ensures that the withholding of assent does not become analogous to a pocket veto. The use of the expression "if the Bill is passed again by the House or Houses with or without amendment" in the first proviso clearly indicates that the role of the Governor under the first proviso has been characterized as recommendatory in nature and that his suggestions do not bind the legislature.

Further, the expression "the Governor shall not withhold assent therefrom" in the first proviso leaves no scope for the Governor to take any course of action other than discontinuing the withholding of assent, which by necessary implication means to accord assent to the bill. The expression also indicates that there is strict constitutional prohibition against the Governor to not withhold assent to the bill.

203. What follows from the aforesaid discussion is that once the option of withholding of assent is exercised by the Governor, the mechanism under the first proviso is set into motion to the exclusion of everything else envisaged under the article. This is in view of the maxim *Expressio Unius Est Exclusio Alterius* i.e., the expression of one thing is the exclusion of another. Once the mechanism under the first proviso is set into motion and the various stages are complied with, the only possible manner in which the mechanism prescribed under the first proviso can conclude is by the Governor granting assent to the bill. Thus, there is no scope for the Governor to reserve a bill for the consideration of the President once it is presented to him for reconsideration after compliance with the procedure laid down in the first proviso.

204. However, for the sake of completeness, we deem it necessary to discuss a possible scenario wherein the Governor may have the power to reserve the bill for the consideration of the President even after it is repassed by the State legislature and presented to him for assent. Say, for instance, in a particular case, the Governor withholds assent to a bill which is presented to him and returns it to the House or the Houses together with a message requesting them to reconsider certain aspects of the bill or introduce certain amendments desirable thereto.

However, the House or the Houses, in the process of reconsideration, introduce certain changes which were not suggested by the Governor in the message which

he sent together with the bill. In such a scenario, the House or Houses cannot be said to have "reconsidered the Bill accordingly" which is a mandatory condition prescribed under the first proviso. If the bill which is presented to the Governor for assent in the second round could be said to have been reconsidered by the House or Houses on wholly different and new grounds, and if those changes are of such a nature where a reservation for the consideration of the President may be desirable, then the Governor would not be precluded from reserving the bill for the consideration of the President.

205. However, if the bill is repassed by the House or Houses without amendments, or only with such amendments as were suggested by the Governor in his message, then the procedure prescribed under the first proviso could be said to be fully complied with and the Governor would be bound to signify his assent thereto and would be precluded from reserving the bill for the consideration of the President.

206. We say so because the procedure laid down in the first proviso cannot be construed as giving the State legislature the unfettered power to introduce changes to the bill which alter its very nature, or which, for instance, fall foul of the second proviso to Article 200. In such a scenario, the Governor would have all the three options which are available to him when a bill is presented to him in the first instance. However, whenever the House or Houses reconsider the bill "accordingly", that is, in accordance with the suggestions of the Governor and pass it with or without amendments, the Governor is bound to act as per the clear constitutional directive laid down in the first proviso.

207. As we shall also discuss later, any reservation of a bill by the Governor for the consideration of the President on the ground that the bill was not reconsidered as per the procedure prescribed in the first proviso would be subject to judicial scrutiny.

208. Coming to the facts of the present case, out of twelve bills which are the subject matter of the present petition, two were reserved by the Governor for the consideration of the President in the first instance of their presentation. As regards the remaining ten bills, the Governor declared a withholding of assent, however, the bills were returned without any message as is envisaged under the first proviso.

What stands out as a glaring omission on the part of the Governor is that the day on which the withholding of assent was declared, the decision in State of Punjab (supra) had already been passed and even the notice in the present petition had been issued. Thus, it was expected of the Governor that he would not declare a simpliciter withholding of assent of the bills without specifying the reasons for such withholding and also without making recommendations as regards the

desirability of introducing any amendments by the State legislature while reconsidering the bills.

209. In light of the language of Article 200, and also keeping in mind its interpretation by this Court in State of Punjab (supra), there was no room for the Governor to declare a simpliciter withholding of assent without taking recourse to the first proviso as that virtually amounts to the exercise of absolute veto by the Governor, a power which is conspicuously absent from our constitutional scheme.

210. In the absence of any message under the first proviso by the Governor, the State legislature was left with no other option but to proceed on the assumption that the bills were required to be reconsidered in its entirety. The State legislature proceeded on this assumption and the said 10 Bills were reconsidered in a special sitting and were passed without any material changes and presented to the Governor on the same day. Thereafter, the Governor, rather than giving his assent to the Bills, went on to reserve the Bills for the consideration of the President on the ground that the Bills were repugnant to Entry 66 of the List I of the Schedule VII to the Constitution.

211. For the reasons that we have assigned in our foregoing discussion, we are of the view that the Governor could not have reserved the Bills for the consideration of the President once they were reconsidered by the State legislature and presented to him without any amendments, particularly when the Governor sent back the Bills to the State legislature without any message on an earlier occasion. As a natural consequence of the reservation of the bills for the consideration of the President having been found to be in contravention of the procedure prescribed under Article 200 of the Constitution and thus, illegal and void, any subsequent decision taken by the President on those Bills would also be non-est and is thus declared to be void ab-initio.

iii. Whether there is an express constitutionally prescribed time-limit within which the Governor is required to act in the exercise of his powers under Article 200 of the Constitution?

212. It was argued by the petitioner that the Governor in exercise of his powers under Article 200 is required to act promptly and the absence of any prescribed time period should not be construed as allowing the Governor the liberty to act on his own free will and volition. It was also submitted that the expression "as soon as possible" appearing in the first proviso places an obligation on the Governor to act promptly and with expedience.

213. The petitioner also placed reliance on the recommendations made by the Sarkaria Commission and the Punchhi Commission to argue that the Court

should read in some time-limit into the scheme of Article(s) 200 and 201 respectively to prevent inaction on the part of the Governor and the President.

214. Refuting the contention of the petitioner, the learned Attorney General argued that in the absence of any prescribed time-limit in the text of the provision, it would not be open to the Court to read in a time-limit and the only way to do so would be by way of a constitutional amendment. He placed reliance on the decision of this Court in Nambudiri (supra) to argue that this Court had expressly rejected the idea that there is a time limit which circumscribes the exercise of functions of the Governor under Article 200.

215. The arguments advanced before us present an interesting question whether it would be open to the courts to read in a time limit for the exercise of a power by a constitutional authority where no such limit is prescribed by the Constitution. We have expressly held during the course of answering the previous issue that the scheme of Article 200 does not envisage either the exercise of a pocket or an absolute veto by the Governor.

The use of the expression "shall" in the substantive part indicates that the Governor is under an obligation to choose from one of the three options that are made available to him. By virtue of the first proviso attaching itself to the option of withholding of assent, as discussed earlier, the possibility of an absolute veto is also ruled out as the Governor must assent to the bill once it is presented to him after the procedure prescribed in the first proviso is complied with.

216. However, unlike many countries across the globe wherein a provision for deemed assent upon the expiry of the specified time period has been made, there is no such provision in our Constitution. The only manner in which a temporal imperative has been weaved into the scheme of Article 200 is by the use of the expression "as soon as possible" in the first proviso. The said expression, which also appears in Article 111 of the Constitution, was the subject of some debate in the Constituent Assembly.

217. Article 111, which provides for the President's assent to bills passed by Parliament was originally numbered as Article 91 under the Draft Constitution and it provided a time-limit of six-weeks to the President to send back the bill to the House(s) for reconsideration. The Draft article read as follows:

"When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent therefrom:

Provided that the President may, not later than six weeks after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provision

thereof, and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Houses shall reconsider the Bill accordingly."

218. During the Constituent Assembly debates, Dr. B.R. Ambedkar moved an amendment to substitute the expression "not later than six weeks" with "as soon as possible". Further in the debate, Shri Naziruddin Ahmad advocated for a change in the aforesaid amendment and sought to substitute the term "as soon as possible" with "as soon as may be". His contention rested on the reasoning that the phrase, "as soon as possible" which was introduced by Dr. Ambedkar in his amendment in place of the original wording used in Article 91, that is, "not later than six weeks", imposed an unduly stringent obligation upon the President.

He was of the opinion that "as soon as possible" mandates immediate action, thereby curtailing the President's scope to engage in a careful and deliberate review of the bill presented for assent. He expressed concern that such a rigid constraint could give rise to hasty decisions, devoid of any careful examination of the presented bill. In his view, the formulation ran the risk of undermining the quality of the President's judgment under Article 111. He expressed his opinion as follows:

"The Proviso is to the effect that "the President may, as soon as possible, after the presentation of the Bill, return the Bill," and so on. I want to make it "as soon as may be". If we leave it exactly as Dr. Ambedkar would have it, it leaves no margin. 'As soon as possible' means immediately. Possibility which means physical possibility is the only test. It may leave no breathing time to the President. The words 'may be' give him a reasonable latitude. It would mean, "reasonably practicable". This is the obvious implication. That is the only reason why I have suggested amendment."¹⁰

219. To avoid the aforesaid possibilities, Shri Naziruddin Ahmad proposed the adoption of "as soon as may be", which he interpreted to mean "as soon as is reasonably practicable". In his opinion, this change would allow the President greater flexibility and sufficient time to thoroughly examine the provisions of the bill presented to him. Such freedom would prove particularly valuable when the President contemplates returning the bill to the House(s) for reconsideration, especially in circumstances where amendments might be recommended. The essence of Shri Ahmad's amendment was to safeguard the President's ability to render well-reasoned and thoughtful decisions without any rigid time constraints.

220. Shri P.S. Deshmukh expressed his opposition to the amendment proposed by Dr. B.R. Ambedkar, deeming the suggested substitution of the words as unnecessary. He, on the other hand, argued that the original phrasing, particularly the expression "not later than six weeks", ought to remain unaltered, as it

established a precise time frame for the President to act accordingly. He further argued that this specific time frame mandated that the President must convey his decision to return the bill for reconsideration as expeditiously as possible, and in no event beyond six-weeks. He opined that preserving the words "not later than six weeks" was quintessential to ensure timely action, thereby preventing undue delays in the legislative process to send the bills back to the House(s) for reconsideration.

221. Shri H.V. Kamath vehemently opposed the amendment put forward by Dr. Ambedkar. Advocating for expeditious and timely action, he argued that, "in human nature, if you will permit me to say so, unless there is a compelling sense of duty or service, there is always a tendency to procrastinate".¹¹ It was his opinion that such tendencies to procrastinate must be rooted out by infusing a standard of duty or service to ensure timely action on part of the President.

He further opined that there exists no assurance that every President of India will consistently adhere to the principle of timely action in legislative processes. Therefore, according to him, it was very necessary that the "Constitution should provide specifically a time limit for a contingency of this nature"¹². He believed the phrase "as soon as possible" to be vague, purposeless and meaningless, and argued that such vague phrases have no place in a provision of such an important nature.

222. In light of the debate which took place on 20th May 1949, the proposed amendment to Article 91 was adopted by the Assembly, thereby substituting the expression "not later than six weeks" with "as soon as possible" and the same came to be added to the Constitution.

223. What can be postulated from this discussion of the relevant Constituent Assembly debates is that although our constitutional makers expressed their concerns for the possibility of an undue delay in the legislative process on account of the human nature to procrastinate, yet they nevertheless proceeded to adopt the phrase "as soon as possible" in the original Article 91. This adoption and amendment of draft Article 91 reflects a sense of inherent trust reposed by the Constituent Assembly that the President would execute his functions as enshrined under Article 111 of the Constitution in a timely and efficient manner.

224. The expression also came to be adopted *mutatis mutandis* in Article 200. The experience of the working of the Constitution, more particularly, Article 200, has shown that the apprehensions expressed by some of the members of the Constituent Assembly have unfortunately proven to be prophecy. As we have discussed in the preceding paragraphs, one of the prominent grievances of the State governments as recorded by the Sarkaria Commission and Punchhi Commission reports was that the exercise of the power under Article 200 by the

Governor, not being a time-bound process, leads to significant legislative delay and that certain bills are withheld in the Governor's secretariat for years.

225. Not taking any action on the bills for an unreasonable and prolonged period of time virtually vests the Governor with the power of pocket veto and the same cannot be held to be permissible within our constitutional scheme. Dr. Singhvi had submitted during the course of his arguments that there is no scope for the Governor to decide not to decide. Article 200, being the final step in the process of the birth of a legislative enactment, the stage wherein life is breathed into an otherwise lifeless document, cannot be interpreted in a manner which allows the Governor to remain silent and exhibit inaction upon the bills which are submitted to him after having received the approval of the majority of the State legislature.

226. This Court in *Durga Pada Ghosh v. State of West Bengal* reported in (1972) 2 SCC 656 whilst dealing with a writ in the nature of habeas corpus was called upon to examine the meaning and import of the expression "as soon as may be" appearing in Article 22(5) of the Constitution and its significance in communication of the grounds of detention and disposal of the representation of the detenu. In the said case, the detenu came to be arrested and put in preventive detention in December, 1971. The detenu moved a representation which was received in early January, 1972. However, his representation came to be considered by the State government therein only in February, 1972 and his detention was confirmed and communicated in March, 1972.

The detenu challenged the order of preventive detention passed against him on the ground that there was an inordinate delay of almost two months on part of the State government in considering his representation even though the same had been received in January itself. This Court held that the aforesaid expression must be seen in the context of the scheme underlying Article 22, more particularly, the importance that it occupies in the constitutional set-up as regards the personal freedom of an individual and in a manner whereby the provision does not lose both its purpose and meaning.

The words "as soon as may be" in such context implies anxious care on the part of the authority concerned to perform its duty in this respect, as early as practicable, without avoidable delay. The course of action which is expected from the concerned authority; being communication of the grounds of arrest and disposal of the representation, was required to be considered with a sense of urgency and must be done with due promptitude or expedition and with reasonable dispatch.

It was further held that although there is no definite time-limit which can be laid down within which such actions must be done, yet at the same time, whether the appropriate authority had disposed of its obligation as expeditiously as possible

ought to be looked into keeping in mind the peculiar facts and circumstances of each case. It further held that such constitutional obligations cannot be ignored or justified on reasons of administrative delay except where it is shown that ample arrangements were made to cope with the situation that led to a delay and a certain degree of priority was accorded. The relevant observations read as under:

"7. Now it is not disputed before us that on the question of delay in considering the representation by the State Government no hard and fast rule can be laid down and it is a matter which falls for decision on the facts and circumstances of each case. It may in this connection be pointed out that in Jayanarayan case the writ petition was referred to a Bench of five Judges to consider as to what would be the question of period within which the State Government could dispose of the representation of the detenu because it was felt that there was an apparent conflict between Shyamal Chakraborty v. Commissioner of Police, Calcutta and Khairul Haque v. State of West Bengal. After considering the various decisions on the point this Court expressly concluded thus:

"No definite time can be laid down within which a representation of a detenu should be dealt with save and except that it is a constitutional right of a detenu to have his representation considered as expeditiously as possible. It will depend upon the facts and circumstances of each case whether the appropriate Government has disposed of the case as expeditiously as possible for otherwise in words of Shelat, J., who spoke for this Court in the case of Khairul Haque:

'it is obvious that the obligation to furnish the earliest opportunity to make a representation loses both its purpose and meaning'."

8. The scheme underlying Article 22 of the Constitution highlights the importance attached in our constitutional setup to the personal freedom of an individual. Sub-articles (1) and (2) refer to the protection against arrest and detention of a person under the ordinary law. Persons arrested or detained under a law providing for preventive detention are dealt with in sub-articles (4) to (7). Sub-article (5) says that when a person is detained in pursuance of an order under a law providing for preventive detention the grounds on which the order is made have to be communicated to the person concerned as soon as may be and he has to be afforded earliest opportunity to represent against the order.

The object of communicating the grounds is to enable the detenu to make his representation against the order. The words "as soon as may be" in the context must imply anxious care on the part of the authority concerned to perform its duty in this respect as early as practicable without avoidable delay. Similarly, when the representation is made it is in the fitness of things that the said representation should be considered with the same sense of urgency with which the grounds are intended to be communicated to the detenu. That is the only way

in which the purpose, for which the earliest communication of the grounds to the person concerned is provided, can be achieved.

The representation must, therefore, be considered with due promptitude or expedition and without avoidable delay, in other words with reasonable dispatch. As held by this Court in Jayanarayan case, the representation should be considered as expeditiously as possible. As the question of delay in considering the representation falls for determination on the facts and circumstances of each case the binding force of a past precedent for a later case would largely depend on the degree of close similarity of the circumstances dealt with therein."

(Emphasis supplied)

227. In *Keisham* (supra) the question that arose before this Court was whether courts can direct the Speaker to decide disqualification petitions pending before it within a reasonable period of time, and this Court speaking eruditely through R.F. Nariman, J., answering the aforesaid question in an affirmative held as under:

(i) First, that the Speaker, being the quasi-judicial authority for the purposes of the Tenth Schedule, is duty bound to take a decision on disqualification petitions within a reasonable time. Any failure of the Speaker in exercising his jurisdiction or refraining from deciding such petition within a reasonable time would be an error that would attract the scrutiny of the courts in judicial review, notwithstanding the exclusive jurisdiction to the exclusion of the courts that has been conferred upon the Speaker in terms of Paragraph 6 of the Tenth Schedule. The relevant observations read as under:-

24. It is clear from a reading of the judgment in *Rajendra Singh Rana* and, in particular, the underlined portions [italicised herein] of paras 40 and 41 that the very question referred by the two-Judge Bench in *S.A. Sampath Kumar* has clearly been answered stating that a failure to exercise jurisdiction vested in a Speaker cannot be covered by the shield contained in Para 6 of the Tenth Schedule, and that when a Speaker refrains from deciding a petition within a reasonable time, there was clearly an error which attracted jurisdiction of the High Court in exercise of the power of judicial review.

(Emphasis supplied)

(ii) Secondly, it observed that although Paragraph 6 of the Tenth Schedule vests the Speaker with an exclusive jurisdiction to decide disqualification petitions and ousts the reach of courts in such matters, yet it does not mean that there is no scope of judicial review by the courts or that the power to pass any direction(s) to the Speaker acting under the Tenth Schedule does not exist. It was observed that the true purport of such exclusive jurisdiction was only to ensure that no obstacle

comes in the way of the Speaker in deciding such petitions by way of injunctions from the courts. However, it by no means interdicts the exercise of judicial review in aiding a prompt decision on such disqualification petitions to ensure that the Speaker decides these issues within a reasonable period. The relevant observations read as under:

"30. A reading of the aforesaid decisions, therefore, shows that what was meant to be outside the pale of judicial review in para 110 of Kihoto Hollohan are quia timet actions in the sense of injunctions to prevent the Speaker from making a decision on the ground of imminent apprehended danger which will be irreparable in the sense that if the Speaker proceeds to decide that the person be disqualified, he would incur the penalty of forfeiting his membership of the House for a long period. Paras 110 and 111 of Kihoto Hollohan do not, therefore, in any manner, interdict judicial review in aid of the Speaker arriving at a prompt decision as to disqualification under the provisions of the Tenth Schedule. Indeed, the Speaker, in acting as a tribunal under the Tenth Schedule is bound to decide disqualification petitions within a reasonable period."

(iii) Lastly, it held that although what would be a 'reasonable period' for deciding such petitions by the Speaker largely depends on the facts of each case yet, where there are no exceptional circumstances, the Speaker should arrive at a decision within an outer time-limit of threemonths so that the avowed constitutional objective of anti-defection under the Tenth Schedule is not defeated. The relevant observations read as under:

"30. What is reasonable will depend on the facts of each case, but absent exceptional circumstances for which there is good reason, a period of three months from the date on which the petition is filed is the outer limit within which disqualification petitions filed before the Speaker must be decided if the constitutional objective of disqualifying persons who have infringed the Tenth Schedule is to be adhered to. This period has been fixed keeping in mind the fact that ordinarily the life of the Lok Sabha and the Legislative Assembly of the States is 5 years and the fact that persons who have incurred such disqualification do not deserve to be MPs/MLAs even for a single day, as found in Rajendra Singh Rana, if they have infringed the provisions of the Tenth Schedule."

(Emphasis supplied)

228. The aforesaid view was reiterated in State of Telangana v. Governor of Telangana reported in (2024) 1 SCC 405 wherein this Court whilst dealing with a similar issue pertaining to the pendency of a few bills before the Governor of Telangana, held that the expression "as soon as possible" in Article 200 has significant constitutional content and must be borne in mind by the constitutional authorities. The relevant observations read as under:

"2. The first proviso to Article 200 states that the Governor may "as soon as possible after the presentation" of the Bill for assent, return the Bill if it is not a Money Bill together with a message for reconsideration to the House or Houses of the State Legislature. The expression "as soon as possible" has significant constitutional content and must be borne in mind by constitutional authorities."

(Emphasis supplied)

229. In *Ram Chand* (supra) certain parcels of land had been demarcated and declared for compulsory acquisition vide a notification, sometime between the years 1959-1965. However, the awards for compensation came to be passed almost fourteen-years later in the year 1980. These awards came to be challenged before this Court on the ground that since the statute in question provides for payment of compensation in respect of the acquisition made at the market value of the land, as it stood, at the time of publication of the notification for declaration, the same necessarily meant that compensation ought to be paid expeditiously and without delay.

This Court held that although the legislature by way of an amendment has now prescribed a time-limit for making an award, yet it does not mean that prior to such amendment there was no time-limit for payment of compensation or that an award could be passed by the authorities at their own pace and leisure. It held that where for exercise of any power no time-limit has been prescribed, such power has to be exercised within a reasonable period of time. It further held that sans any fixed time-limit, such powers cannot be exercised or subjected to delay in a manner that violates or circumvents the object of the statute and the constitutional mandate under Article 31A of timely acquisition and adequate compensation, respectively. The relevant observations read as under:

"14. The Parliament has recognized and taken note of the inaction and non-exercise of the statutory power on the part of the authorities, enjoined by the provisions of the Act to complete the acquisition proceedings within a reasonable time and because of that now a time-limit has been fixed for making of the award, failing which the entire proceeding for acquisition shall lapse. But, can it be said that before the introduction of the aforesaid amendment in the Act, the authorities were at liberty to proceed with the acquisition proceedings, irrespective of any schedule or time-frame and to complete the same as and when they desired?

It is settled that in a statute where for exercise of power no time-limit is fixed, it has to be exercised within a time which can be held to be reasonable. This aspect of the matter can be examined in the light of second proviso to Article 31-A of the Constitution, which in clear and unambiguous terms prohibits making of any law which does not contain a provision for payment of compensation at a rate,

which shall not be less than the market value thereof. The Act is consistent with the second proviso to Article 31-A, because it provides for payment of compensation at the market value of the land acquired.

But, whether the constitutional and statutory requirement of the payment of the market value to the persons, whose lands have been compulsorily acquired, is not being circumvented and violated by keeping the land acquisition proceedings pending for more than a decade and half, without making the awards and paying the compensation, which has been pegged to the dates of notifications under sub-section (1) of Section 4 of the Act, which in the present cases had been issued 14 to 21 years before the making of the awards."

(Emphasis supplied)

230. In A.G. Perarivalan (supra) the facts germane for our discussion are that the appellant convict therein had filed a mercy petition under Article 161 to the Governor in December, 2015. The State Cabinet recommended the grant of remission to the Governor in 2018. However, the Governor did not take any decision on the mercy petition for two years despite receiving the recommendation of the State Cabinet. Thereafter, upon a direction of this Court, the Governor in 2021, by an order, forwarded the mercy petition of the appellant to the President citing that the Union is the appropriate authority to decide the same. This reference came to be challenged before this Court wherein it was held as under:

(i) First, it was held that the "limits within which the executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the executive which our Constitution has set up". The Court observed that although the Governor is the head of the executive in the State, yet in actuality, it is the Council of Ministers that carries on the executive Government. It held that as per Article 163, the Governor shall exercise his functions provided under different provisions of the Constitution only under the aid and advice of the Council of Ministers except where he under the Constitution has been expressly authorised to exercise such functions in his discretion. This Court, speaking through L. Nageswar Rao, J., described this relation of the Governor and the Council of Ministers as "a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part". The relevant observations read as under:

"18. The power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of an offence against any law related to which the executive power of the State extends is vested in the Governor under Article 161 of the Constitution. Article 162 makes it clear that the executive power of the State shall extend to matters with

respect to which the legislature of the State has power to make laws. Article 163 of the Constitution provides that there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except insofar as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

19. The limits within which the executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the executive which our Constitution has set up. Our Constitution, though federal in its structure, is modelled on the British parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State.

The Governor occupies the position of the head of the executive in the State but it is virtually the Council of Ministers in each State that carries on the executive Government. In the Indian Constitution, therefore, we have the same system of parliamentary executive as in England and the Council of Ministers consisting, as it does, of the members of the legislature is, like the British Cabinet, "a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part

20. Under the Cabinet system of Government as embodied in our Constitution the Governor is the constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion.

Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise of any power or function by the President or the Governor, as the case may be, as for example in Articles 123, 213, 311(2) proviso (c), 317, 352(1), 356 and 360, the satisfaction required by the Constitution is not the personal satisfaction of the President or of the Governor but is the satisfaction of the President or of the Governor in the constitutional sense under the Cabinet system of Government. It is the satisfaction of the Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions.

21. Even though the Governor may be authorised to exercise some functions, under different provisions of the Constitution, the same are required to be exercised only on the basis of the aid and advice tendered to him under Article 163, unless the Governor has been expressly authorised, by or under a

constitutional provision, to discharge the function concerned, in his own discretion."

(ii) Secondly, it observed that the law is clear and explicit - the advice of the State Cabinet is binding on the Governor when it comes to the exercise of powers under Article 161. In the absence of any other provision under the Constitution or any statute in this regard, the Governor could not have deviated from the binding recommendations of the State Cabinet and referred the mercy petition to the President. It was held that such an action is contrary to the constitutional scheme. The relevant observations read as under:

"24. The law laid down by this Court, as detailed above, is clear and explicit. The advice of the State Cabinet is binding on the Governor in matters relating to commutation/remission of sentences under Article 161. No provision under the Constitution has been pointed out to us nor any satisfactory response tendered as to the source of the Governor's power to refer a recommendation made by the State Cabinet to the President of India. In the instant case, the Governor ought not to have sent the recommendation made by the State Cabinet to the President of India.

Such action is contrary to the constitutional scheme elaborated above. It is relevant to point out that the recommendation made by the State Cabinet was on 9-9-2018, which remained pending before the Governor for almost two-and-a-half years without a decision being taken. It was only when this Court started enquiring about the reason for the decision being delayed, the Governor forwarded the recommendation made by the State Government for remission of the appellant's sentence to the President of India."

(Emphasis supplied)

(iii) Thirdly, as regards the inaction of the Governor in deciding the mercy petition for more than two-years, this Court held that although there is a certain degree of immunity with respect to the exercise of powers by the Governor under the Constitution, yet it is an equally settled position that the courts have the power to judicially review the functioning of the Governor on certain grounds. It held that a nonexercise of these powers, such as, under Article 161 is one such ground for the exercise of judicial review as the said provision pertains to the liberty of individuals and any inexplicable delay not on account of the prisoners, is inexcusable. The relevant observations read as under:

"24. It is relevant to point out that the recommendation made by the State Cabinet was on 9-9-2018, which remained pending before the Governor for almost two-and-a-half years without a decision being taken. It was only when this Court started enquiring about the reason for the decision being delayed, the Governor

forwarded the recommendation made by the State Government for remission of the appellant's sentence to the President of India.

25. We are fully conscious of the immunity of the Governor under the Constitution with respect to the exercise and performance of the powers and duties of his office or for any act done or purported to be done by him in the exercise and performance of such powers and duties. However, as held by this Court in numerous decisions, this Court has the power of judicial review of orders of the Governor under Article 161, which can be impugned on certain grounds.

Non-exercise of the power under Article 161 is not immune from judicial review, as held by this Court in *Epuru Sudhakar v. State of A.P.* Given petitions under Article 161 pertain to the liberty of individuals, inexplicable delay not on account of the prisoners is inexcusable as it contributes to adverse physical conditions and mental distress faced by a prisoner, especially when the State Cabinet has taken a decision to release the prisoner by granting him the benefit of remission/commutation of his sentence."

(Emphasis supplied)

(iv) Lastly, as regards the contention of the respondents that the decision of the Governor to forward the mercy petition to the President was done in exercise of his discretion owing to the irrational recommendation of the Cabinet in line with the ratio of *M.P. Special Police* (supra), this Court held that the aforesaid decision would not be applicable, since there is nothing to make out a case of irrational or non-consideration of relevant factors by the State government to warrant the Governor exercising his discretion and deviating from their recommendations as laid down in *M.P. Special Police* (supra). The relevant observations read as under:

"29. We are afraid that the judgment of this Court in *M.P. Special Police Establishment* is not applicable to the facts of the present case. No arguments have been put forth to make out a case of non-consideration of relevant factors by the State Cabinet or of the State Cabinet having based its recommendation on extraneous considerations. Moreover, in the said case, the Governor had taken a decision which was subsequently challenged, unlike the present case, where the Governor has merely forwarded the recommendation made by the State Cabinet to the President of India."

Accordingly, this Court held as under:

"38. In conclusion, we have summarised our findings below:

38.1. The law laid down by a catena of judgments of this Court is well settled that the advice of the State Cabinet is binding on the Governor in the exercise of his powers under Article 161 of the Constitution.

38.2. Non-exercise of the power under Article 161 or inexplicable delay in exercise of such power not attributable to the prisoner is subject to judicial review by this Court, especially when the State Cabinet has taken a decision to release the prisoner and made recommendations to the Governor to this effect.

38.3. The reference of the recommendation of the Tamil Nadu Cabinet by the Governor to the President of India two-and-a-half years after such recommendation had been made is without any constitutional backing and is inimical to the scheme of our Constitution, whereby "the Governor is but a shorthand expression for the State Government" as observed by this Court.

38.4. The judgment of this Court in M.P. Special Police Establishment has no applicability to the facts of this case and neither has any attempt been made to make out a case of apparent bias of the State Cabinet or the State Cabinet having based its decision on irrelevant considerations, which formed the fulcrum of the said judgment."

(Emphasis supplied)

231. What is discernible from a reading of the decisions discussed above is that despite there being no prescribed time-limit for the Governor to take a decision under Article 200, the provision cannot be read in a manner which allows the Governor to not take action upon bills which are presented to him for assent and thereby delay and essentially roadblock the law-making machinery in the State. As held in A.G. Perarivalan (supra), the inaction of the Governor would be subject to judicial review and in the absence of any cogent reasons for the delay, it would be open to the courts to issue directions for a time-bound decision on a case-to-case basis.

232. In Purushothaman Nambudiri (supra), two questions fell for the consideration of this Court; first, whether a bill which has been pending for assent before the President or the Governor could be said to have lapsed with the dissolving or dissolution of the State legislative assembly and secondly, whether Article 200 mandates that a bill sent back by the President or the Governor for reconsideration must be looked into by the very same House that originally passed it.

Before looking into the effect of the dissolution of the House on bills pending before the Governor for assent, the Court, while examining the effect of prorogation of the House on the bills pending before the State legislature, observed that Article 196 of the Constitution that deals with the introduction and

passing of bills in the State legislature reinforces that the parliamentary form of government established under the Constitution is markedly different from the Parliament in England inasmuch as clause (3) of Article 196 explicitly stipulates that a bill pending in the legislature of a State will not lapse by reason of the prorogation of the House or Houses thereof.

233. Thereafter, the Court observed that Article 196(5) provides for three categories of cases where a bill pending before a Legislative Assembly would lapse upon its dissolution. Those are as follows:

- a. A bill pending before the Legislative Assembly of a unicameral State legislature;
- b. A bill pending before the Legislative Assembly of a bicameral State legislature; or
- c. A bill which originated in the Legislative Assembly and is yet to reach the Legislative Council.

234. In light of the aforesaid, the Court reached the conclusion that since Article 196 only stipulates as to when a bill pending in the State legislature could be said to have lapsed, be it the Legislative Assembly or the Legislative Council, any bill which has been passed by the State legislature and is pending assent of the Governor or President, would be outside the ambit of the doctrine of lapse of pending business as contained in Article 196(5) of the Constitution.

Had the intent of the framers of the Constitution been otherwise, a specific provision to that effect providing for lapse of a bill awaiting assent would have been inserted. The natural corollary of the omission of the aforesaid is that Article 196(5) is exhaustive in nature, and only the circumstances enumerated therein would result in any lapse of a pending bill, as otherwise there was no need for inserting clause (5) in Article 196 after having already provided the situations where a bill would not lapse in clause(s) (3) and (4) of the Constitution respectively.

235. Thereafter, the Court adverted to Articles 200 and 201 of the Constitution respectively in order to determine the effect of dissolution on bills pending the assent of the Governor or the President. Adverting to the procedure prescribed under Articles 200 and 201 respectively, the Court noted that both the Articles do not prescribe a time-limit within which the Governor or President are required to come to a decision on the bill presented to him unlike other provisions in the Constitution where it was felt necessary and expedient to prescribe a time-limit such as Articles 197(1)(b) and (2)(b) respectively.

This, in the opinion of the Court, necessarily meant that the omission in prescribing a time-limit within which the Governor or the President should reach a decision under Articles 200 and 201 respectively suggests that the framers of the Constitution knew that a bill pending the assent of the Governor or the President does not stand the risk of getting lapsed on the dissolution of the Assembly. Any other contrary view would lead to a chilling effect whereby a fair number of bills which may have been passed by the Assembly during the last months of its existence, may be exposed to the risk of lapse, consequent to the dissolution of the Assembly, unless assent is either withheld or granted before the date of the dissolution, which could not have been the intention in the absence of a time-limit under Articles 200 and 201 respectively. The relevant observations read as under:

"15. It is clear that if a Bill pending the assent of the Governor or the President is held to lapse on the dissolution of the Assembly it is not unlikely that a fair number of Bills which may have been passed by the Assembly, say during the last six months of its existence, may be exposed to the risk of lapse consequent on the dissolution of the Assembly, unless assent is either withheld or granted before the date of the dissolution. If we look at the relevant provisions of Articles 200 and 201 from this point of view it would be significant that neither Article provides for a time limit within which the Governor or the President, should come to a decision on the Bill referred to him for his assent. Where it appeared necessary and expedient to prescribe a time limit the Constitution has made appropriate provisions in that behalf (vide : Article 197(1)(b) and (2)(b)).

In fact the proviso to Article 201 requires that the House to which the Bill is remitted with a message from the President shall reconsider it accordingly within a period of six months from the date of the receipt of such message. Therefore, the failure to make any provision as to the time within which the Governor or the President should reach a decision may suggest that the Constitution-makers knew that a Bill which was pending the assent of the Governor or the President did not stand the risk of lapse on the dissolution of the Assembly. That is why no time limit was prescribed by Articles 200 and 201. Therefore, in our opinion, the scheme of Articles 200 and 201 supports the conclusion that a Bill pending the assent of the Governor or the President does not lapse as a result of the dissolution of the Assembly, and that incidentally shows that the provisions of Article 196(5) are exhaustive."

(Emphasis supplied)

236. What is clearly discernible from a plain reading of the aforesaid decision is that the observations as regards the absence of a time-limit under Articles 200 and 201 respectively were made in the context of the impact of dissolution of the State legislature on the bills which were pending assent from the Governor.

Applying the doctrine of constitutional continuity of the State legislature as an institution and the absence of any specific time-limit prescribed under Article 200, the Court arrived at a finding that such bills would not lapse by virtue of dissolution of the State legislature.

It is important to note that the observations in Nambudiri (*supra*) were not made in the context of the expediency with which the Governor is expected to act in discharge of his duties under Article 200. Further, while this Court said that there was no prescribed time-limit in Article 200, it held that the reason for this was that the framers of the Constitution knew that such a bill would not lapse automatically with the dissolution of the House. It was never observed or even remotely indicated by this Court that the exercise of power by the Governor under Article 200 was not of an urgent or expedient character and thus, could be exercised even beyond reasonable time.

237. It is crucial to understand that the prescription of a general time-limit by this Court within which the ordinary exercise of power by the Governor under Article 200 must take place, is not the same thing as amending the text of the Constitution to read in a time-limit, thereby fundamentally changing the procedure and mechanism of Article 200. This is because, reading such a time-limit into the provision neither militates against the underlying object of the said provision nor does it alter the procedure that is envisaged therein.

On the contrary, it only reinforces the sense of expediency and urgency that has been time and again emphasized since the adoption of the Constitution. The reason why the prescription of a time-limit does not tantamount to an alteration or amendment is because the time-limit that is being prescribed by cannot be understood to be a hanging sword on the Governor whereby even an unavoidable non-compliance would automatically ensue consequences of 'assent'. The nature of such prescription is quite different which may be better explained through the concept of judicial review.

238. For the exercise of judicial review, the existence of a certain set of definitive standards against which the courts can embark upon their scrutiny, is quintessential. Without these standards, the power of judicial review could be said to be ineffective in certain contexts which shall be elucidated upon in the latter parts of the judgment. The doctrine of stare-decisis is not just concerned with ensuring that decisions of higher courts or of larger benches are duly adhered to and questions of law already settled and put to quietus by higher judicial authorities are not disturbed.

The idea is also to infuse a sense of judicial comity within the intertwined hierarchical courts in the manner of their functioning. Additionally, one of the core precepts of staredecisis is that not only the decisions but the very decision-

making process of the courts are predicated upon a discernible standard, often coined as 'judicially manageable standards'. We shall discuss this in more detail in the later parts of this judgment.

239. Any time-limit in the exercise of powers in terms of Article 200 of the Constitution should not be construed as timelines laid within the edifice of the provision, rather should be understood as timelines that would serve as a lodestar for the purpose of exercise of judicial review by the courts, a benchmark tool to aid and enable the courts in ascertaining if any inaction or malfeasance has occasioned in the exercise of such powers. These timelines no doubt demand the earnest adherence by the Governor, however, these being nothing more than tools upon which scrutiny by judicial review is to be premised, remain as prescriptions within the realm of judicial review alone and do not transgress into the legislative bounds or amount to alteration of the text or authority of Article 200 of the Constitution.

The reason why these time-lines do not immolate the very fabric of Article 200 is because the said provision even with the infusion of these time-limit still remains markedly different from its counterpart provisions where such timelimits are legislatively prescribed. For instance, Article 75 of the Constitution of the Islamic Republic of Pakistan or Article I, Section 7 of the U.S. Constitution, where if no decision is taken within the stipulated time-limit by the President then the bills are deemed to have been assented to.

240. Thus, it is important to take note of this very fine but pertinent distinction that the prescription of a time-limit by this Court into Article 200 of the Constitution does not fundamentally change the procedure which has been envisaged. While the reading in of a time-limit under Article 200 would have meant that there would be deemed assent upon failure of the Governor to comply with the said timeline, the prescription of a reasonable time period does not introduce any such mechanism or deeming fiction in Article 200.

241. What emerges from the above is that the fine but pertinent distinction between the time-limits that are expressly prescribed and those that are judicially evolved is only that in the former the consequence of deemed assent emanates from the provision itself whereas in the latter there could be no such consequence except to the extent that the courts judicially reviewing the action or inaction can direct a decision to be taken within a time-bound manner, or in exceptional cases like the one at hand, deem the assent to have been granted under Article 142 of the Constitution, which we shall again discuss in the later parts of this judgment.

242. When prescribing such a time-limit for the exercise of power under Article 200, we are guided by the inherent expedient nature of the procedure prescribed thereunder and the well-settled legal principle that where no timelimit for the

exercise of a power is prescribed, it should be exercised within a reasonable period.

243. What would be a reasonable period would vary from situation to situation, however, in the present case, taking guidance from the timelines that have been prescribed by the Sarkaria and the Punchhi Commission, we have arrived at the view that in the absence of any exceptional circumstances, the Governor would be able to exercise his powers under the Article within the maximum period prescribed by us.

244. While the reading in of an absolute time-limit would have left the Governor with no choice but to comply with it, the prescription of the judicially evolved time-limits by us leaves it open for the Governor to justify the delay caused by providing reasonable grounds. Delay caused by the Governor beyond the prescribed time-limits would be justiciable and the courts, with deference to applicable judicial principles, would be fully competent to ascertain whether the delayed exercise of power by the Governor under Article 200 was based on any reasonable grounds or not.

245. The prescription of a time-limit is with a view to ensure that the Governor is not conferred with the power of exercising a pocket veto under the scheme of Article 200, and hinder the law-making process in the State without the existence of any reasonable grounds. While the decision in Nambudiri (supra) does not make the prescription of such a time-limit by the Court impermissible, the decisions, adverted to above, vest this Court with sufficient power to ensure that the procedure prescribed under Article 200 is followed by the Governor in a constitutionally permissible manner and in line with the principles of parliamentary democracy keeping in mind the nature of the power. Such an approach also ensures that the State governments are not left remediless in cases of malicious, arbitrary or capricious exercise of power by the Governor under Article 200.

246. We also deem it necessary to prescribe a timeline for the discharge of functions by the Governor under Article 200. The Sarkaria and Punchhi Commissions in their reports adopted this view, keeping in mind the importance of an expeditious decision under Article 200 for the smooth functioning of electoral democracy in the States. An elected government gets the mandate of the people for a limited period of five-years within which it is expected to legislate on issues pertaining to the electorate.

If the Governor, for whatsoever reasons, exhibits reluctance or lethargy in decision making, particularly when it is concerned with the assent to bills, it severely impacts the ability of the government to act upon its mandate and deliver to the people who brought them into power. Any obstacle created by the

Governor, whether advertently or inadvertently, severely impacts the perception of the elected government in the subsequent elections and thereby also negatively affecting their chances of coming back into power.

The problem is further exacerbated when the political party in power in the State is different from the one at the Centre, and the Governor should be more cautious and non-partisan in the exercise of his functions in such a scenario. Any deliberate inaction on part of the Governor in assenting to bills or reserving them for the consideration of the President, thus, has to be viewed as a serious threat to the federal polity of the country and the aggrieved governments cannot be left remediless, desperately waiting for a decision at the hands of the Governor.

247. This Court in *State of Punjab (supra)* held that the Constitution terms any inaction on part of the Governor as deplorable and that he cannot indefinitely keep the bills passed by the State legislature on a chokehold. The relevant observations read as under:

"24. The Constitution evidently contains this provision bearing in mind the importance which has been attached to the power of legislation which squarely lies in the domain of the State Legislature. The Governor cannot be at liberty to keep the Bill pending indefinitely without any action whatsoever."

(Emphasis supplied)

248. It is not unusual for this Court to prescribe time-limits for the discharge of certain functions, even in cases where no specific time-limit has been prescribed. Recently, in *Periyammal (Dead) thr. LRs & Ors. v. Rajamani & Anr. Etc.* reported in 2025 INSC 329, a two-Judge Bench of this Court, of which one of us (J.B. Pardiwala, J.) was a part, directed all the High Courts to issue directions to all the District Courts to decide pending execution petitions within a period of six-months without fail. The directions read as follows:

"75. In view of the aforesaid, we direct all the High Courts across the country to call for the necessary information from their respective district judiciary as regards pendency of the execution petitions. Once the data is collected by SLP (C) Nos. 8490, 8491 & 8492 of 2020 Page 77 of 78 each of the High Courts, the High Courts shall thereafter proceed to issue an administrative order or circular, directing their respective district judiciary to ensure that the execution petitions pending in various courts shall be decided and disposed of within a period of six months without fail otherwise the concerned presiding officer would be answerable to the High Court on its administrative side. Once the entire data along with the figures of pendency and disposal thereafter, is collected by all the High Courts, the same shall be forwarded to the Registry of this Court with individual reports."

249. We have already discussed that in *Keisham* (supra), a three-Judge Bench of this Court fixed an outer time-limit of three-months for the Speaker to decide disqualification petitions under the Tenth Schedule. The Court pertinently observed that the said period was fixed "keeping in mind the fact that ordinarily the life of the Lok Sabha and the Legislative Assembly of the States is five-years". This Court has also, in a number of decisions, set down and reiterated that the High Courts must pronounce judgments on reserved matters within a period of six-months.

Inaction on part of any constitutional authority being subject to judicial review, it is important that there are reasonably laid down standards of justiciability of such inaction, and the timelines prescribed by us serve that purpose. Even the Constituent Assembly had initially laid down a period of six-weeks for the President to take action on bills submitted to him under Article 111. However, that was later changed to account for any exceptional circumstance that may arise in the discharge of functions by the President or the Governor.

However, the expression "six-months" was replaced with "as soon as possible", which though not determinable, envisages an expeditious disposal of bills, unless in cases where some impossibility exists. The prescription of timelines by us balances the objective of expediency as well as the desirability of having some flexibility in cases of existence of an impossibility in discharge of functions in an expeditious manner. Flexibility in the discharge of a function cannot be allowed to be stretched to an extent that renders the very object underlying such function otiose, resulting into the proverbial snapping of the constitutional machinery.

250. Keeping in mind the constitutional significance of Article 200 and the role it plays in the federal polity of the country, the following timelines are being prescribed. Failure to comply with these timelines would make the inaction of the Governors subject to judicial review by the courts:

- (i) In case of either withholding of assent or reservation of the bill for the consideration of the President upon the aid and advice of the State Council of Ministers, the Governor is expected to take such an action forthwith subject to a maximum period of one-month;
- (ii) In case of withholding of assent contrary to the advice of the State Council of Ministers, the Governor must return the bill together with a message within a maximum period of three-months;
- (iii) In case of reservation of bills for the consideration of the President contrary to the advice of the State Council of Ministers, the Governor shall make such reservation within a maximum period of three months; In case of presentation of

bill after reconsideration in accordance with the first proviso, the Governor must grant assent forthwith, subject to a maximum period of one-month.

251. Failure to comply with the timelines prescribed above would make the inaction on part of the Governor amenable to judicial review. We shall also deal with the necessity of expeditiously disposing of the references under Article 201 by the President in subsequent parts of this judgment.

iv. Whether the Governor in the exercise of his powers under Article 200 of the Constitution can only act in accordance with the aid and advice tendered to him by the State Council of Ministers?

252. Significant time was spent during the course of the arguments on the key issue of the scope of discretion enjoyed by the Governor in exercise of his powers under Article 200, more particularly, as regards the reservation of bills for the consideration of the President.

253. Mr. Rohatgi, learned Senior Counsel, submitted that the act of the Governor amounts to a subversion of the Constitution. He further emphatically submitted that it indeed amounted to a subversion of the Constitution.

254. He also submitted that there was no discretion available to the Governor under the scheme of Article 200 of the Constitution and the only exception to the same was provided in the second proviso to Article 200 itself. In other words, he contended that the Governor could only reserve a bill against the advice tendered to him by the Council of Ministers, if the bill was of a description as provided in the second proviso. He submitted that in all other cases, the reservation of a bill for the consideration of the President had to take place strictly in accordance with the advice of the Council of Ministers.

255. This argument was also endorsed by Dr. Singhvi, who added that the observations made in B.K. Pavitra (supra) as regards the discretion of the Governor under Article 200 of the Constitution have to be understood in the context of the reservation taking place on the aid and advice of the Council of Ministers.

256. Mr. Dwivedi, placing reliance on the deletion of the expression "in his discretion" from both the substantive part of Article 200 as well the first proviso by the Constituent Assembly, proposed an even stricter interpretation of Article 200. He argued that the deletion of the expression "in his discretion" indicated that the intention of the framers of the Constitution was crystal clear that the Governor should have no semblance of discretion while exercising his powers under Article 200 and he should act in accordance with the advice rendered by the Council of Ministers. He further submitted that it is not just reservation of the bills for the consideration of the President, but the grant of assent, as well as the

decision to send the bill back to the State legislature together with a message upon the withholding of assent, which must be taken strictly in accordance with the advice of the Council of Ministers.

257. The Attorney General, per contra, argued that while exercising his powers under Article 200, the Governor is discharging an important constitutional obligation, and even if he does not exercise individual discretion, he may still act against the aid and advice of the Council of Ministers if he is so required to, in the discharge of his constitutional duties.

258. An answer to the aforesaid question cannot be arrived at without first answering the following sub-questions:

a. How has the office of the Governor been envisaged by the constitutional scheme? In what manner does he play a dual role in the federal polity of the country?

b. Whether the Governor enjoys a certain degree of discretion in discharge of his duties under the Constitution? What is the source of such discretion?

c. Does the deletion of the expression "in his discretion" from Article 175 of the Draft Constitution imply that the Governor has no discretion available in the exercise of his powers under Article 200?

a. The Office of the Governor

259. With the enactment of the Government of India Act, 1858, the administration of India transitioned from the East India Company to the British Crown, bringing about a new administrative framework wherein the Governor, as an agent of the Crown, operated under the general supervision of the Governor-General. While this structure prevailed, the Montagu- Chelmsford Reforms of 1919, which culminated into the GoI Act, 1919, marked the early stirrings of responsible government, albeit in a nascent form. Despite this shift, the Governor remained central to the provincial administration, continuing to wield significant authority.

260. The GoI Act, 1935, ushered in the era of provincial autonomy and formally required the Governor to act on the advice of the Ministers who were accountable to the provincial legislature by abolishing the system of dyarchy at the provincial level, while introducing it at the central level. However, the Act also conferred upon the Governor certain special responsibilities, such as maintaining peace and tranquility within the province and safeguarding minority interests. These responsibilities necessitated the exercise of discretion by the Governor in specific matters. Further, the autonomy of the Governor in such cases remained subject to

the general superintendence and control of the Governor-General, ensuring oversight over the exercise of his individual judgment.

261. The declaration of Independence brought about a fundamental transformation in the role of the Governor. Until the Constitution came into effect, the provisions of the GoI Act, 1935, as modified by the India (Provisional Constitution) Order, 1947 (for short, the "Adaptation Order"), governed the administration of the country. Significantly, the Adaptation Order omitted the expressions 'in his discretion', 'acting in his discretion', and 'exercising his individual judgment' from the Act, signaling a departure from the colonial framework.

262. One of the key decisions that the framers of the Constitution had to take was to decide the mode of selection of the Governor - whether he should be elected by way of a direct election, or selected from a panel of names suggested by the State legislature, or nominated by the President. While in the early days, the Constituent Assembly leaned towards having an elected Governor, as the framing of the Constitution neared its conclusion, there was increasing support in favour of having a Governor nominated by the President. Jawaharlal Nehru attributed this shift of opinion to the bitter experience of partition, which, according to him, opened the eyes of the Constituent Assembly to the dangers of separatism and the need for having a political structure which focused more on the character of the nation as a Union of States rather than a federation.

b. Constituent Assembly Debates on the mode of Selection of the Governor

263. The speeches made by some of the members of the Constituent Assembly on Article 155 of the Constitution broadly encapsulate the ideas which were debated and rejected before nomination was selected as the mode of appointment for the Governor.

264. Speaking in favour of appointment of Governors by Presidential nomination, Shri. H.V. Kamath was of the opinion that the concept of an elected Governor would undermine the structure of the country as a Union of States, since a Governor elected directly by the people on the basis of adult suffrage would place more emphasis on India being a federation. However, according to him, "the emphasis today is more upon the Union pattern of our State than upon its Federal aspect"¹³.

He believed that an elected Governor, being a partisan figure, would inevitably clash with the Chief Minister, thereby disrupting the functioning of a cabinet-style government. According to him, the role of a constitutional head should be impartial and symbolic, and the nomination system was better suited to uphold

these principles. He further elaborated on the potential tussle that would ensue between an elected Governor and the Chief Minister of the State as follows:

"If the Governor were to be elected by the direct vote of all voters in a province he is very likely to be a party-man with strong views of his own, and considering that he will be elected by the whole province-by the entire adult population of the province- he will think that he is a far superior man and a far more powerful man than the Chief Minister or Premier of the State who will be returned from one constituency only, but because he happens to be the leader of the majority party, he will be nominated Premier by the Governor.

There will be two conflicting authorities within the State: one is the Premier, whom, under this Constitution which we are considering today, we have invested with executive authority so far as the State is concerned, and the other is the Governor, who, though the Constitution does not confer on him very substantial powers and functions, will arrogate much to himself, because he will say that "I have been elected by the people of the whole province and as such I am persona gratia with the people and not the Chief Minister". Therefore, there will be in the administration of the province at every turn-if not at every turn, then very often-points of conflicts or friction between the elected Governor and the elected Chief Minister. Therefore, I think we have done very wisely in deleting or in doing away with the system of election for the Provincial Governor."¹⁴

265. Shri. Hukam Singh, opting for the middle path, acknowledged the difficulties inherent in both pure election and pure nomination for the purpose of appointment of Governors. While agreeing with Shri. H.V. Kamath on the drawbacks of an elected Governor, such as the potential for conflict with the Chief Minister and the high costs involved in conducting elections, he proposed a balanced alternative, suggesting that a panel of candidates be nominated by the State legislature and a Governor be chosen from the said panel.

This method, while allowing for some discretion would also ensure public accountability since the merits of those individuals who had been recommended in the panel would be publicly available and if the right person was not chosen, then the selection would also be criticized publicly. In his view, this approach would reduce favoritism, enhance transparency, and provide a safeguard against the abuse of power, striking a middle ground between the extremes of election and direct nomination.

266. Shri. Rohini Kumar Chaudhari opposed the nomination of Governors, cautioning that a Centre-appointed Governor belonging to a different political party than the provincial government could lead to discord and undermine provincial autonomy. The friction that would result from adopting a system wherein Governors are elected would also exist, according to him, when a

Governor is nominated, since the nominee of the President would not work in harmonious tandem with the Ministry of the State which belongs to a different political party than the one which enjoys power at the Centre.

He argued that electing Governors would ensure that they are more attuned to the needs of all communities, including marginalized groups like tribal populations in States where the Governor would have an even more important role to play. He criticized the reliance on British precedents and advocated for a more democratic process, such as election or selection from a panel, to reflect the will of the people and to also safeguard provincial interests.

267. Shri. Alladi Krishnaswami Ayyar was of the view that since the Governor is merely a constitutional head of the province and the real executive power had been vested in a ministry responsible to the Lower House of the different States, it seemed rather unnecessary, under such circumstances, to adopt the method of election based on universal suffrage for the appointment of the Governors. The nomination of Governors by the President would, in his opinion, mitigate constitutional conflicts and foster harmonious relations between the Governor and the provincial Cabinet.

He argued that an elected Governor, deriving authority from universal suffrage, might assert dominance over the Cabinet, leading to significant constitutional risks. He specifically remarked that, "In the normal working of the Government also there is danger of a clash between the Minister and the Governor, whereas the whole basis of the constitutional structure we are erecting depends upon the harmony between the legislature and the executive, and between the executive and the formal head of the Government".¹⁵

Drawing inspiration from the Canadian model, he suggested that the President's appointment of Governors, guided by the advice of the provincial Cabinet, would ensure stability and sound governance. Furthermore, according to him, "Nowhere does the system of election of the Governor exist where the Institution of responsible government is the main feature of the Constitution".¹⁶ He believed that this system would better serve the interests of the provinces and the nation as a whole.

268. It was his belief that while the method of nomination was the most appropriate one, a convention of appointing Governors in consultation with the State government would grow. This, when read with the other discussions which took place in the Constituent Assembly, indicate that the framers of the Constitution reposed trust that the Governor would not be a cipher of the Central government, would be a person above party politics and would not attempt to override the State government with his actions. He also supported the idea of having nominated Governors on the ground that the intervention of the Governor

would be required only in extraordinary situations, and an elected Governor may come in conflict with the provincial Cabinet by trying to override their decisions. His words are reproduced below:

"I see no objection to the appointment of the Governor being left to the President of the Union who has necessarily to act on the advice of the Prime Minister and his Cabinet. A convention, of consulting the provincial Cabinet might easily grow up. Such a convention, as the House is aware, has grown up in the appointment of Governors in Canada. In Australia too, though under a different Constitution, a similar convention has grown up and the Governor of a State is appointed on the advice of the provincial Cabinet. There is another aspect also which the House might take into consideration. In our Constitution we must try every method by which harmony could be secured between the Centre and the provinces.

If you have a person who is not elected by the province or the State but you have a person appointed by the President of the Union with the consent, I take it, of the provincial Cabinet, you will add a close link between the Centre and the provinces and a clash between the provinces and the Centre will be avoided which will otherwise occasionally result. Then there is another point. It is said that the Governor may occasionally have to use his extraordinary powers. This point is more in favour of nomination rather than in favour of election. If the person who is elected on the basis of universal suffrage is to come into clash with the provincial Cabinet and if he is to set himself above the provincial Cabinet, there will be a greater constitutional danger.

Even if circumstances arise when intervention by the Governor is necessary it will be only on extraordinary occasions. Even for that intervention a person who is nominated or appointed by the President with the concurrence of the provincial Cabinet is likely to take far greater care than a person who is elected by the people. On the whole, in the interest of harmony, in the interests of good working, in the interests of sounder relations between the provincial Cabinet and the Governor, it will be much better if we adopt the Canadian model and have the Governors appointed by the President with the convention growing up that the Cabinet at the Centre would also be guided by the advice of the provincial Cabinet."

(Emphasis supplied)

269. Shri. P.S. Deshmukh was of the opinion that there exist a few fundamental considerations which have to be kept in mind while discussing the appointment of the Governor. The first of these fundamental considerations was that, "if we decide that the Governor should be elected by the province on the basis of adult franchise, then it follows logically that he should be a real executive authority.

On the other hand, if you want him to be mere figurehead, if you want him to have exactly the same position as he has today under the 1935 Act and which is exactly the position which is assigned to him under the Draft Constitution, you cannot but have him appointed by the President."17.

In light of this, he buttressed his view that Governors must be nominated and not elected. Regarding the concern that adopting a system of nominating the Governor would give undue power to the Prime Minister and the President, he opined that the Prime Minister would also be a popular Prime Minister and that he can only be there as long as he has the support of the Parliament elected by the people at large. Therefore, his view was that we must not hesitate in giving powers of patronage to the Prime Minister or the President.

He also expressed concerns about the potential discord between an elected Governor and the Chief Minister or Premier, which could disrupt governance. Apart from the very real possibility of conflicts between the elected Governor and the Chief Minister which necessitated appointment via nomination, he argued, on the other hand that, if there was no conflict and there was perfect agreement or collusion between the Governor and the Chief Minister, they could agree in defying the Centre altogether and that would put the Centre in a precarious position where they would be completely blocked out from the States.

Therefore, he remarked that, "But apart from the conflict, if there is no conflict and there is perfect agreement, if these two gentlemen set the Centre at naught, what will be the position?"18. Hence, in his opinion, the appointment of Governors by the President would maintain a balance of power and ensure some degree of Central influence over provincial matters. He further suggested that Governors should serve at the pleasure of the President, thereby eliminating the need for impeachment provisions and also reinforcing the oversight of the Centre.

270. Shri. Hriday Nath Kunzru highlighted the potential for friction between Governors and their Cabinets, specifically with reference to Article 175 of the Draft Constitution, which has now been adopted as Article 200. By drawing comparisons to the Canadian model, he argued that empowering the President to disallow provincial bills directly by overriding the assent of the Governor within a certain prescribed period of time from the date of such assent, rather than relying on the Governors as intermediaries who refer the bill for the consideration of the President, would centralize responsibility with the Central Executive and reduce conflicts at the provincial level. In his view, this approach would align with the principles of responsible government and ensure smoother governance.

271. Pandit Jawaharlal Nehru emphasized the need to foster unity and avoid separatist tendencies within the nation. He believed that an elected Governor could exacerbate provincial divisions and weaken ties with the Centre. In his

opinion, "Nevertheless a certain convention and practice helps or hinders the growth of separatist tendencies. I feel that if we have an elected Governor that would to some extent encourage that separatist provincial tendency more than otherwise.

There will be far fewer common links with the Centre."19 He argued that duplicating the electoral process for the office of Governor would be unnecessary and counterproductive, leading to conflicts, wastage of resources, and disruptive tendencies. Supporting the nomination of Governors, he asserted that this approach would align with the parliamentary system of democracy and strengthen the relationship between the provinces and the Centre.

c. Constituent Assembly Debates on the Exercise of Discretion by the Governor

272. The other key question which fell for the consideration of the Constituent Assembly was whether any discretion would be made available to the Governor as the constitutional head of the State. Article 163(1) of the Constitution, which describes the nature of such discretionary powers, reads as follows:

"(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."

273. To understand the true import and the scope of this discretion which exists with the Governor, it would be apposite for us to look into the Constituent Assembly debates pertaining to this Article in some detail. Article 163 which provides for the Council of Ministers to aid and advice the Governor was earlier numbered as Article 143 under the Draft Constitution. Two amendments were sought to be moved to draft Article 143 on the 1st of July 1949; however, those did not gain the approval of the Constituent Assembly and the original version of draft Article 143 came to be later adopted as Article 163 as we see it today.

274. Of the two amendments, one of which was moved by Shri. H.V. Kamath sought to delete the expression, "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion". Shri. H.V. Kamath was of the opinion that the draft Article had been blindly copied from the GoI Act, 1935, without any mature consideration. He further remarked that, "There is no strong or valid reason for giving the Governor more authority either in his discretion or otherwise vis-a-vis his ministers, than has been given to the President in relation to his ministers"20. Investing such wide discretionary powers on the Governor was all the more problematic, according to him, since Governors are nominated to their positions and not elected. No

departure from the principles of a constitutional government must be favored except for reasons of emergency and therefore, he advocated for these discretionary powers to be done away with.

275. However, Shri. T. T. Krishnamachari pointed out that there existed specific provisions under the Draft Constitution wherein the Governor was in fact empowered to act in his discretion, irrespective of the advice tendered by his Council of Ministers. Therefore, according to him, there were two ways of drafting which would capture the aforesaid underlying idea: One, would be to make a mention of this exception under draft Article 143 itself and enumerate the specific scenarios where the Governor would be able to exercise his discretion in the subsequent relevant articles or; Two, would be to leave out any mention of this discretionary power under draft Article 143 and only state it in the appropriate article that will follow. In the case of draft Article 143, according to him, it was only that the former method had been followed. Therefore, the general proposition or the default rule would be that "the Governor has normally to act on the advice of his Ministers except in so far as the exercise of his discretions covered by those Articles in the Constitution in which he is specifically empowered to act in his discretion."²¹

276. As an illustration, Shri. T.T. Krishnamachari referred to draft Article 188 which related to the proclamation of Emergency in States by the Governor under his discretion. It was his opinion that if such a discretionary power can be given under draft Article 188, there is no harm in the mention of discretion under draft Article 143 either. He understood the scheme of the draft Constitution to mean that unless there is a specific mention of discretion under any subsequent Article, the discretionary power mentioned under draft Article 143 cannot at all be exercised.

277. Shri. Brajeshwar Prasad was not in favor of the amendment that was put forth since he was of the opinion that the Governor should be vested not only with the power to act in his discretion but also with the power to act in his individual judgement. He was of the view that there was a dearth of leadership in the provinces wherein competent men were not available and unless the Governor is vested with large powers, it would be difficult to effect any improvement in the provincial administration.

He went to the extent of saying that though such a procedure may be considered as undemocratic, it would be in the interest of the country. He remarked that, "I cannot allow democracy to jeopardize the vital interests of the country The masses who ought to be the rulers of this land are down-trodden and exploited in all ways. Under these circumstances there is no way left open but for the Government of India to take the Provincial administrations in its own hands"²². In his opinion, federalism could not succeed in a country which was passing

through a transitory period and therefore, he subscribed to the view that power must be vested at the Centre and as a natural corollary, the Governor must be able to act in his discretion.

278. Shri. Mahavir Tyagi was also in agreement with the view that the Governor must be granted discretion. In his opinion, the State must be kept linked together with the Centre and the Governor would be the agent who guards the Central policy in the provinces/States. There would be certain subjectmatters which affect the whole body politic and the provinces/States cannot be left free of the policy at the Centre. Since the policy which is evoked in the Centre must be followed by all the States, and if the Governors were to be in the hands of the provincial Ministers, then there will be various policies in various provinces and ministers of various types having different party labels and programmes would push their own agenda.

Therefore, it was his view that, "The Governor being the agency of the Centre would be the only guarantee to integrate the various provinces/States"²³. According to him, this is why the Governor's discretionary powers should not be interfered with. He went on to remark that democratic trends are like a wild beast and that it goes by the whims and fancies of the parties and the masses. There must be some machinery which would keep this wild beast under control. It is in such a reality that the Governor exercising his discretion acts as a guardian of the Central policy on one side and the Constitution on the other.

279. Shri. B.M. Gupta was of the view that if certain powers had to be given to the Governor, our endeavor must be to restrict them as far as possible so that the Governor's position as a constitutional head may be maintained.

280. Shri. Alladi Krishnaswami Ayyar echoed the stance taken by Shri T.T. Krishnamachari. He stated that, in the first place, a general principle under Article 143 is laid down, namely, the principle of ministerial responsibility that the Governor in the various spheres of executive activity should normally act on the advice of his ministers. Then, the Article goes on to carve out an exception as regards the matters under which the Governor is required to exercise certain functions under his own discretion. Therefore, it was his conclusion that as long as there are articles under the Constitution which enable the Governor to act in his discretion, the draft Article 143 as it was framed was perfectly in order.

In certain circumstances, this exercise of discretion may be to override the Cabinet or to refer to the President. If later on, the Constituent Assembly were to arrive at the conclusion that those subsequent Articles which enable the Governor to act in his discretion in specific cases must be deleted, it would be open to revise draft Article 143. But as long as there are Articles occurring later in the

Constitution which permit the Governor to act in his discretion and not on ministerial responsibility, the present draft Article 143 was drafted rightly.

281. The only other question, in his opinion, was to see whether the Constituent Assembly had to first make a provision under draft Article 143 that the Governor shall mandatorily act on ministerial responsibility and then go on to provide "Notwithstanding anything contained in Article 143, he can do this" or that "Notwithstanding anything contained in Article 143, he can act in his discretion" in the subsequent relevant Articles.

However, he favored the method of drafting that had already been adopted i.e., to provide in draft Article 143 itself that the Governor shall always act on ministerial responsibility excepting in particular or specific cases where he is empowered to act in his discretion. If, of course, the Constituent Assembly came to the conclusion that in no case the Governor shall act in his discretion, and that he shall in every case act only on ministerial responsibility, then there will be a consequential change to this Article.

282. Pandit Thakur Das Bhargava adopted the notion that the Governor "shall be a guide, philosopher and friend of the Ministry as well as the people in general, so that he will exercise certain functions some of which will be in the nature of unwritten conventions and some will be such as will be expressly conferred by this Constitution."²⁴ The Governor's role would transcend party politics and he would look at the Minister and the State government from a detached standpoint. He would also be able to influence the ministers and members of the legislature in such a manner that the administration would run smoothly.

In such a circumstance, to say that he is merely a dummy, an automaton or a dignitary without powers would be gravely wrong. According to his conception of a constitutional Governor, the Governor would have to accept the advice of his ministers in many matters but there may also exist many other matters in which such an advice will either be unavailable or wherein he will not be bound to accept that advice. Another illustration, according to him, of when the Governor would act in his discretion would be under draft Article 147 (Article 167 as it stands today) where the Governor can exercise his power of calling for certain information from the Chief Minister.

Under this Article, the Governor is competent to ask the Chief Minister to place any matter before the Council of Ministers which only one minister might have decided. When he calls for such information, he will be acting in the exercise of his discretion and may call for any kind of information with a view to control and restrain the ministry from undertaking irresponsible acts. Therefore, he remarked that, "In my opinion taking the Governor as he is conceived to be under the

Constitution, he will exercise very important functions and therefore it is very necessary to retain the words relating to his discretion in article 143"²⁵.

283. Shri. Rohini Kumar Chaudhuri put forth the alternate view that it is always better to be governed by the will of the people than to be governed by the will of a single person who could act in his discretion. He remarked that, "If this Governor is given the power to act in his discretion there is no power on earth to prevent him from doing so. He can be a veritable King Stork."²⁶. Furthermore, the draft Article 143 itself states that wherever the Governor thinks that he is acting in his discretion, he cannot be questioned. According to him, in this day and age, we must not countenance such a state of affairs.

284. While concluding the debate on draft Article 143, Dr. B. R. Ambedkar elaborated that the main and crucial question under this draft Article was whether the Governor must have certain discretionary powers or not. During the course of the debate, it was pointed out that the retention of discretionary powers in the Governor was contrary to responsible government in the States/provinces. It was also stated that the same mimicked the GoI Act, 1935, which was largely assailed as being undemocratic. However, Dr. B. R. Ambedkar was of the undoubted view that "the retention in or the vesting the Governor with certain discretionary powers is in no sense contrary to or in no sense a negation of responsible government."²⁷ He cited Section 55 of the Canadian Constitution which read as follows:

"Section 55.-
Where a Bill passed by the House of Parliament is presented to the Governor-General for the Queen's assent, he shall, according to his discretion, and subject to the provisions of this Act, either assent thereto in the Queen's name, or withhold the Queen's assent or reserve the Bill for the signification of the Queen's pleasure."

285. He conveyed that the Canadians and the Australians had not found it necessary to delete these provisions even in this day and age and that they were quite satisfied with its retention. This, he argued, was demonstrative of the fact that the grant of such a discretion to the Governor is fully compatible with a responsible government. If they had felt otherwise, they had the fullest right to abrogate this provision and would have done so. Therefore, the existence of a provision vesting a certain amount of discretion in the Governor cannot be questioned.

Furthermore, the draft Article reads that, "Except in so far as he is by or under this Constitution" and not that "except wherever he thinks that he should exercise this power of discretion against the wishes or against the advice of the ministers"²⁸. Therefore, the clause is very limited in nature and would have to be

read in conjunction with such other Articles which specifically reserve the discretionary power for the Governor. It must not be construed as a general clause which gives the Governor the power to disregard the advice of his ministers in any matter in which he finds that he could disregard their opinion.

286. Now moving on to how an Article providing for a certain amount of discretionary powers to the Governor is to be framed, Dr. B. R. Ambedkar elaborated that there are several ways in which the same can be done. One way could be to omit the words from draft Article 143 and to add to draft Articles 175 (presently Article 200), 188, or such other provisions, an express mention which vests the Governor with discretionary power.

Those Articles would then mention that notwithstanding draft Article 143, the Governor would have a certain discretionary power. Another way would be to state in draft Article 143 itself that "except as provided in draft Articles 175, 188 etc.", the Governor shall act in accordance with the aid and advice of the Council of Ministers with the Chief Minister at the head. However, irrespective of what method of drafting is adopted, the essential point that would remain is that the Governor's discretionary power must be acknowledged in some form.

287. Dr. B. R. Ambedkar was open and quite willing to concede to the position of those members who were of the view that the last portion of clause (1) of draft Article 143 must be amended to mention the specific Articles under which the Governor shall exercise discretion, if at that stage of the Constituent Assembly debates the provisions intended for such vesting were already determined.

The difficulty was that the Constituent Assembly had not yet arrived at a stage where they could discuss draft Articles 175 or 188, nor had they exhausted all the possibilities of other provisions being made which vested the Governor with discretionary power. If all those possibilities were already known, draft Article 143 could have been amended and those specific Articles could have been mentioned or listed out. Therefore, Dr. B. R. Ambedkar was firmly of the view that no wrong could be done if the words as they stood in the draft Article were retained.

288. While acknowledging that there exists a material difference between draft Article 61(1) (Article 74(1) as it stands today) relating to the executive functions of the President vis-à-vis his Ministers and the draft Article 143, Dr. B. R. Ambedkar elucidated that it was not the intention of the drafters to vest any discretionary power upon the President.

It is because the provincial governments are required to work in subordination to the Central government and in order to ensure that they do act in such subordination, the Governor would reserve certain matters, thereby giving the

President an opportunity to see that they are broadly in compliance with the policy of the Central government. Through this mechanism, the President would be able to ensure that the rules under which the provincial governments are supposed to act, according to the Constitution, are observed. Therefore, the vesting of discretionary powers in the post of the Governor was considered crucial to enable this administrative dialogue between the Centre and the provinces.

289. What flows from a study of the Constituent Assembly debates concerning the appointment of the Governor and the scope of his discretionary powers is that the Governor plays a very crucial role in the political structure of the country. He is the bridge between the governments at the Central and State level, the proverbial buckle which ties the States with the Centre. The Punchhi Commission Report also acknowledged this dual role of the Governor - one as the custodian of the Constitution in the States and a representative of the Union, and the other as the constitutional head of the State and a "friend, philosopher and guide" of the State government as well as the people.

The position of the Governor and how it differs from that of the President were discussed by Dr. B. R. Ambedkar as we have elaborated in the preceding paragraphs. This difference was also taken note of by Krishna Iyer J., in his opinion in *Samsher Singh* (supra) as we will discuss subsequently. We are of the firm view that this unique position of the Governor must be kept in mind whenever we set out to interpret any provision of the Constitution pertaining to any gubernatorial powers or functions. It is not terminologies like "federal", "quasi-federal" or "unitary" which should guide our interpretation of the Constitution.

In turn, the words and ideas of the wise artisans, who carefully weaved the fabric of the Constitution with threads borrowed from across the world after dyeing them in colors uniquely Indian, that we should look towards, when in doubt about the fundamental ideas of our Constitution. The framers of the Constitution were cognizant of the fact that vesting the Centre with excessive powers would not be healthy for the country's polity.

In this regard we may refer to the observations made by the Sarkaria Commission - "there is considerable truth in the saying that undue centralization leads to blood pressure at the Centre and anemia at the periphery. The inevitable result is morbidity, and inefficiency. Indeed, centralization does not solve but aggravates the problems of the people." Therefore, the curtailing of the powers of the Governor under the Constitution as distinguished from the GoI Act, 1935 was done keeping in mind that the Centre does not arrogate all powers to itself by utilizing the Governor as an intermediary of the Centre at the State.

290. Arijit Pasayat, J., in his dissenting opinion in the decision of this Court in Rameshwar Prasad (supra), observed thus on the role of the Governor:

"270. As noted above, the Governor occupies a very important and significant post in the democratic set-up. When his credibility is at stake on the basis of allegations that he was not performing his constitutional obligations or functions in the correct way, it is a sad reflection on the person chosen to be the executive head of a particular State. A person appointed as a Governor should add glory to the post and not be a symbolic figure oblivious of the duties and functions which he has and is expected to carry out.

It is interesting to note that the allegations of favouritism and mala fides are hurled by other parties at the Governors who belonged or belong to the ruling party at the Centre, and if the Governor at any point of time was a functionary of the ruling party. The position does not change when another party comes to rule at the Centre. It appears to be a matter of convenience for different political parties to allege mala fides. This unfortunate situation could have been and can be avoided by acting on the recommendations of the Sarkaria Commission and the Committee of the National Commission to review the working of the Constitution in the matter of appointment of Governors.

This does not appear to be convenient for the parties because they want to take advantage of the situation at a particular time and cry foul when the situation does not seem favourable to them. This is a sad reflection on the morals of the political parties who do not lose the opportunity of politicising the post of the Governor. Sooner the remedial measures are taken would be better for democracy.

271. It is not deficiency in the Constitution which is responsible for the situation. It is clearly attributable to the people who elect (sic appoint) the Governors on considerations other than merit. It is a disturbing feature, and if media reports are to be believed, Raj Bhavans are increasingly turning into extensions of party offices and the Governors are behaving like party functionaries of a particular party. This is not healthy for democracy.

272. The key actor in the Centre-State relations is the Governor who is a bridge between the Union and the State. The founding fathers deliberately avoided election to the office of the Governor, as is in vogue in the USA to insulate the office from linguistic chauvinism. The President has been empowered to appoint him as executive head of the State under Article 155 in Part VI, Chapter II. The executive power of the State is vested in him by Article 154 and exercised by him with the aid and advice of the Council of Ministers, the Chief Minister as its head. Under Article 159 the Governor shall discharge his functions in accordance with the oath to protect and defend the Constitution and the law.

The office of the Governor, therefore, is intended to ensure protection and sustenance of the constitutional process of the working of the Constitution by the elected executive and giving him an umpire's role. When a Gandhian economist member of the Constituent Assembly wrote a letter to Gandhiji of his plea for abolition of the office of the Governor, Gandhiji wrote to him for its retention; thus, the Governor had been given a very useful and necessary place in the scheme of the team. He would be an arbiter when there was a constitutional deadlock in the State and he would be able to play an impartial role. There would be administrative mechanism through which the constitutional crisis would be resolved in the State.

The Governor thus should play an important role. In his dual undivided capacity as head of the State he should impartially assist the President. As a constitutional head of the State Government in times of constitutional crisis he should bring about sobriety. The link is apparent when we find that Article 356 would be put into operation normally based on the Governor's report. He should truthfully and with high degree of constitutional responsibility, in terms of his oath, inform the President that a situation has arisen in which the constitutional machinery in the State has failed and the Government of the State cannot be carried on in accordance with the provisions of the Constitution, with necessary detailed factual foundation."

(Emphasis supplied)

291. A Constitution Bench of this Court in *B.P. Singhal v. Union of India* reported in (2010) 6 SCC 331 observed that the Governor is neither an employee of the Union nor the agent of the party in power. The relevant observations are extracted below:

"40. It is thus evident that a Governor has a dual role. The first is that of a constitutional head of the State, bound by the advice of his Council of Ministers. The second is to function as a vital link between the Union Government and the State Government. In certain special/emergent situations, he may also act as a special representative of the Union Government. He is required to discharge the functions related to his different roles harmoniously, assessing the scope and ambit of each role properly. He is not an employee of the Union Government, nor the agent of the party in power nor required to act under the dictates of political parties. There may be occasions when he may have to be an impartial or neutral umpire where the views of the Union Government and the State Governments are in conflict. His peculiar position arises from the fact that the Indian Constitution is quasifederal in character."

(Emphasis supplied)

292. The question of whether the Governor is bound to act on the aid and advice of the Council of Ministers in all circumstances fell for the consideration of this Court in *Samsher Singh* (supra). Speaking for the majority, A.N. Ray C.J., observed as follows:

"20. Articles where the expression "acts in his discretion" is used in relation to the powers and functions of the Governor are those which speak of special responsibilities of the Governor. These articles are 371-A(1)(b), 371-A(1)(d), 371-A(2)(b) and 371-A(2)(f). There are two paragraphs in the Sixth Schedule, namely 9(2) and 18(3) where the words "in his discretion" are used in relation to certain powers of the Governor. Para 9(2) is in relation to determination of amount of royalties payable by licensees or lessees prospecting for, or extracting minerals, to the District Council. Paragraph 18(3) has been omitted with effect from January 21, 1972.

21. The provisions contained in Article 371-A(1)(b) speak of the special responsibility of the Governor of Nagaland with respect to law and order in the State of Nagaland and exercise of his individual judgment as to the action to be taken. The proviso states that the decision of the Governor in his discretion shall be final and it shall not be called in question.

22. Article 371-A(1)(d) states that the Governor shall in his discretion make rules providing for the composition of the Regional Council for the Tuensang District.

23. Article 371-A(2)(b) states that for periods mentioned there the Governor shall in his discretion arrange for an equitable allocation of certain funds, between the Tuensang District and the rest of the State.

24. Article 371-A(2)(f) states that the final decision on all matters relating to the Tuensang District shall be made by the Governor in his discretion.

28. Under the Cabinet system of Government as embodied in our Constitution the Governor is the constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion.

54. The provisions of the Constitution which expressly require the Governor to exercise his powers in his discretion are contained in articles to which reference has been made. To illustrate, Article 239(2) states that where a Governor is appointed an administrator of an adjoining Union territory he shall exercise his functions as such administrator independently of his Council of Ministers. The other articles which speak of the discretion of the Governor are paragraphs 9(2) and 18(3) of the Sixth Schedule and Articles 371-A(1)(b), 371-A(1)(d) and 371-A(2)(b) and 371-A(2)(f).

The discretion conferred on the Governor means that as the constitutional or formal head of the State the power is vested in him. In this connection, reference may be made to Article 356 which states that the Governor can send a report to the President that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution. Again Article 200 requires the Governor to reserve for consideration any Bill which in his opinion if it became law, would so derogate from the powers of the High Court as to endanger the position which the High Court is designed to fill under the Constitution.

55. In making a report under Article 356 the Governor will be justified in exercising his discretion even against the aid and advice of his Council of Ministers. The reason is that the failure of the constitutional machinery may be because of the conduct of the Council of Ministers. This discretionary power is given to the Governor to enable him to report to the President who, however, must act on the advice of his Council of Ministers in all matters.

In this context Article 163(2) is explicable that the decision of the Governor in his discretion shall be final and the validity shall not be called in question. The action taken by the President on such a report is a different matter. The President acts on the advice of his Council of Ministers. In all other matters where the Governor acts in his discretion he will act in harmony with his Council of Ministers. The Constitution does not aim at providing a parallel administration within the State by allowing the Governor to go against the advice of the Council of Ministers.

56. Similarly, Article 200 indicates another instance where the Governor may act irrespective of any advice from the Council of Ministers. In such matters where the Governor is to exercise his discretion, he must discharge his duties to the best of his judgment. The Governor is required to pursue such courses which are not detrimental to the State."

(Emphasis supplied)

293. A reading of the observations reproduced above indicates that the Court identified that the Governor was required to act on his discretion when performing his functions, inter alia, under Articles 356 and 200 of the Constitution respectively. However, it is pertinent to note that under Article 200, only the reservation of bills falling under the second proviso was observed by the Court to be an exercise which must be undertaken by the Governor independent of the advice of the Council of Ministers.

294. Furthermore, this Court laid down a general rule that the Governor, in the Cabinet form of government envisaged by the Constitution, acts as a

constitutional head performing all his functions and exercising all his powers on the aid and advice of the Council of Ministers, except in a limited area. This limited area of discretion, too, is provided by the Constitution under the specific provisions wherein such exercise of discretion is permissible. The Court gave certain illustrative examples where the expression "acts in his discretion" was used and observed that such provisions indicated that a special responsibility on the Governor has been entrusted upon by the Constitution.

295. It is pertinent to observe the observations made by the Court in paragraphs 54, 55 and 56 of *Samsher Singh* (supra) which are reproduced above. In paragraph 54, while giving illustrations of the provisions where the Governor is expressly required by the Constitution to act in his discretion, the Court made reference to Articles 356 and 200 respectively. In the context of Article 200, the Court observed that the limited area where express discretion has been conferred upon the Governor falls under the second proviso. Thereafter, in paragraph 55, the Court elaborated upon the exercise of discretion by the Governor under Article 356.

In paragraph 56, the Court elaborated upon the exercise of discretion under Article 200 and observed that Article 200 "indicates another instance where the Governor may act irrespective of any advice from the Council of Ministers". It is important to read the observations made in paragraph 56 along with paragraph 54 of the judgment. A conjoint reading of these two paragraphs, it becomes clear, without a cavil of doubt, that the second proviso to Article 200 is an instance under the Constitution where the Governor has been conferred with the power to act in his discretion and even against the advice of the Council of Ministers. However, the logical sequitur to this is that under Article 200, there is no scope for the Governor acting in his discretion other than the second proviso.

296. Speaking for himself and P.N. Bhagwati J., the redoubtable Krishna Iyer J., in *Samsher Singh* (supra) observed as follows:

"100. The first broad proposition of the appellants is that the President -and the Governor - are not just constitutional cousins of the British Queen, but real wielders of power, bestowed on them expressly by the terms of the text, almost next of kin to their American counterparts with similar designations. The issue is so fundamental that its resolution is necessary to know not only who can declare a probationer's fitness but who can declare a war in national defence or proclaim a breakdown of the State constitutional machinery or assent to a Bill passed by Parliament.

For, if under Article 311 the President must be personally satisfied for certain small steps he must surely be individually convinced regarding the far more momentous spectrum of functions he is called upon to discharge under a big

bunch of other provisions. And this reasoning regarding disposal of gubernatorial business or discharge of official responsibilities will equally apply to Governors.

113. If the 'inner voice' of the founding fathers may be any guide, it is proved beyond reasonable doubt that the President and, a fortiori, the Governor enjoys nothing more and nothing less than the status of a constitutional head in a Cabinet-type Government - a few exceptions and marginal reservations apart.

139. Of course, there is some qualitative difference between the position of the President and the Governor. The former, under Article 74 has no discretionary powers; the latter too has none, save in the tiny strips covered by Articles 163(2), 371-A(1)(b) and (d), 371-A(2)(b) and (f), VI Schedule, para 9(2) [and VI Schedule, para 18(3), until omitted recently with effect from January 21, 1972]. These discretionary powers exist only where expressly spelt out and even these are not left to the sweet will of the Governor but are remotecontrolled by the Union Ministry which is answerable to Parliament for those actions. Again, a minimal area centering round reports to be despatched under Article 356 may not, in the nature of things, be amenable to Ministerial advice.

The practice of sending periodical reports to the Union Government is a pre-constitutional one and it is doubtful if a Governor could or should report behind the back of his Ministers. For a Centrally appointed constitutional functionary to keep a dossier on his Ministers or to report against them or to take up public stances critical of Government policy settled by the Cabinet or to interfere in the administration directly - these are unconstitutional faux pas and run counter to Parliamentary system. In all his constitutional 'functions' it is the Ministers who act; only in the narrow area specifically marked out for discretionary exercise by the Constitution, he is untrammelled by the State Ministers' acts and advice. Of course, a limited free-wheeling is available regarding choice of Chief Minister and dismissal of the Ministry, as in the English practice adapted to Indian conditions.

154. We declare the law of this branch of our Constitution to be that the President and Governor, custodians of all executive and other powers under various articles shall, by virtue of these provisions, exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers save in a few well-known exceptional situations.

Without being dogmatic or exhaustive, these situations relate to (a) the choice of Prime Minister (Chief Minister), restricted though this choice is by the paramount consideration that he should command a majority in the House; (b) the dismissal of a Government which has lost its majority in the House, but refuses to quit office; (c) the dissolution of the House where an appeal to the country is necessitous, although in this area the head of State should avoid getting involved

in politics and must be advised by his Prime Minister (Chief Minister) who will eventually take the responsibility for the step.

We do not examine in detail the constitutional proprieties in these predicaments except to utter the caution that even here the action must be compelled by the peril to democracy and the appeal to the House or to the country must become blatantly obligatory. We have no doubt that de Smith's statement [Constitutional and Administrative Law - by S.A. De Smith - Penguin Books on Foundations of Law] regarding royal assent holds good for the President and Governor in India:

"Refusal of the royal assent on the ground that the Monarch strongly disapproved of a Bill or that it was intensely controversial would nevertheless be unconstitutional. The only circumstances in which the withholding of the royal assent might be justifiable would be if the Government itself were to advise such a course - a highly improbable contingency - or possibly if it was notorious that a Bill had been passed in disregard to mandatory procedural requirements; but since the Government in the latter situation would be of the opinion that the deviation would not affect the validity of the measure once it had been assented to, prudence would suggest the giving of assent."

(Emphasis supplied)

297. Interestingly, as can be seen from the paragraphs reproduced above, while describing the limited nature of the scope of exercise of discretion by the President and the Governor, Krishna Iyer, J., referred to an excerpt on how refusal of royal assent to a bill passed by the Parliament could only be done on the advice of the Ministers and not on the personal discretion of the monarch, regardless of how controversial the monarch found the bill to be. He further observed that the discretionary powers of the Governor existed only where they were expressly spelt out in the Constitution, and even the exercise of such discretion was remote-controlled by the Union Ministry.

298. Referring to the decision in *Samsher Singh* (supra), Krishna Iyer J., in *Maru Ram v. Union of India* reported in (1981) 1 SCC 107, again, reiterated the position of the President and the Governor as figureheads in the constitutional scheme. However, he observed that they acted in accordance with the aid and advice of the Council of Ministers "save in a narrow area of power" and that the "Governor vis-à-vis his Cabinet is no higher than the President save in a narrow area which does not include Article 161", thereby implying that there is a small area of discretion available with the Governor, which however does not include Article 161. The relevant observations are reproduced hereinbelow:

"61. It is fundamental to the Westminster system that the Cabinet rules and the Queen reigns being too deeply rooted as foundational to our system no serious

encounter was met from the learned Solicitor-General whose sure grasp of fundamentals did not permit him to controvert the proposition, that the President and the Governor, be they ever so high in textual terminology, are but functional euphemisms promptly acting on and only on the advice of the Council of Ministers save in a narrow area of power. The subject is now beyond controversy, this Court having authoritatively laid down the law in Shamsher Singh case [Shamsher Singh v. State of Punjab, (1974) 2 SCC 831 : 1974 SCC (L&S) 550 : (1975) 1 SCR 814].

So, we agree, even without reference to Article 367(1) and Sections 3(8)(b) and 3(60)(b) of the General Clauses Act, 1897, that, in the matter of exercise of the powers under Articles 72 and 161, the two highest dignitaries in our constitutional scheme act and must act not on their own judgment but in accordance with the aid and advice of the ministers. Article 74, after the 42nd Amendment silences speculation and obligates compliance. The Governor vis-À-vis his Cabinet is no higher than the President save in a narrow area which does not include Article 161. The constitutional conclusion is that the Governor is but a shorthand expression for the State Government and the President is an abbreviation for the Central Government."

(Emphasis supplied)

299. A Constitution Bench of this Court while dealing with the issue of discretionary powers of the Governor in M.P. Special Police (supra) and explaining the import of Article 163(2) of the Constitution, observed that even if discretion was not expressly granted upon the Governor by a specific provision of the Constitution, it was open to him to act in his discretion in certain exceptional situations where by reason of threat to democratic principles, he could not act on the advice of the Council of Ministers. The relevant observations are reproduced hereinbelow:

"8. The question for consideration is whether a Governor can act in his discretion and against the aid and advice of the Council of Ministers in a matter of grant of sanction for prosecution of Ministers for offences under the Prevention of Corruption Act and/or under the Penal Code, 1860.

11. Mr Sorabjee submits that even though normally the Governor acts on the aid and advice of the Council of Ministers, but there can be cases where the Governor is, by or under the Constitution, required to exercise his function or any of them in his discretion. The Constitution of India expressly provides for contingencies/cases where the Governor is to act in his discretion. Articles 239(2), 371-A(1)(b), 371-A(2)(b), 371-A(2)(f) and paras 9(2) and 18(3) of the Sixth Schedule are some of the provisions. However, merely because the Constitution of India expressly provides, in some cases, for the Governor to act in

his discretion, can it be inferred that the Governor can so act only where the Constitution expressly so provides?

If that were so then subclause (2) of Article 163 would be redundant. A question whether a matter is or is not a matter in which the Governor is required to act in his discretion can only arise in cases where the Constitution has not expressly provided that the Governor can act in his discretion. Such a question cannot arise in respect of a matter where the Constitution expressly provides that the Governor is to act in his discretion. Article 163(2), therefore, postulates that there can be matters where the Governor can act in his discretion even though the Constitution has not expressly so provided.

12. Thus, as rightly pointed out by Mr Sorabjee, a seven- Judge Bench of this Court has already held that the normal rule is that the Governor acts on the aid and advice of the Council of Ministers and not independently or contrary to it. But there are exceptions under which the Governor can act in his own discretion. Some of the exceptions are as set out hereinabove. It is, however, clarified that the exceptions mentioned in the judgment are not exhaustive.

It is also recognised that the concept of the Governor acting in his discretion or exercising independent judgment is not alien to the Constitution. It is recognised that there may be situations where by reason of peril to democracy or democratic principles, an action may be compelled which from its nature is not amenable to Ministerial advice. Such a situation may be where bias is inherent and/or manifest in the advice of the Council of Ministers.

19. Article 163 has been extracted above. Undoubtedly, in a matter of grant of sanction to prosecute, the Governor is normally required to act on aid and advice of the Council of Ministers and not in his discretion. However, an exception may arise whilst considering grant of sanction to prosecute a Chief Minister or a Minister where as a matter of propriety the Governor may have to act in his own discretion. Similar would be the situation if the Council of Ministers disables itself or disentitles itself.

32. If, on these facts and circumstances, the Governor cannot act in his own discretion there would be a complete breakdown of the rule of law inasmuch as it would then be open for Governments to refuse sanction in spite of overwhelming material showing that a prima facie case is made out. If, in cases where a prima facie case is clearly made out, sanction to prosecute high functionaries is refused or withheld, democracy itself will be at stake. It would then lead to a situation where people in power may break the law with impunity safe in the knowledge that they will not be prosecuted as the requisite sanction will not be granted."

(Emphasis supplied)

300. The decision in this case was a step forward from the general rule laid down by the larger Bench in *Samsher Singh* (supra). However, what is essential to note is that the Court did not dilute the general rule laid down earlier, and only allowed for a very limited scope of discretion for the Governor in certain exceptional situations in light of Article 163(2). The extraordinary nature of the exceptional situations envisaged by the Court can be gauged from the use of the expressions "peril to democracy or democratic principles", "bias is inherent and/or manifest in the advice of the Council of Ministers", "Council of Ministers disables itself or disentitles itself" and "there would be a complete breakdown of the rule of law".

Whenever the situation arises for the Governor to exercise discretion in discharge of a function which is ordinarily to be exercised upon the aid and advice of the Council of Ministers, it is these exceptional circumstances that the Governor must take into account before rejecting the aid and advice tendered to him. Courts too, when judicially reviewing the exercise of discretion by the Governor in such cases, must be guided by the situations as described in the decision in *M.P. Special Police* (supra). Article 200, being a provision where the Governor must act on ministerial advice as a general rule, the aforesaid exposition would squarely apply to this provision as well, thereby severely curtailing any possibility of exercise of discretion by the Governor.

301. Another Constitution Bench of this Court in *Nabam Rebia* (supra) had the occasion to discuss at length the nature of the position of the Governor in the constitutional scheme, along with the source and scope of his discretionary powers. The Court held that the discretionary powers of the Governor could be traced back to Article 163(1), that is, he could act in exercise of his discretionary powers only where expressly provided for under the Constitution, or where the interpretation of a constitutional provision could not be construed otherwise, or in cases where this Court has declared the exercise of powers to be done by the Governor in his discretion notwithstanding ministerial advice.

Further, the Court held that the finality expressed under Article 163(2) was only in respect of those situations where the exercise of discretion by the Governor was permissible under the framework of Article 163(1) and any exercise of discretion beyond the jurisdiction provided by the Constitution would be subject to judicial review. The relevant observations are reproduced hereinbelow:

"147.1. Article 163 further warrants that the Governor would exercise his functions, on the aid and advice of the Council of Ministers with the Chief Minister as the head. The above edict is not applicable, in situations where the Governor is expressly required to exercise his functions, "by or under this Constitution", "in his discretion". The question that will need determination at our hands is, whether the underlying cardinal principle, with reference to the

discretionary power of the Governor, is to be traced from Article 163(1) or from Article 163(2). All in all, it is apparent, that the Governor is not assigned any significant role in the executive functioning of the State.

147.2. Insofar as the legislative process is concerned, the only function vested with the Governor is expressed through Article 200 which, inter alia, provides that a Bill passed by the State Legislature, is to be presented to the Governor for his assent. And its ancillary provision, namely, Article 201 wherein a Bill passed by the State Legislature and presented to the Governor, may be reserved by the Governor for consideration by the President. All in all, it is apparent that the Governor is not assigned any significant role even in the legislative functioning of the State.

148. The above position leaves no room for any doubt that the Governor cannot be seen to have such powers and functions, as would assign to him a dominating position, over the State Executive and the State Legislature. The interpretation placed on Article 163(2), on behalf of the respondents, has just that effect, because of the following contentions advanced on behalf of the respondents. Firstly, whenever a question arises, whether in discharging a particular function, the Governor can or cannot act in his own discretion.

According to the respondents, the discretion of the Governor, on the above question, is final. Secondly, since the provision itself postulates, that "the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion", according to the respondents, makes the Governor's orders based on his own discretion, immune from judicial review. Accepting the above position, will convert the Governor into an all-pervading super constitutional authority.

This position is not acceptable because an examination of the executive and legislative functions of the Governor, from the surrounding provisions of the Constitution clearly brings out that the Governor has not been assigned any significant role either in the executive or the legislative functioning of the State. The position adopted on behalf of the appellants, on the other hand, augurs well in an overall harmonious construction of the provisions of the Constitution. Even on a cursory examination of the relevant provisions of the Constitution, we are inclined to accept the contention advanced on behalf of the appellants.

149. In our considered view, a clear answer to the query raised above, can inter alia emerge from the Constituent Assembly Debates with reference to draft Article 143, which eventually came to be renumbered as Article 163 in the Constitution. It would be relevant to record that from the queries raised by H.V. Kamath, T.T. Krishnamachari, Alladi Krishnaswami Ayyar, and from the

response to the same by Dr B.R. Ambedkar, it clearly emerges that the general principle with reference to the scope and extent of the discretionary power of the Governor, is provided for through Article 163(1).

It also becomes apparent from Article 163(1), which provides for the principle of Ministerial Responsibility. The crucial position that gets clarified from a perusal of the Constituent Assembly Debates, arises from the answer to the query, whether the Governor should have any discretionary power at all? The Debates expound, that the retention of discretionary power with the Governor was not, in any way, contrary to the power of responsible Government, nor should the same be assumed as a power akin to that vested with a Governor under the Government of India Act, 1935.

And from that, emerges the answer that the retention and vesting of discretionary powers with the Governor, should not be taken in the sense of being contrary to, or having the effect of negating the powers of responsible Government. Significantly, with reference to the Governor's discretionary powers, it was emphasised by Dr B.R. Ambedkar, that: (CAD Vol. 8, p. 501)

"The Hon'ble Dr B.R. Ambedkar.- The clause is a very limited clause; it says: 'except insofar as he is by or under this Constitution'. Therefore, Article 163 will have to be read in conjunction with such other articles which specifically reserve the power to the Governor. It is not a general clause giving the Governor power to disregard the advice of his Ministers, in any matter in which he finds he ought to disregard. There, I think, lies the fallacy of the argument of my Hon'ble friend." In our considered view, the Constituent Assembly Debates leave no room for any doubt that the Framers of the Constitution desired to embody the general and basic principle, describing the extent and scope of the discretionary power of the Governor, in clause (1) of Article 163, and not in clause (2) thereof, as suggested by the learned counsel for the respondents.

154. We are, therefore, of the considered view that insofar as the exercise of discretionary powers vested with the Governor is concerned, the same is limited to situations, wherein a constitutional provision expressly so provides that the Governor should act in his own discretion. Additionally, a Governor can exercise his functions in his own discretion, in situations where an interpretation of the constitutional provision concerned, could not be construed otherwise.

We, therefore, hereby reject the contention advanced on behalf of the respondents, that the Governor has the freedom to determine when and in which situation, he should take a decision in his own discretion, without the aid and advice of the Chief Minister and his Council of Ministers. We accordingly, also turn down the contention, that whenever the Governor in the discharge of his

functions, takes a decision in his own discretion, the same would be final and binding, and beyond the purview of judicial review.

We are of the view that finality expressed in Article 163(2) would apply to functions exercised by the Governor in his own discretion, as are permissible within the framework of Article 163(1), and additionally, in situations where the clear intent underlying a constitutional provision, so requires i.e. where the exercise of such power on the aid and advice, would run contrary to the constitutional scheme, or would be contradictory in terms.

155. We may, therefore, summarise our conclusions as under:

155.1. Firstly, the measure of discretionary power of the Governor, is limited to the scope postulated therefor, under Article 163(1).

155.2. Secondly, under Article 163(1) the discretionary power of the Governor extends to situations, wherein a constitutional provision expressly requires the Governor to act in his own discretion.

155.3. Thirdly, the Governor can additionally discharge functions in his own discretion, where such intent emerges from a legitimate interpretation of the provision concerned, and the same cannot be construed otherwise.

155.4. Fourthly, in situations where this Court has declared that the Governor should exercise the particular function at his own and without any aid or advice because of the impermissibility of the other alternative, by reason of conflict of interest.

155.5. Fifthly, the submission advanced on behalf of the respondents, that the exercise of discretion under Article 163(2) is final and beyond the scope of judicial review cannot be accepted. Firstly, because we have rejected the submission advanced by the respondents, that the scope and extent of discretion vested with the Governor has to be ascertained from Article 163(2), on the basis whereof the submission was canvassed. And secondly, any discretion exercised beyond the Governor's jurisdictional authority, would certainly be subject to judicial review."

(Emphasis supplied)

302. This Court in *State of Gujarat v. R.A. Mehta* reported in (2013) 3 SCC 1 placing reliance on the decision in *B.P. Singhal* (supra) observed that the expression "required" appearing under Article 163(1) indicated that it is only in situations where there is express stipulation or necessary implication that the Governor can act in his own discretion. The term "required" also indicates an element of compelling necessity. The Court also observed that Article 200 was

one such provision where the Governor is expected to act upon ministerial advice and not in his discretion. The relevant observations are reproduced hereinbelow:

"35. However, the power to grant pardon or to remit sentence (Article 161), the power to make appointments including that of the Chief Minister (Article 164), the Advocate General (Article 165), the District Judges (Article 233), the Members of the Public Service Commission (Article 316) are in the category where the Governor is bound to act on the aid and advice of the Council of Ministers.

Likewise, the power to prorogue either House of Legislature or to dissolve the Legislative Assembly (Article 174), the right to address or send messages to the Houses of the Legislature (Article 175 and Article 176), the power to assent to Bills or withhold such assent (Article 200), the power to make recommendations for demands of grants [Article 203(3)], and the duty to cause to be laid every year the annual budget (Article 202), the power to promulgate ordinances during recess of the Legislature (Article 213) also belong to this species of power.

Again, the obligation to make available to the Election Commission, requisite staff for discharging functions conferred upon it by Article 324(1) and Article 324(6), the power to nominate a member of the Anglo-Indian community to the Assembly in certain situations (Article 333), the power to authorise the use of Hindi in proceedings in the High Court [Article 348(2)], are illustrative of the functions of the Governor, qua the Governor.

49. The exceptions carved out in the main clause of Article 163(1), permit the legislature to entrust certain functions to the Governor to be performed by him, either in his discretion, or in consultation with other authorities, independent of the Council of Ministers. The meaning of the words "by or under" is well settled. The expression "by an Act", would mean by virtue of a provision directly enacted in the statute in question and that which is conceivable from its express language or by necessary implication therefrom.

The words "under the Act", would in such context, signify that which may not directly be found in the statute itself, but which is conferred by virtue of powers enabling such action(s) e.g. by way of laws framed by a subordinate law-making authority competent to do so under the parent Act. (Vide *Indramani Pyarelal Gupta v. W.R. Natu* [AIR 1963 SC 274].)

50. This Court in *Rameshwar Prasad (6) v. Union of India* [(2006) 2 SCC 1] held : (SCC p. 82, para 57) "57. The expression 'required' found in Article 163(1) is stated to signify that the Governor can exercise his discretionary powers only if there is a compelling necessity to do so. It has been reasoned that the expression 'by or under the Constitution' means that the necessity to exercise such powers

may arise from any express provision of the Constitution or by necessary implication. The Sarkaria Commission Report further adds that such necessity may arise even from rules and orders made 'under' the Constitution.'"

(Emphasis supplied)

d. The decision of this Court in B.K. Pavitra (supra) is per incuriam

303. Placing reliance on the aforesaid decision in Nabam Rebia (supra), this Court in B.K. Pavitra (supra) while dealing with the reservation of bills for the consideration of the President under Article 200 observed thus: "66. Where a Bill is not a Money Bill, the Governor may return the Bill for reconsideration upon which the House or Houses, as the case may be, will reconsider the desirability of introducing the amendments which the Governor has recommended. If the Bill is passed again by the House (or Houses as the case may be), the Governor cannot thereafter withhold assent.

The second proviso to Article 200 stipulates that the Governor must not assent to a Bill but necessarily reserve it for the consideration of the President if the Bill upon being enacted would derogate from the powers of the High Court in a manner that endangers its position under the Constitution. Save and except for Bills falling within the description contained in the second proviso (where the Governor must reserve the Bill for consideration of the President), a discretion is conferred upon the Governor to follow one of the courses of action enunciated in the substantive part of Article 200.

Aside from Bills which are covered by the second proviso, where the Governor is obliged to reserve the Bill for the consideration of the President, the substantive part of Article 200 does not indicate specifically, the circumstances in which the Governor may reserve a Bill for the consideration of the President. The Constitution has entrusted this discretion to the Governor. The nature and scope of the discretionary power of the Governor to act independent of, or, contrary to aid and advice of Council of Ministers under Article 163 was discussed in Nabam Rebia [Nabam Rebia and Bamang Felix v. Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1], J.S. Khehar, J. (as the learned Chief Justice then was) held thus : (SCC p. 159, para 154)

"154. We are, therefore, of the considered view that insofar as the exercise of discretionary powers vested with the Governor is concerned, the same is limited to situations, wherein a constitutional provision expressly so provides that the Governor should act in his own discretion. Additionally, a Governor can exercise his functions in his own discretion, in situations where an interpretation of the constitutional provision concerned, could not be construed otherwise." Dipak Misra, J. (as the learned Judge then was), observed thus : (SCC p. 244, para 375)

"375. The Governor is expected to function in accordance with the provisions of the Constitution (and the history behind the enactment of its provisions), the law and the rules regulating his functions. It is easy to forget that the Governor is a constitutional or formal head-nevertheless like everybody else, he has to play the game in accordance with the rules of the game-whether it is in relation to the Executive (aid and advice of the Council of Ministers) or the Legislature (Rules of Procedure and Conduct of Business of the Arunachal Pradesh Legislative Assembly). This is not to say that the Governor has no powers-he does, but these too are delineated by the Constitution either specifically or by necessary implication."

67. The Framers carefully eschewed defining the circumstances in which the Governor may reserve a Bill for the consideration of the President. By its very nature the conferment of the power cannot be confined to specific categories. Exigencies may arise in the working of the Constitution which justify a recourse to the power of reserving a Bill for the consideration of the President. They cannot be foreseen with the vision of a soothsayer. The power having been conferred upon a constitutional functionary, it is conditioned by the expectation that it would be exercised upon careful reflection and for resolving legitimate concerns in regard to the validity of the legislation.

The entrustment of a constitutional discretion to the Governor is premised on the trust that the exercise of authority would be governed by constitutional statesmanship. In a federal structure, the conferment of this constitutional discretion is not intended to thwart democratic federalism. The State Legislatures represent the popular will of those who elect their representatives. They are the collective embodiments of that will. The act of reserving a Bill for the assent of the President must be undertaken upon careful reflection, upon a doubt being entertained by the Governor about the constitutional legitimacy of the Bill which has been passed.

71. These decisions are specifically in the context of Article 254. Article 254(1) postulates inter alia, that in a matter which is governed by the Concurrent List, a law which has been enacted by the Legislature of a State shall be void to the extent of its repugnancy with a law enacted by Parliament. Clause (2) of Article 254 obviates that consequence where the law has been reserved for the consideration of the President and has received assent. Article 254(1) is made subject to clause (2), thereby emphasising that the assent of the President will cure a repugnancy of the State law with a law enacted by Parliament in a matter falling in the Concurrent List.

It is in this context, that the decisions of this Court hold that the assent of the President should be sought in relation to a repugnancy with a specific provision contained in a Parliamentary legislation so as to enable due consideration by the

President of the ground on which assent has been sought. Article 200 contains the source of the constitutional power which is conferred upon the Governor to reserve a Bill for the consideration of the President. Article 254(2) is an illustration of the constitutional authority of the Governor to reserve a law enacted by the State Legislature for consideration of the President in a specified situation - where it is repugnant to an existing law or to a Parliamentary legislation on a matter falling in the Concurrent List.

The eventuality which is specified in Article 254(2) does not exhaust the ambit of the power entrusted to the Governor under Article 200 to reserve a Bill for the consideration of the President. Apart from a repugnancy in matters falling in the Concurrent List between State and Parliamentary legislation, a Governor may have sound constitutional reasons to reserve a Bill for the consideration of the President. Article 200, in its second proviso mandates that a Bill which derogates from the powers of the High Court must be reserved for the consideration of the President.

Apart from Bills which fall within the description set out in the second proviso, the Governor may legitimately refer a Bill for consideration of the President upon entertaining a legitimate doubt about the validity of the law. By its very nature, it would not be possible for this Court to reflect upon the situations in which the power under Article 200 can be exercised. This was noticed in the judgment of this Court in Hoechst [Hoechst Pharmaceuticals Ltd. v. State of Bihar, (1983) 4 SCC 45 : 1983 SCC (Tax) 248]. Excluding it from judicial scrutiny, the Court held : (SCC pp. 100-101, para 86)

'86. There may also be a Bill passed by the State Legislature where there may be a genuine doubt about the applicability of any of the provisions of the Constitution which require the assent of the President to be given to it in order that it may be effective as an Act. In such a case, it is for the Governor to exercise his discretion and to decide whether he should assent to the Bill or should reserve it for consideration of the President to avoid any future complication.

Even if it ultimately turns out that there was no necessity for the Governor to have reserved a Bill for the consideration of the President, still he having done so and obtained the assent of the President, the Act so passed cannot be held to be unconstitutional on the ground of want of proper assent. This aspect of the matter, as the law now stands, is not open to scrutiny by the courts. In the instant case, the Finance Bill which ultimately became the Act in question was a consolidating Act relating to different subjects and perhaps the Governor felt that it was necessary to reserve it for the assent of the President. We have no hesitation in holding that the assent of the President is not justiciable, and we cannot spell out any infirmity arising out of his decision to give such assent."

(Emphasis supplied)

304. This Court in B.K. Pavitra (supra) took the view that the Constitution has entrusted the Governor with the discretion of reserving a bill, presented to him for assent, for the consideration of the President. It also held that the exercise of the power of reservation of bills for the consideration of the President could be done by the Governor contrary to the aid and advice tendered by the Council of Ministers.

The Court observed that such an important responsibility having been conferred upon a constitutional functionary, its discharge was expected to be undertaken upon careful reflection and with statesmanship, and in a manner that does not thwart democratic federalism. On the nature of bills which may be reserved for the consideration of the President, the Court held that it was impossible to lay down with certainty all the situations wherein such a reference may be warranted.

305. We find ourselves in disagreement with the view taken in B.K. Pavitra (supra) that the Constitution confers a discretion upon the Governor insofar as the reservation of bills for the consideration of the President is concerned. We say so because the removal of the expression "in his discretion" from Section 75 of the GoI Act, 1935 when it was being adapted as Article 200 of the Constitution, clearly indicates that any discretion which was available to the Governor under the GoI Act, 1935 in respect of reservation of bills became unavailable with the commencement of the Constitution.

The views expressed by the members of the Constituent Assembly, which are recorded in the debates that took place on Article 175 of the Draft Constitution, also indicate the same²⁹. We are also of the view that the same is also in alignment with the fundamental tenets of responsible government in a parliamentary democracy. The only exception to the general principle of the Governor adhering to the aid and advice tendered by the Council of Ministers can be traced to Article 163(1) and the second proviso to Article 200.

306. Pertinently, the Court in B.K. Pavitra (supra) failed to take into consideration the larger Bench decisions in Samsher Singh (supra) and M.P. Special Police (supra). As we have discussed above, paragraphs 54 to 56 of the decision in Samsher Singh (supra) make it clear beyond any doubt that there is no express requirement under the Constitution for the exercise of discretion by the Governor in discharge of his functions under Article 200, except to the limited extent of the second proviso where the expression "in his opinion" is employed for the Governor. This is also apparent from the conscious decision of the Constituent Assembly in removing the expression "in his discretion" while enacting Article 200.

Thus, the only express stipulation where the Governor may exercise discretion for reservation of bills is in the second proviso to Article 200. Even when looked at from the perspective of necessary implication, the discretion of the Governor in reserving the bills for the consideration of the President can be said to be present only in those cases where the Constitution has envisaged a mandatory approval of the Government, before the law can become enforceable in the State. The Sarkaria Commission mentioned three categories where reservation of a bill for the consideration of the President is envisaged:

a. First, where the bill pertains to the second proviso of Article 200, Article 288(2) or Article 360(4)(a)(ii) of the Constitution, reservation for the President is a mandatory condition as the bill will not become effective without his assent;

b. Secondly, where the bill pertains to Articles 31A(1) or 31C, presidential assent is compulsory for securing immunity from the operation of Articles 14 and 19. Similarly, where the law is repugnant to a Union legislation on a Concurrent list subject-matter, presidential assent is required to make the law effective in the State. Further, laws made under Article 304(b) would not be enforceable if they were introduced without the previous sanction of the President and having been introduced and passed by the State legislature, have not received the assent of the President. This position can be derived from a reading of Article 255;

c. Thirdly, there may be laws falling outside the aforesaid categories which may be reserved by the Governor for the President. However, the scope of discretion in such category of laws would be extremely limited and only when an exceptional situation of the nature described by this Court in *M.P. Special Police* (supra) and in *Nabam Rebia* (supra) as explained by us in paragraph 300 of this judgment arises that there would be scope for the Governor to reserve the bill for the consideration of the President.

307. While construing the role of the Governor in the context of Article 200, we must keep in mind that such a role has been envisaged not to supplant the opinion of the Council of Ministers, but to infuse it with his wisdom. The role of a friend, philosopher and guide which a Governor is to play under the Constitution is played by him at various stages of administrative and legislative functioning of the State. Article 167 makes it mandatory for the Chief Minister to share with the Governor, inter alia, the proposals of legislations that the government wishes to introduce in the State legislature.

This means that the Governor is made well aware of any legislation that the State government is planning to enact much before it is introduced in the State legislature and sent to him for assent. Thus, the advisory role of the Governor is best played by engaging with the Council of Ministers even before the legislation is introduced in the State legislature. He is well within his rights, and in fact, it is

his bounden duty to put to use his experience and wisdom by making constructive suggestions to the Cabinet regarding the legislative proposals. The Council of Ministers would also do good to take into consideration the advice of the Governor and deliberate upon it so that the legislation and ultimately, public interest is benefitted.

308. However, once the bill is passed by the State legislature, and presented to the Governor for assent, he must act on the aid and advice of the Council of Ministers as a general rule and only in exceptional situations which have been illustrated in paragraph 300 of this judgment, should he reserve it for the consideration of the President. A look at Rule 48 of the Tamil Nadu Government Business Rules, 1978 makes it clear that once a draft bill is approved by the Minister-in-Charge, a copy of it is supplied to the Governor. Rule 48 reads thus:

"48. (1) If the tentative draft Bill is approved by the Minister in charge, it shall be circulated to the other Ministers and a copy supplied to the Governor and unless the Chief Minister directs otherwise, the tentative draft Bill shall be brought before a meeting of the Council. Proposals for any substantial or important amendments in the draft Bill after its approval shall also be dealt with similarly."

309. After circulation of the bill to the Governor, any suggestions made by the Governor may be looked into and incorporated. Thereafter, a final copy of the bill as approved by the Law Department is also circulated to the Governor. Rule 51(b) which provides for it reads thus:

"b) The originating Department shall also prepare a notice of motion to introduce a Bill and shall, after obtaining the signature of the Minister in charge, forward the notice to the Secretary to the Chamber of the Legislature to which it is proposed to introduce the Bill. The department will be in charge of the Bill in all its subsequent stages. The originating department, shall while giving notice of motion to the Assembly or Council Department submit a copy of the Bill as finalised by the Law Department to the Governor."

310. As our discussion on the Constituent Assembly debates also reveals, the option of withholding of assent, was believed by the framers, would be invoked in very rare circumstances where the Council of Ministers discover some error in the legislation or desire to incorporate certain changes to it so as to meet with the popular opinion outside the House. The framers did not expect that the Governor would, as a matter of routine, declare the withholding of assent to bills casually. The deletion of the expression "in his discretion" from the first proviso is also an unmistakable indication of the intent of the framers in vesting no discretion in the Governor as regards the withholding of assent and returning of the bill along with suggestions for the introduction of amendments.

311. B.K. Pavitra (supra) made a reference to paragraph 375 of the decision in Nabam Rebia (supra) to support the idea that the Governor is entrusted with discretion in the exercise of his powers under Article 200. However, it is pertinent to note that in the said paragraph, the Court observed that "The Governor is expected to function in accordance with the provisions of the Constitution (and the history behind the enactment of its provisions)". The history behind the enactment of Article 200 is loud and clear and speaks for itself as regards the intention of the framers of the Constitution, as we have discussed in detail.

312. What also needs to be remembered is that whenever a provision of the Constitution prescribes for the assent of the President for the purpose of enforceability or securing immunity, any State government would, in all likelihood, advise the Governor to reserve the bill for the consideration of the President. Even the Tamil Nadu Government Business Rules, 1978 prescribe the procedure for pre-consultation with the Central government whenever a subject-matter falling in the Concurrent list or certain other constitutional provision, is being legislated upon.

As we have also discussed, the position settled by Kaiser-I-Hind (supra) is that the reference to the President needs to be detailed and specific so as to enable him to undertake an effective "consideration" of the reserved bill. In the practical working of a Cabinet form of government, it is the Council of Ministers who would be best equipped to make such detailed references to the President, and the Governor would act as the bridge connecting the two. It is only in rare cases, where in spite of the evident requirement for the President's assent in order to make the bill effective as an Act (as observed in paragraph 86 of Hoecsht (supra)), the Council of Ministers has failed to advise the Governor to reserve the bill for the President, should the Governor decide to reserve the bill on his own motion.

313. Reference must also be made at this point to the observation made by this Court in Valluri Basavaiah Chowdhari (supra) wherein it was observed thus:

"19. The Governor is, however, made a component part of the legislature of a State under Article 168, because every Bill passed by the State legislature has to be reserved for the assent under Article 200. Under that article, the Governor can adopt one of the three courses, namely (i) he may give his assent to it, in which case the Bill becomes a law; or (ii) he may, except in the case of a "Money Bill", withhold his assent therefrom, in which case the Bill falls through unless the procedure indicated in the first proviso is followed i.e. return the Bill to the Assembly for reconsideration with a message, or (iii) he may (subject to Ministerial advice) reserve the Bill for the consideration of the President, in which case the President will adopt the procedure laid down in Article 201.

The first proviso to Article 200 deals with a situation where the Governor is bound to give his assent when the Bill is reconsidered and passed by the Assembly. The second proviso to that article makes the reservation for consideration of the President obligatory where the Bill would, "if it becomes law", derogate from the powers of the High Court. Thus, it is clear that a Bill passed by a State Assembly may become law if the Governor gives his assent to it, or if, having been reserved by the Governor for the consideration of the President, it is assented to by the President.

The Governor is, therefore, one of the three components of a State legislature. The only other legislative function of the Governor is that of promulgating Ordinances under Article 213(1) when both the Houses of the State legislature or the Legislative Assembly, where the legislature is unicameral, are not in session. The Ordinance-making power of the Governor is similar to that of the President, and it is co-extensive with the legislative powers of the State legislature."

(Emphasis supplied)

314. As discussed earlier, D.D. Basu has also taken a similar view in his commentary on the Constitution of India³⁰. The position prevailing in a number of international jurisdictions as discussed in the preceding parts of this judgment, also lends credence to this view.

315. The deletion of the expression "in his discretion" both from the substantive part of Article 200 as well as from the first proviso to it signifies that the intention of the framers of the Constitution was to ensure that the ordinary exercise of the Governor's function under Article 200 was to be in accordance with the aid and advice tendered to him by the Council of Ministers. The view expressed by Shri. Brajeshwar Prasad that the Governor should be conferred with some veto to negate an unsound legislation was expressly rejected by the Constituent Assembly.

Further, it was explained by Mr. T.T. Krishnamachari that the first proviso was in the form of a saving clause where the Council of Ministers could ask the Governor to hold up a bill in which certain errors were discovered subsequent to its passage in the House(s), or to suitably respond to the popular sentiment expressed after such passage. Pertinently, during the course of the debates, it was observed by Dr. B. R. Ambedkar that in a responsible form of government, there can be no room for the Governor to act in his discretion.

316. The deletion of the words "in his discretion" from Section 75 of the GoI Act, 1935 before adapting it as Article 200 of the Constitution must be understood in the right context. The GoI Act, 1919 introduced an element of provincial autonomy in the administration of the country, however, the Governor remained

at the center of administration having reserve as well as emergency powers. With the advent of the GoI Act, 1935, the dyarchy at the provincial level was abolished, but the Governor, as the agent of the British Crown, continued to have the discretion to veto any legislation passed by the provincial legislature.

The Governor could also in his discretion reserve any bill for the consideration of the Governor-General. This power of the Governor was to be essentially exercised in accordance with the directions of the Governor-General. However, with the dawn of independence, and the framing of the Constitution, the model of governance which was adopted allowed the States to be supreme in their respective fields, with certain powers having been reserved for the Union to ensure the integrity of the nation and uniformity of policy in certain key areas.

The Governor was no more required to have an all-pervasive control over the State and their responsibility towards the Union was to the extent of ensuring that the administration in the State was being done in conformity with the principles enshrined in the Constitution. It is in this context that the power of the Governor to submit a report to the President under Article 356 and also the power under Article 200 to reserve a bill for the consideration of the President, is to be understood.

317. The Governor under the constitutional scheme is no longer envisaged as the Governor under the GoI Act, 1935, having the ultimate power to veto any legislation and subvert the collective will of the people being expressed through the legislature. If the power to withhold assent to bills or to reserve them for the consideration of the President is construed as falling within the exclusive discretionary domain of the Governor, who would be free to decide a course of action notwithstanding the aid and advice of the Council of Ministers, it would have the potential of turning him into a super-constitutional figure, having the power to bring to a complete halt, the operation of the legislative machinery in the State.

The Governor cannot be vested with such a power, the exercise of which would enable him to collude with the Union Cabinet and ensure the death of any and all legislation initiated by the State merely by reserving it for the consideration of the President, who under Article 201 is not bound to give assent to any legislation reserved for his consideration.

318. Thus, we are of the view that the Governor does not possess any discretion in the exercise of his functions under Article 200 and has to mandatorily abide by the advice tendered to him by the Council of Ministers. The only exceptions to this general rule are as follows:

a. Where the bill is of a description as provided under the second proviso to Article 200;

b. Where the bill is of a nature covered by Articles 31A, 31C, 254(2), 288(2), 360(4)(a)(ii) etc. wherein assent of the President is a condition precedent before the bill can take effect as law or is necessary for the purpose of securing immunity against the operation of some constitutional provision;

c. Where the bill is of a nature that, if allowed to take effect, then it would undermine the Constitution by placing the fundamental principles of a representative democracy in peril as described in M.P. Special Police (supra).

319. Exception (a) as mentioned above is one which is expressly provided by the Constitution to fall within the ambit of discretionary powers of the Governor. Exception (b) flows from a reading of those provisions which require the mandatory assent of the President to a bill passed by the State legislature and thus are to be construed in light of the observations made in Nabam Rebia (supra) as instances "where such intent emerges from a legitimate interpretation of the provision concerned, and the same cannot be construed otherwise." Exception (c) has to be construed and understood in the context of the observations made by this Court in M.P. Special Police (supra) as covering such "situations where by reason of peril to democracy or democratic principles, an action may be compelled which from its nature is not amenable to Ministerial advice."

v. Whether the exercise of discretion by the Governor in discharge of his functions under Article 200 of the Constitution could be said to be subject to judicial review? If yes, what are the parameters for such judicial review?

"Be your ever so high, the law is above you"

~ Thomas Fuller

320. We have extensively discussed in the preceding section that the Governor under the scheme of Article 200 would, as a general rule, be expected to act on the aid and advice of the Council of Ministers as provided for under Article 163(1). The deletion of the expression "in his discretion" by the framers of the Constitution during the course of adapting Section 75 of the GoI Act, 1935 into Article 200, is a clear indication of their intent to make the ordinary exercise of powers of the Governor under Article 200 subject to the aid and advice of the Council of Ministers. However, the aforesaid ordinary exercise of power by the Governor is subject to certain exceptions where the Governor may act in his own discretion, contrary to the advice of the Council of Ministers. There are two broad circumstances under which it would be permissible for the Governor to act in his own discretion under Article 200:

a. Where the Governor is by or under the Constitution required to act in his discretion. The only situation in which such exercise of discretion has been explicitly laid down in the Constitution is the second proviso to Article 200, that is, where, in the opinion of the Governor, the bill, if assented to, would so derogate from the powers of the High Court as to endanger the position which the High Court is designed to fill by the Constitution;

b. Where the Governor is by necessary implication required to act in his own discretion. This would include:

(i) Where a bill attracts such a provision of the Constitution which requires the mandatory assent of the President for securing immunity or making the law enforceable. Exercise of discretion is permissible in these cases. For instance, Article(s) 31A, 31C, 254(2), 288(2), 360(4)(a)(ii) etc.

(ii) Situations where the exceptional conditions as described in *M.P. Special Police* (supra) and *Nabam Rebia* (supra) are applicable i.e., the State Council of Ministers has disabled or disentitled itself; possibility of complete breakdown of the rule of law or by reason of peril to democracy/democratic principles respectively, as a consequence of which an action may be compelled which, by its nature is not amenable to ministerial advice.

321. The question which naturally follows is whether the exercise of discretion by the Governor, in the exceptional situations as discussed aforesaid, would be amenable to judicial review. The importance of this question lies in the high constitutional importance of the role which the Governor plays under Article 200. The Governor, by choosing to act in his discretion under Article 200, has the power to thwart the entire legislative machinery of the State by reserving a bill for the consideration of the President. He also has the power to significantly delay the grant of assent to a bill by withholding assent and returning the same to the State legislature under the first proviso to Article 200 of the Constitution.

322. It was contended by the petitioner that no exercise of power under the Constitution could be said to be beyond the scope of judicial review as every authority, howsoever high, is expected to perform its functions within the constitutional framework. It was submitted that if the exercise of powers by the Governor under Article 200 is held to be outside the scope of judicial review, then that would render him to be a super-constitutional figure in the State, who would be able to override the legislature and the government elected by the people, at his whims and fancies and without any checks and balance.

323. Refuting the contention of the petitioner, the Attorney General for India placed reliance on the decisions of this Court in *Hoechst* (supra), *Kaiser-IHind* (supra), and *B.K. Pavitra* (supra) to argue that the grant of assent under Articles

200 and 201 respectively has been previously held to be nonjusticiable by this Court.

324. Essentially, the questions that fall for our consideration are as follows:

(i) First, whether the discharge of functions by the Governor under Article 200 of the Constitution, in his discretion could be said to be immune from judicial review?

(ii) Secondly, whether the withholding of assent by the President under Article 201 of the Constitution, could also be said to be beyond the scope of judicial scrutiny?

(iii) Thirdly, if the aforesaid discharge of functions is subject to judicial review, whether such discharge of functions could be said to be nonjusticiable in light of the decisions of this Court in *Hoechst* (supra), *Kaiser-I-Hind* (supra), and *B.K. Pavitra* (supra)?

325. *Samsher Singh* (supra) in paragraph 54 observed that "The discretion conferred upon the Governor means that as the constitutional or formal head of the State the power is vested in him". We have also discussed in detail, in the preceding sections, that the source of all discretion for the Governor is to be found within Article 163(1) of the Constitution alone.

Thus, what falls for us to decide is whether the exercise of this constitutional power by the Governor could be said to be amenable to judicial review where such exercise is assailed on the ground that it transgresses the boundaries set by the Constitution. This Court has had the occasion of discussing the concept of judicial review in a catena of cases. We are of the view that for a better exposition and enlightenment on this issue, it would be prudent and beneficial to make a reference to all these decisions.

326. In *Maru Ram* (supra) this Court speaking eruditely through the inimitable Krishna Iyer, J., observed that all public power including constitutional powers of pardon, commutation and release under Articles 72 and 161 of the Constitution respectively, cannot run riot or be exercisable irrationally or arbitrarily. Any action under these provisions must be informed by the finer canons of constitutionalism. In his words, "the rule of law, under our constitutional order, transforms all public power into responsible, responsive, regulated exercise informed by high purposes and geared to people's welfare".

It held that all the powers entrusted by the Constitution must, in its exercise, eschew any form of arbitrariness and stem from an intelligible and well-reasoned criterion that is predicated on an earnest purpose. It further categorically held that - "while constitutional power is beyond challenge, its actual exercise may still be

vulnerable" - to judicial review. In the last, Krishna Iyer, J., further cautioned that such power ought not to be vulgarized or abused by personal vanity and the notions of those exercising such powers. The relevant observations read as under:

"62. An issue of deeper import demands our consideration at this stage of the discussion. Wide as the power of pardon, commutation and release (Articles 72 and 161) is, it cannot run riot; for no legal power can run unruly like John Gilpin on the horse but must keep sensibly to a steady course. Here, we come upon the second constitutional fundamental which underlies the submissions of counsel. It is that all public power, including constitutional power, shall never be exercisable arbitrarily or mala fide and, ordinarily, guidelines for fair and equal execution are guarantors of the valid play of power. We proceed on the basis that these axioms are valid in our constitutional order.

63. The jurisprudence of constitutionally canalised power as spelt out in the second proposition also did not meet with serious resistance from the learned Solicitor-General and, if we may say so rightly. Article 14 is an expression of the egalitarian spirit of the Constitution and is a clear pointer that arbitrariness is anathema under our system. It necessarily follows that the power to pardon, grant remission and commutation, being of the greatest moment for the liberty of the citizen, cannot be a law unto itself but must be informed by the finer canons of constitutionalism.

It is the pride of our constitutional order that all power, whatever its source, must, in its exercise, anathematise arbitrariness and obey standards and guidelines intelligible and intelligent and integrated with the manifest purpose of the power. From this angle even the power to pardon, commute or remit is subject to the wholesome creed that guidelines should govern the exercise even of presidential power.

65. Pardon, using this expression in the amplest connotation, ordains fair exercise, as we have indicated above. Political vendetta or party favouritism cannot but be interlopers in this area. The order which is the product of extraneous or mala fide factors will vitiate the exercise. While constitutional power is beyond challenge, its actual exercise may still be vulnerable. Likewise, capricious criteria will void the exercise. For example, if the Chief Minister of a State releases everyone in the prisons in his State on his birthday or because a son has been born to him, it will be an outrage on the Constitution to let such madness survive. Push this logic a little further and the absurdity will be obvious.

No constitutional power can be vulgarised by personal vanity of men in authority. Likewise, if an opposition leader is sentenced, but the circumstances cry for remission such as that he is suffering from cancer or that his wife is terminally ill or that he has completely reformed himself, the power of remission under

Articles 72/161 may ordinarily be exercised and a refusal may be wrong-headed. If, on the other hand, a brutal murderer, bloodthirsty in his massacre, has been sentenced by a court with strong observations about his bestiality, it may be arrogant and irrelevant abuse of power to remit his entire life sentence the very next day after the conviction merely because he has joined the party in power or is a close relation of a political high-up."

(Emphasis supplied)

327. This Court, speaking through nine-Judges in *Indira Sawhney v. Union of India* reported in (1992) Supp (3) SCC 217 held that the yardstick of subjecting an act or a decision to judicial review is not whether it is a legislative act or an executive decision on a policy matter but whether it violates any constitutional guarantee or the rights under Part III of the Constitution. The Court further held that the doctrine of political thicket does not apply in the Indian constitutional framework. It is not that the courts avoid entering into a political question because of the doctrine of separation of power, but because of desirability of avoiding entering into a political question. The relevant observations are reproduced hereinbelow:

"557. The political questions doctrine, however, does not mean, that anything that is tinged with politics or even that any matter that might properly fall within the domain of the President or the Congress shall not be reviewable, for that would end the whole constitutional function of the court" [Samuel Krislov : *The Supreme Court in the Political Process*, p. 96].

Under our Constitution, the yardstick is not if it is a legislative act or an executive decision on a policy matter but whether it violates any constitutional guarantee or has potential of constitutional repercussions as enforcement of an assured right, under Chapter III of the Constitution, by approaching courts is itself a fundamental right. The "constitutional fiction" of political question, therefore, should not be permitted to stand in way of the court to, "deny the Nation the guidance on basic democratic problems" [C. Herman Pritchett : *The American Constitution*, p. 154 (quoted in *The Judicial Review of Legislative Acts* by Dr Chakradhar Jha, p. 355)].

Avoidance of entering into a political question may be desirable and may not be resorted to, "not because of doctrine of separation of power or lack of rules but because of expediency" [Charles Gordon Post, pp. 129-130 : *The Supreme Court Questions* (quoted in '*The Judicial Review of Legislative Acts*' by Dr Chakradhar Jha, p. 351)] in larger interest for public good but legislatures, too, have, "their authority measured by the Constitution". Therefore absence of norms to examine political question has rarely any place in the Indian constitutional jurisprudence."

(Emphasis supplied)

328. Further, this Court in *B.P. Singhal (supra)* upon examining a catena of decisions on the scope and evolution of the power of judicial review of the courts observed that, although under the English Law, the prerogative powers of the monarch such as the power to make treaties, grant mercy or to dissolve the parliament etc. are traditionally not subject to judicial review due to the very nature of such powers falling outside the expertise and competence of the courts, yet such preclusion of the power of judicial review is by no means a blanket rule.

It observed that even prerogative powers, insofar as the questions of legality, rationality or procedural propriety are concerned, would always be amenable to judicial review, because the safeguarding of such considerations in the exercise of any prerogative powers is the domain, responsibility and duty of the courts as the sentinel on the *qui vive*.

Placing reliance on the decision of this Court in *State of Rajasthan v. Union of India* reported in (1977) 3 SCC 592 it held that the courts, as the protector and ultimate interpreter of the Constitution, not only have the power but an obligation to determine the power conferred on each branch of the government, the extent and limits of such powers and whether the exercise of such power exceeds those limits or not, irrespective of whether such powers are the exclusive prerogative of any one branch of the government or such questions are inherently political in complexion. The relevant observations read as under:

"72. The traditional English view was that prerogative powers of the Crown conferred unfettered discretion which could not be questioned in courts. Lord Ruskil attempted to enumerate such prerogative powers in *Council of Civil Service Unions v. Minister for Civil Service* [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] : (AC p. 418)

"Prerogative powers such as those relating to the making of treaties, the defence of the realm, the prerogative of mercy, the grant of honours, the dissolution of Parliament and the appointment of ministers as well as others are not, I think, susceptible to judicial review because their nature and subject-matter are such as not to be amenable to the judicial process. The courts are not the place wherein to determine whether a treaty should be concluded or the armed forces disposed in a particular manner or Parliament dissolved on one date rather than another."

However, the contemporary English view is that in principle even such "political questions" and exercise of prerogative power will be subject to judicial review on principles of legality, rationality or procedural impropriety. [See decision of House of Lords in: *R. (Bancoult) v. Secy. of State for Foreign & Commonwealth*

Affairs (No. 2) [(2009) 1 AC 453 (HL)].] In fact, De Smith's Judicial Review (6th Edn. 2007, p. 15) states:

"Judicial review has developed to the point where it is possible to say that no power-whether statutory or under the prerogative-is any longer inherently unreviewable. Courts are charged with the responsibility of adjudicating upon the manner of the exercise of public power, its scope and its substance. As we shall see, even when discretionary powers are engaged, they are not immune from judicial review."

73. In *State of Rajasthan v. Union of India* [(1977) 3 SCC 592] , this Court (Bhagwati, J. as he then was) held: (SCC pp. 660-62, para 149)

"149. But merely because a question has a political complexion, that by itself is no ground why the Court should shrink from performing its duty under the Constitution if it raises an issue of constitutional determination. the Court cannot fold its hands in despair and declare 'Judicial hands off'. So long as a question arises whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the Court. Indeed it would be its constitutional obligation to do so. This Court is the ultimate interpreter of the Constitution and to this Court is assigned the delicate task of determining what is the power conferred on each branch of Government, whether it is limited, and if so, what are the limits and whether any action of that branch transgresses such limits.

It is for this Court to uphold the constitutional values and to enforce the constitutional limitations. That is the essence of the rule of law. Where there is manifestly unauthorised exercise of power under the Constitution, it is the duty of the Court to intervene. Let it not be forgotten, that to this Court as much as to other branches of Government, is committed the conservation and furtherance of democratic values. The Court's task is to identify those values in the constitutional plan and to work them into life in the cases that reach the Court. The Court cannot and should not shirk this responsibility,."

In the said decision, Chandrachud, J. (as he then was) observed thus: (SCC p. 645, para 132)

"132. They may not choose to disclose them but if they do, as they have done now, they cannot prevent a judicial scrutiny thereof for the limited purpose of seeing whether the reasons bear any rational nexus with the action proposed. I am inclined to the opinion that the Government cannot claim the credit at the people's bar for fairness in disclosing the reasons for the proposed action and at the same time deny to this Court the limited power of finding whether the reasons bear the necessary nexus or are wholly extraneous to the proposed action. The

argument that 'if the Minister need not give reasons, what does it matter if he gives bad ones' overlooks that bad reasons can destroy a possible nexus and may vitiate the order on the ground of mala fides."

329. Furthermore, B.P. Singhal (supra) categorically held that unlike England, all powers that have been conferred upon the President and the Governor by the Constitution are not a matter of prerogative but a constitutional responsibility and its exercise, a matter of performance of an official duty of the highest sanctity, and thus, unquestionably amenable to judicial review. It observed that the sufficiency of the attending facts and circumstances necessitating the exercise of such powers is to be decided by the President or the Governor.

However, the question of whether such exercise is predicated upon all relevant cogent materials and falls within the limitations of the constitutional scheme and is not a result of an arbitrary or malafide exercise, would be subject to the judicial review of the courts. Placing reliance on Maru Ram (supra) it held that the exercise of such powers by the President only carries with it a notional presumption of a careful and proper exercise based on objective considerations, but, by no stretch of imagination can it be construed to confer an immunity from judicial review.

It further explained, in the context of Article 72 of the Constitution, the standard of judicial review that the courts are expected to apply when scrutinizing the exercise of such power by the President. It held that where reasons have been given for the exercise of such power, there the courts may interfere only if the reasons are based on irrelevant or extraneous considerations. However, where no reasons have been given, there the courts may interfere only if the exercise is vitiated by a flawed understanding of the ambit of such power by misjudgment or is otherwise arbitrary, discriminatory or malafide. The relevant observations read as under: -

"76. This Court has examined in several cases, the scope of judicial review with reference to another prerogative power-power of the President/Governor to grant pardon, etc. and to suspend, remit or commute sentences. The view of this Court is that the power to pardon is a part of the constitutional scheme, and not an act of grace as in England. It is a constitutional responsibility to be exercised in accordance with the discretion contemplated by the context. It is not a matter of privilege but a matter of performance of official duty. All public power including constitutional power, shall never be exercisable arbitrarily or mala fide.

While the President or the Governor may be the sole judge of the sufficiency of facts and the propriety of granting pardons and reprieves, the power being an enumerated power in the Constitution, its limitations must be found in the Constitution itself. The Courts exercise a limited power of judicial review to

ensure that the President considers all relevant materials before coming to his decision. As the exercise of such power is of the widest amplitude, whenever such power is exercised, it is presumed that the President acted properly and carefully after an objective consideration of all aspects of the matter.

Where reasons are given, the Court may interfere if the reasons are found to be irrelevant. However, when reasons are not given, the Court may interfere only where the exercise of power is vitiated by self-denial or wrong appreciation of the full amplitude of the power under Article 72 or where the decision is arbitrary, discriminatory or mala fide (vide *Maru Ram v. Union of India* [(1981) 1 SCC 107 : 1981 SCC (Cri) 112], *Kehar Singh v. Union of India* [(1989) 1 SCC 204 : 1989 SCC (Cri) 86], etc.)."

(Emphasis supplied)

330. In *Keisham* (supra), this Court had held that a Speaker acting under the Tenth Schedule of the Constitution would be duty bound to decide the disqualification petitions made before him within a reasonable time and that any failure in exercising this jurisdiction conferred upon him or reluctance in acting in a time-bound manner would be a fit ground for the courts to engage in an exercise of judicial review of his actions, irrespective of the fact that it is the Speaker who has the prerogative to adjudicate such petitions. It held that even where the jurisdiction of the courts to embark upon an examination on the merits of such prerogative powers has been ousted, the same does not curtail or inhibit the power of judicial review over the manner of exercise or non-exercise of such prerogative powers.

331. Similarly, in *A.G. Perarivalan* (supra), this Court reiterated that any inexplicable or inexcusable non-exercise of a prerogative or sovereign power would be amenable to judicial review and that the manner of exercise of such powers by the Governor could not be said to be impervious to judicial scrutiny.

332. From the above exposition of law, it becomes clear as a noon day, that no exercise of power under the Constitution is beyond the pale of judicial review. Thus, we find no reason to exclude the discharge of functions by the Governor or the President under Articles 200 and 201 of the Constitution respectively.

333. It could be argued that the decision taken by the Governor under Article 200 would be shielded from the scrutiny of the courts by virtue of the immunity accorded under Article 361 of the Constitution. However, in this regard, we may only refer to the observations made by this Court in *Rameshwar Prasad* (supra) which leaves no doubt that the immunity enshrined in Article 361 of the Constitution does not preclude or prohibit the courts in any manner from looking

into the actions of the Governor which by necessary implication would include his actions under Article 200 as well. The relevant observations are as follows:

"173. A plain reading of the aforesaid article shows that there is a complete bar to the impleading and issue of notice to the President or the Governor inasmuch as they are not answerable to any court for the exercise and performance of their powers and duties. Most of the actions are taken on the aid and advice of the Council of Ministers. The personal immunity from answerability provided in Article 361 does not bar the challenge that may be made to their actions.

Under law, such actions including those actions where the challenge may be based on the allegations of mala fides are required to be defended by the Union of India or the State, as the case may be. Even in cases where personal mala fides are alleged and established, it would not be open to the Governments to urge that the same cannot be satisfactorily answered because of the immunity granted. In such an eventuality, it is for the respondent defending the action to satisfy the Court either on the basis of the material on record or even filing the affidavit of the person against whom such allegation of personal mala fides are made."

(Emphasis supplied)

334. The High Court of Madras in *S. Ramakrishnan v. State of Tamil Nadu* reported in 2020 SCC OnLine Mad 5207 was in seisin of a similar issue involving a bill passed by the State Legislative Assembly which remained pending for two months before the Governor for grant of assent. When the High Court posed a question as regards the inaction on the part of the Governor, the Advocate General referred to Article 361 of the Constitution. The Court interpreted Article 361 in light of Article 200 and observed that the protection granted to the Governor under the Constitution was to perform his constitutional duties expeditiously. It also underscored the obligation of the courts to perform their constitutional duties and subjecting unconstitutional actions to judicial scrutiny in public interest. The relevant observations are as follows:

"6. A perusal of Article 200 - Assent to Bills, would reveal that the Constitutional Authority has to take a decision, if a Bill is presented for Assent, as soon as possible. The protection has been given by the Framers of the Constitution, with hope and trust in the Appointees that they would perform their constitutional functioning promptly and there would not be any situation, wherein they would be called for to give explanation or they will be questioned by the Court of law.

7. When situation changes and present kind of situation arises, a different approach has to be taken by the Courts in the interest of the Public. It is well settled law that "Extraordinary situation requires extraordinary remedies". When public interest requires, this Court has to do its constitutional duties and to

address the situation. However, this Court is of the opinion that such a situation would not arise to pass any order in this matter."

(Emphasis supplied)

335. Thus, what is discernible from above is that the discharge of functions by the President or the Governor as constitutional and formal heads is undoubtedly subject to judicial review by virtue of it being an exercise of their constitutional powers. However, could it at the same time be said that nevertheless it would be improper for the courts to examine such actions of the President or the Governor as the actions are essentially political in nature and hence non-justiciable for the reason that no judicial standard can be evolved for the scrutiny of such actions. In this regard, we may make reference to certain decisions rendered by this Court as well as few landmark decisions of other international jurisdictions.

336. In *Minerva Mills v. Union of India* reported in (1980) 3 SCC 625, this Court held that the jurisdiction of courts is not ousted merely because a question has a political colour. Every constitutional question, irrespective of the political complexion or make thereof, falls within the jurisdiction of the courts. The Court held that whether the legislature or the executive has acted within the limits of its authority or not, is for the courts to decide. The relevant observations are as follows:

"98. It is axiomatic that if a question brought before the court is purely a political question not involving determination of any legal or constitutional right or obligation, the court would not entertain it, since the court is concerned only with adjudication of legal rights and liabilities. But merely because a question has a political complexion, that by itself is no ground why the court should shrink from performing its duty under the Constitution, if it raises an issue of constitutional determination. There are a large number of decisions in the United States where the Supreme Court has entertained actions having a political complexion because they raised constitutional issues: vide *Gomellion v. Lightfoot* [364 US 339 (1960) : 5 L Ed 2d 110] and *Baker v. Carr* [369 US 186 (1962) : 7 L Ed 2d 663].

The controversy before the court may be political in character, but so long as it involves determination of a constitutional question, the court cannot decline to entertain it. This is also the view taken by Gupta, J., and myself in *State of Rajasthan v. Union of India* [(1977) 3 SCC 592 : AIR 1977 SC 1361]. I pointed out in my judgment in that case and I still stand by it, that merely because a question has a political colour, the court cannot fold its hands in despair and declare "judicial hands off".

So long as the question is whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the

court. Indeed it would be its constitutional obligation to do so. I have said before, I repeat again that the Constitution is *suprema lex*, the paramount law of the land, and there is no department or branch of government above or beyond it. Every organ of government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of its authority and whether it has done so or not is for the court to decide.

The court is the ultimate interpreter of the Constitution and when there is manifestly unauthorised exercise of power under the Constitution, it is the duty of the court to intervene. Let it not be forgotten, that to this Court as much as to other branches of government, is committed the conservation and furtherance of constitutional values. The court's task is to identify those values in the constitutional plan and to work them into life in the cases that reach the court."

(Emphasis supplied)

337. The nine-Judge Bench decision of this Court in *S.R. Bommai* (supra) observed that the concept of justiciability is not synonymous with judicial review. It noted that even while exercising the power of judicial review, courts can decline to exercise such power as being non-justiciable. It categorically observed that though judicial review may be avoided on questions of political nature, yet legal questions camouflaged with a political cloak will be justiciable. The relevant observations have been reproduced hereinbelow:

"201. Judicial review must be distinguished from justiciability. The two concepts are not synonymous. The power of judicial review goes to the authority of the court, though in exercising the power of judicial review, the court in an appropriate case may decline to exercise the power as being not justiciable. The Constitution is both the source of power as well as it limits the power of an authority, *ex necessitate*. Judiciary has to decide the source, extent, limitations of the power and legitimacy in some cases of the authority exercising the power. There are no hard and fast fixed rules as to justiciability of a controversy.

258. Justiciability is not a legal concept with a fixed content, nor is it susceptible of scientific verification. Its use is the result of many pressures or variegated reasons. Justiciability may be looked at from the point of view of common sense limitation. Judicial review may be avoided on questions of purely political nature, though pure legal questions camouflaged by the political questions are always justiciable. The courts must have judicially manageable standards to decide a particular controversy. Justiciability on a subjective satisfaction conferred in the widest terms to the political coordinate executive branch created by the constitutional scheme itself is one of the considerations to be kept in view in exercising judicial review."

(Emphasis supplied)

338. This Court in *A.K. Kaul v. Union of India* reported in (1995) 4 SCC 73 also elucidated the distinction between judicial review and justiciability. It observed that, in a written Constitution, the bounds within which the various organs of the State are delineated, the same implicitly casts a duty upon the courts to test the validity of every action of such constitutional organ, through judicial review, to ensure that such exercise of power is within the confines of the Constitution.

It thus, held that the power of judicial review of the courts would be available in respect of exercise of all powers by any authority under the Constitution unless expressly excluded. It further held that, although judicial review is the norm, yet the unavailability of judicially manageable standards in certain aspects of the power, whose exercise is in question, may render the judicial review of such exercise of power nonjusticiable. It explained that justiciability refers to the question whether a particular field could be said to fall within the purview of the power of judicial review. The relevant observations are as follows:

"12. It is, therefore, necessary to deal with this question in the instant case. We may, in this context, point out that a distinction has to be made between judicial review and justiciability of a particular action. In a written constitution the powers of the various organs of the State are limited by the provisions of the Constitution. The extent of those limitations on the powers has to be determined on an interpretation of the relevant provisions of the Constitution.

Since the task of interpreting the provisions of the Constitution is entrusted to the Judiciary, it is vested with the power to test the validity of an action of every authority functioning under the Constitution on the touchstone of the Constitution in order to ensure that the authority exercising the power conferred by the Constitution does not transgress the limitations placed by the Constitution on exercise of that power. This power of judicial review is, therefore, implicit in a written constitution and unless expressly excluded by a provision of the Constitution, the power of judicial review is available in respect of exercise of powers under any of the provisions of the Constitution. Justiciability relates to a particular field falling within the purview of the power of judicial review.

On account of want of judicially manageable standards, there may be matters which are not susceptible to the judicial process. Such matters are regarded as nonjusticiable. In other words, during the course of exercise of the power of judicial review it may be found that there are certain aspects of the exercise of that power which are not susceptible to judicial process on account of want of judicially manageable standards and are, therefore, not justiciable."

(Emphasis supplied)

339. This Court in *Epuru Sudhakar v. Govt. of A.P.* reported in (2006) 8 SCC 161, speaking in the context of Articles 72 and 161 of the Constitution respectively, observed that the determining factor in deciding whether a sovereign or prerogative power would be subject to judicial review is the subject-matter of such power and not its source. It held that the exercise of every prerogative power is subject to the rule of law and the rule of law cannot be made subservient to political expediency. The Court defined that 'manageable standards' refer to certain discernible standards expected in a functioning democracy. It also held that exercise of any prerogative power cannot be placed in a straitjacket formula and manageable standards would vary depending on the nature of the power. The relevant observations are as follows:

"66. Granting of pardon is in no sense an overturning of a judgment of conviction, but rather it is an executive action that mitigates or sets aside the punishment for a crime. It eliminates the effect of conviction without addressing the defendant's guilt or innocence. The controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subjectmatter. It can no longer be said that prerogative power is ipso facto immune from judicial review. An undue exercise of this power is to be deplored. Considerations of religion, caste or political loyalty are irrelevant and fraught with discrimination. These are prohibited grounds.

The Rule of Law is the basis for evaluation of all decisions. The supreme quality of the Rule of Law is fairness and legal certainty. The principle of legality occupies a central plan in the Rule of Law. Every prerogative has to be subject to the Rule of Law. That rule cannot be compromised on the grounds of political expediency. To go by such considerations would be subversive of the fundamental principles of the Rule of Law and it would amount to setting a dangerous precedent. The Rule of Law principle comprises a requirement of "Government according to law".

The ethos of "Government according to law" requires the prerogative to be exercised in a manner which is consistent with the basic principle of fairness and certainty. Therefore, the power of executive clemency is not only for the benefit of the convict, but while exercising such a power the President or the Governor, as the case may be, has to keep in mind the effect of his decision on the family of the victims, the society as a whole and the precedent it sets for the future."

69. In conclusion, it may be stated that, there is a clear symmetry between the constitutional rationale for review of statutory and prerogative power. In each case, the courts have to ensure that the authority is used in a manner which is consistent with the Rule of Law, which is the fundamental principle of good administration. In each case, the Rule of Law should be the overarching constitutional justification for judicial review. The exercise of prerogative power

cannot be placed in straitjacket formula and the perceptions regarding the extent and amplitude of this power are bound to vary. However, when the impugned decision does not indicate any data or manageable standards, the decision amounts to derogation of an important constitutional principle of Rule of Law."

(Emphasis supplied)

340. In *Regina (Miller) v. Prime Minister (Lord Advocate and others intervening)* reported in [2019] 3 WLR 589, the Supreme Court of the United Kingdom was dealing with the justiciability of the power of prorogation. It was held that, although the courts cannot decide political questions, yet, the fact that a dispute arises from a matter of political controversy would not restrain the courts completely from looking into it, in exercise of judicial review. It further noted that almost all decisions by the executive have a political hue to them, yet, the courts in the past have exercised a supervisory jurisdiction. The Court held that a threat to parliamentary sovereignty constitutes as a significant ground for justiciability of prerogative powers.

341. In the seminal decision of *Baker v. Carr*, reported in 1962 SCC OnLine US SC 40, the Supreme Court of the United States of America examined whether questions of legislative apportionment were essentially political questions and hence, not justiciable. The Court in this case laid down six heavily overlapping indicia of a non-justiciable matter. These were as follows:

- (i) a textually demonstrable constitutional commitment of the issue to another political branch; or
- (ii) a lack of judicially discoverable and manageable standards for resolving it, or
- (iii) a need to make an initial policy determination clearly for non-judicial discretion, or
- (iv) the impossibility of a decision by the court without expressing lack of respect due to co-ordinate branches of Government; or
- (v) an unusual need for unquestioning adherence to a political decision already made; or
- (vi) the potentiality for embarrassment from multifarious pronouncements by various departments on one question. It was emphatically held that, save the aforesaid considerations, no other issue is liable for dismissal on ground of a lack of justiciability.

342. Before proceeding further, we deem it appropriate to refer to all the aforesaid decisions of this Court where the justiciability of assent has been

discussed. The first in line is the Constitution Bench decision in Kameshwar Singh (supra) where M.C. Mahajan, J., (as his lordship then was), in the context of Article 31A of the Constitution, observed that the assent of the President, once given to a bill reserved for his consideration, is non-justiciable. The relevant observations are as follows:

"266. The provisions of Article 31(2) therefore, do not stand repealed by Article 31-A. On the other hand, they are kept alive. The difference is that persons whose properties fall within the definition of the expression "estate" in Article 31-A are deprived of their remedy under Article 32 of the Constitution and the President has been constituted the sole judge of deciding whether a State law acquiring estates under compulsory power has or has not complied with the provisions of Article 31(2). The validity of the law in those cases depends on the subjective opinion of the President and is not justiciable. Once the assent is given, the law is taken to have complied with the provisions of Article 31(2)."

(Emphasis supplied)

343. The aforesaid observations would indicate that the grant of assent by the President to a State legislation falling under Article 31A was held to be nonjusticiable only on the ground that the first proviso to Article 31A confers the power on the President to take a decision as regards whether assent is to be granted or not.

344. The next decision where the justiciability of assent was discussed is the decision of the three-Judge Bench in Hoechst (supra) wherein, inter alia, one of the grounds of challenge to the legislation under consideration was that since the subject matter of the bill fell under List II of the Seventh Schedule, there was no occasion for the Governor to have reserved the bill for the consideration of the President. It is on this ground that the subsequent grant of assent by the President was called into question. Negating the contention, the Court observed thus:

"86. There is no provision in the Constitution which lays down that a Bill which has been assented to by the President would be ineffective as an Act if there was no compelling necessity for the Governor to reserve it for the assent of the President. A Bill which attracts Article 254(2) or Article 304(b) where it is introduced or moved in the Legislative Assembly of a State without the previous sanction of the President or which attracted Article 31(3) as it was then in force, or falling under the second proviso to Article 200 has necessarily to be reserved for the consideration of the President.

There may also be a Bill passed by the State Legislature where there may be a genuine doubt about the applicability of any of the provisions of the Constitution which require the assent of the President to be given to it in order that it may be

effective as an Act. In such a case, it is for the Governor to exercise his discretion and to decide whether he should assent to the Bill or should reserve it for consideration of the President to avoid any future complication. Even if it ultimately turns out that there was no necessity for the Governor to have reserved a Bill for the consideration of the President, still he having done so and obtained the assent of the President, the Act so passed cannot be held to be unconstitutional on the ground of want of proper assent.

This aspect of the matter, as the law now stands, is not open to scrutiny by the courts. In the instant case, the Finance Bill which ultimately became the Act in question was a consolidating Act relating to different subjects and perhaps the Governor felt that it was necessary to reserve it for the assent of the President. We have no hesitation in holding that the assent of the President is not justiciable, and we cannot spell out any infirmity arising out of his decision to give such assent."

(Emphasis supplied)

345. It is important to note that the aforesaid observations were made by this Court in response to the argument that the grant of assent by the President, in a case where it was not necessary for the Governor to reserve the bill for the consideration of the President, would vitiate the assent given by the President. On the contrary, the case at hand involves a totally different factual situation wherein the State Government is aggrieved by the reservation of bills by the Governor in exercise of his discretion and not in accordance with the aid and advice of the Council of Ministers.

The further grievance of the petitioner is that such reservation of bills by the Governor is not guided by constitutional principles but is impelled by lack of bonafides and political reasons. The applicability of the ratio laid down in the aforesaid decisions of Kameshwar Singh (supra) and Hoechst (supra) and also the other decisions of this Court as regards the questions of justiciability and judicial review, would have to be decided keeping in mind the peculiar facts of the case at hand which we have been called upon to deal with.

346. The decision in Hoechst (supra) was referred to in the decision of this Court in Bharat Sevashram Sangh v. State of Gujarat reported in (1986) 4 SCC 51 wherein one of the challenges to the validity of the legislation was that the bill had received conditional assent from the President, and such partial or conditional assent not being permissible under the Constitution, was thus erroneous in law.

While the Court referred to the observations made in Hoechst (supra), it also looked into the materials on record and arrived at a conclusion that there was no

infirmity in the grant of assent by the President. Therefore, it cannot be said that the decision of the Court was based on the non-justiciability of assent alone as the Court arrived at the finding after the actual satisfaction on the validity of assent upon a perusal of the relevant materials. The relevant observations are reproduced below:

"6. The contention relating to the alleged invalidity of the assent given by the President is formulated by the learned counsel for the petitioners/appellants thus. The Bill was passed by the legislature of the State on February 15, 1973 and it was immediately thereafter forwarded to the Governor for his assent. The Governor reserved the Bill for the consideration of the President under Article 200 of the Constitution and the subsequent events according to the learned counsel showed that the President did not either give his assent or withhold his assent as contemplated under Article 201 of the Constitution but he gave a qualified or conditional assent which was not contemplated under Article 201 of the Constitution.

It is argued that since the President did not give absolute assent but only a qualified or conditional assent the Bill in question had not become a law. In reply to these averments in the petitions the Under Secretary to the Government of Gujarat, Education Department has stated in his counter-affidavit that the Bill was presented to the Governor of Gujarat after it was passed by the Assembly. The Governor of Gujarat reserved the Bill for the consideration of the President under Article 200 of the Constitution since he felt that in view of clause 33 of the Bill which provided for taking over of the management of a school for a limited period in public interest it was necessary to reserve the Bill for the consideration of the President.

Accordingly the Bill was referred to the President. At the meeting held in the Ministry of Home Affairs, Government of India on August 3, 1973 to discuss the Bill it was suggested by the representatives of the Central Government that the provisions of the Bill which did not exclude institutions established or administered by the minorities from their scope were repugnant to Article 30 of the Constitution and therefore the Bill should be suitably amended. It was also suggested to the representatives of the State Government that it would be better to carry out the requisite amendments by promulgating an ordinance.

Accordingly the draft of the ordinance which was ultimately promulgated as Ordinance 6 of 1973 was forwarded for the instructions of the President under Article 213(1) of the Constitution. Thereafter the draft of the Ordinance and the Bill were both considered by the President and he assented to the said Bill and issued instructions as required by the proviso to Article 213 of the Constitution for the promulgation of the said Ordinance on September 28, 1973. Accordingly

the said Bill became law on its publication on the very same day. The Ordinance was issued on September 29, 1973.

In the circumstances it cannot be said that the assent which was given by the President was conditional. The records relating to the above proceedings were also made available to the court. On going through the material placed before us we are satisfied that the President had given assent to the Act and it is not correct to say that it was a qualified assent. The Act which was duly published in the official Gazette contains the recital that the said Act had received the assent of the President on September 28, 1973. Moreover questions relating to the fact whether assent is given by the Governor or the President cannot be agitated also in this manner."

(Emphasis supplied)

347. Hoechst (supra) was also referred to and relied upon by this Court in B.K. Pavitra (supra) wherein it was observed that owing to the sovereign nature of the power of the Governor to reserve a bill for the consideration of the President under Article 200, it would not be possible for this Court to reflect upon the situations in which such a power of reference may be exercised by the Governor. It was further observed by the Court that the decision in Hoechst (supra) has excluded the exercise of this power from the scope of judicial scrutiny. The relevant observations read as under:-

"71. The eventuality which is specified in Article 254(2) does not exhaust the ambit of the power entrusted to the Governor under Article 200 to reserve a Bill for the consideration of the President. Apart from a repugnancy in matters falling in the Concurrent List between State and Parliamentary legislation, a Governor may have sound constitutional reasons to reserve a Bill for the consideration of the President. Article 200, in its second proviso mandates that a Bill which derogates from the powers of the High Court must be reserved for the consideration of the President.

Apart from Bills which fall within the description set out in the second proviso, the Governor may legitimately refer a Bill for consideration of the President upon entertaining a legitimate doubt about the validity of the law. By its very nature, it would not be possible for this Court to reflect upon the situations in which the power under Article 200 can be exercised. This was noticed in the judgment of this Court in Hoechst [Hoechst Pharmaceuticals Ltd. v. State of Bihar, (1983) 4 SCC 45 : 1983 SCC (Tax) 248].

72. Hoechst [Hoechst Pharmaceuticals Ltd. v. State of Bihar, (1983) 4 SCC 45 : 1983 SCC (Tax) 248] is an authority for the proposition that the assent of the President is nonjusticiable. Hoechst [Hoechst Pharmaceuticals Ltd. v. State of

Bihar, (1983) 4 SCC 45 : 1983 SCC (Tax) 248] also lays down that even if, as it turns out, it was not necessary for the Governor to reserve a Bill for the consideration of the President, yet if it was reserved for and received the assent of the President, the law as enacted cannot be regarded as unconstitutional for want of "proper" assent.

73. The above decisions essentially answer the submissions which were urged by Dr Dhavan. The law as propounded in the line of precedents adverted to above must negate the submissions which were urged on behalf of the petitioners. Once the Bill (which led to the Reservation Act, 2018) was reserved by the Governor for the consideration of the President, it was for the President to either grant or withhold assent to the Bill. The President having assented to the Bill, the requirements of Article 201 were fulfilled. The validity of the assent by the President is non-justiciable."

(Emphasis supplied)

348. We find it difficult to express our agreement with the view taken in B.K. Pavitra (supra) that the exercise of power to reserve a bill for the consideration of the President by the Governor is beyond the pale of judicial scrutiny, even in cases where it is exercised in his own discretion and against the aid and advice of the Council of Ministers. We have discussed in the previous sections of this judgment that the Governor under Article 200 is ordinarily expected to act in accordance with the aid and advice of the Council of Ministers, and it is only in certain very exceptional situations that he should resort to the exercise of discretion.

Further, the limits of such discretion are to be derived from Article 163(1). The exercise of such discretion by the Governor, if excluded from judicial scrutiny, would militate against the fundamental constitutional principle that exercise of all power must be within the confines of the Constitution. Absolute exclusion of judicial scrutiny would also confer upon the Governor an absolute power to disregard the will of the people expressed through the State legislature and government.

While it is true that there may be situations in which the exercise of discretion by the Governor under Article 200 would be permissible, this does not imply that this Court would be precluded from determining the legality and propriety of the exercise of such discretion in a given case. In fact, it is owing to the impossibility of the task of exhaustively charting out such situations wherein discretion would be allowed to be exercised, that it becomes all the more crucial for the power of judicial review to exist with the courts. This would keep in line any bonafide action on the part of the Governor which is disguised under the garb of legitimate exercise of discretion.

349. The two-fold observations in B.K. Pavitra (supra) vesting the Governor with unfettered discretion to reserve bills for the consideration of the President under Article 200, and at the same time excluding such exercise of discretion from judicial scrutiny essentially has the effect of safeguarding the actions of the Governor in a lead casket which cannot be permeated even in cases of breach of the constitutional framework within which the Governor is expected to function.

350. The Constitution Bench in Kaiser-I-Hind (supra) had the occasion to consider in detail whether the assent of the President sought with regard to a State law would be limited only to the repugnancy of the laws to which the attention of the President was drawn to whilst seeking his assent or would such assent be qua all other laws enacted by the Parliament to which the State law in question may also be repugnant to. In other words, whether the assent granted by the President to a State legislation would be deemed to be an assent qua all earlier enactments made by the Parliament on the subject.

This Court whilst answering the aforesaid question in the negative, held that the "consideration" by the President and his "assent" under Article 254(2) is limited to the proposal made by the State government and, the State legislation would prevail only qua the laws for which repugnancy was pointed out and the "assent" of the President was sought for. The Court, inter alia, held that the words "reserved for consideration" indicate the requirement of an active application of mind by the President to the repugnancy pointed out between the proposed State law and the earlier law made by the Parliament and the necessity of having such a law in the State, keeping in mind the peculiar facts, the attending circumstances and the backdrop in which such law was made by the State government.

Similarly, the word "consideration" indicates the requirement of careful thinking and due application of mind regarding the necessity of having a State law which is repugnant to the law(s) made by the Parliament. Lastly, the term "assent" implies an expressed agreement of mind to what is proposed by the State i.e., knowledge of the President as to the repugnancy between the State law and the earlier law(s) made by Parliament on the same subject-matter, as well as agreement to the reason and attending circumstances, regarding the necessity of having such State law.

351. As regards justiciability, it was held by the Court that the examination of the records to ascertain the extent to which assent was sought for, would not amount to deciding whether assent was rightly or wrongly given. Thus, it could not be said that the Court was determining the validity of the assent granted by the President. The relevant observations made by M.B., Shah J., speaking for the majority, are reproduced below:

"25. In our view, for finding out whether the assent was given qua the repugnancy between the State legislation and the earlier law made by Parliament, there is no question of deciding validity of such assent nor the assent is subjected to any judicial review. That is to say, merely looking at the record, for which assent was sought, would not mean that the Court is deciding whether the assent is rightly, wrongly or erroneously granted. The consideration by the Court is limited to the extent that whether the State has sought assent qua particular earlier law or laws made by Parliament prevailing in the State or it has sought general assent.

In such case, the Court is not required to decide the validity of the "assent" granted by the President. In the present case, the assent was given after considering the extent and nature of repugnancy between the Bombay Rent Act and the Transfer of Property Act as well as the Presidency Small Cause Courts Act. Therefore, it would be totally unjustified to hold that once the assent is granted by the President, the State law would prevail qua earlier other law enacted by Parliament for which no assent was sought for nor which was reserved for the consideration of the President.

29. We further make it clear that granting of assent under Article 254(2) is not exercise of legislative power of the President such as contemplated under Article 123 but is part of the legislative procedure. Whether procedure prescribed by the Constitution before enacting the law is followed or not can always be looked into by the Court."

(Emphasis supplied)

352. Doraiswamy Raju, J., in a concurring opinion, laid strong emphasis on the requirement that a reference to the President for the purpose of Article 254(2) must be precise and specific as regards the extent of protection sought for the State legislation. He observed that keeping in mind the serious implications of the grant of assent of the President to a repugnant State law, the making of such reference to the President cannot be exercised in a routine manner. He further observed that the non-justiciability of the assent of the President would not preclude the constitutional courts from examining the sufficiency and justifiability of the predominance sought for the State legislation over the Central legislation. The relevant observations are reproduced below:

"72. The exception engrafted in clause (2) to enable the State law to prevail in that State, the legislature of which has enacted it, notwithstanding its repugnancy, as above, as long as both the laws deal with a concurrent subject, will enure to its benefit, "if it has been reserved for the consideration of the President and has received his assent", under the said provision of the Constitution of India. Thus, the sweep of mandate and serious nature of the result flowing from the assent

renders, in my view, the very exercise of power by the President and the attendant formalities whereof, as of great significance and vitally important, and not a mere routine or mechanical exercise.

Despite such assent having been obtained, power of Parliament to enact, at any time, any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the legislature of the State, with the assent envisaged under clause (2) of Article 254 has also been conserved and preserved in the proviso to the said clause. In substance, Parliament has undisputed power to undo the effect or consequences flowing from the Presidential assent obtained under clause (2), by enacting a subsequent law creating once more a "repugnancy" and thereby override or repeal impliedly, to the extent of such repugnancy, the State law.

73. The assent of the President envisaged under Article 254(2) is neither an idle or empty formality, nor an automatic event, necessitated or to be given for the mere asking, in whatever form or manner and whether specific, vague, general or indefinite - in the terms sought for to claim that once sought and obtained as well as published, a curtain or veil is drawn, to preclude any probe or contention for consideration that what was sought and obtained was not really what should and ought to have been, to claim the protection envisaged under clause (2) in respect of a particular State law vis-À-vis or with reference to any particular or specified law on the same subject made by Parliament or an existing law, in force.

The repugnancy envisaged under clause (1) or enabled under clause (2) to get excepted from under the protective coverage of the assent obtained from the President, is such that there is a legislation or legislative provision(s), covering and operating on the same field or identical subject-matter made by both the Union and the State, both of them being competent to enact in respect of the same subject-matter or legislative field, but the legislation by Parliament has come to occupy the entire field.

Necessarily, in the quasi-federal structure adopted for the nation, predominance is given to the law made by Parliament and in such circumstances only the State law which secured the assent of the President under clause (2) of Article 254 comes to be protected, subject of course to the powers of Parliament under the proviso to the said clause. Therefore, the President has to be apprised of the reasons at least as to why his assent is being sought, the need or necessity and the justification or otherwise for claiming predominance for the State law concerned.

This itself would postulate an obligation, inherent in the scheme underlying as well as the very purpose and object of seeking the assent under clause (2) of Article 254, to enumerate or specify and illustrate the particular Central law or provision with reference to which the predominance is desired. The absence of

any standardized or stipulated form in which it is to be sought for, should not detract the State concerned, to disown its obligation to be precise and specific in the extent of protection sought having regard to the serious consequences which thereby inevitably follow i.e. the substitution of the Union law in force by the State law, in the territorial limits of the State concerned, with drastic alteration or change in the rights of citizen, which it may, thereby bring about.

74. The mere forwarding of a copy of the Bill may obviate, if at all, only the need to refer to each one of the provisions therein in detail in the requisition sent or the letter forwarding it, but not obliterate the necessity to point out specifically the particular Central law or provisions with reference to which, the predominance is claimed or purported to be claimed. The deliberate use of the word "consideration" in clause (2) of Article 254, in my view, not only connotes that there should be an active application of mind, but also postulates a deliberate and careful thought process before taking a decision to accord or not to accord the assent sought for.

If the object of referring the State law for consideration is to have the repugnancy resolved by securing predominance to the State law, the President has to necessarily consider the nature and extent of repugnancy, the feasibility, practicalities and desirabilities involved therein, though may not be obliged to write a judgment in the same manner, the courts of law do, before arriving at a conclusion to grant or refuse to grant or even grant partially, if the repugnancy is with reference to more than one law in force made by Parliament.

Protection cannot be claimed for the State law, when questioned before courts, taking cover under the assent, merely asserting that it was in general form, irrespective of the actual fact whether the State claimed for such protection against a specific law or the attention of the President was invited to at least an apprehended repugnancy vis-à-vis the particular Central law. In the teeth of innumerable Central laws enacted and in force on concurrent subjects enumerated in List III of the Seventh Schedule to the Constitution, and the hoard of provisions contained therein, artificial assumptions based on some supposed knowledge of all those provisions and the presumed regularity of official acts, cannot be blown out of proportion, to do away with an essential exercise, to make the "assent" meaningful, as if they are empty formalities, except at the risk of rendering Article 254 itself a dead letter or merely otiose.

The significant and serious alteration in or modification of the rights of parties, both individuals or institutions resulting from the "assent" cannot be overlooked or lightly brushed aside as of no significance, whatsoever. In a federal structure, peculiar to the one adopted by our Constitution it would become necessary for the President to be apprised of the reason as to why and for what special reason or object and purpose, predominance for the State law over the Central law is

sought, deviating from the law in force made by Parliament for the entire country, including that part of the State.

When this Court observed in *Gram Panchayat of Village Jamalpur v. Malwinder Singh* [(1985) 3 SCC 661] that when the assent of the President is sought for a specific purpose the efficacy of the assent would be limited to that purpose and cannot be extended beyond it, and that if the assent is sought and given in general terms so as to be effective for all purposes different considerations may legitimately arise, it cannot legitimately be contended that this Court had also declared that reservation of the State law can also be by mere reference to Article 254(2) alone with no further disclosures to be made or that with mere forwarding of the Bill, no other information or detail was either a permissible or legalized and approved course to be adopted or that such course was held to be sufficient, by this Court, to serve the purpose of the said article.

The expression "general terms" needs to be understood, in my view, a reference to a particular law as a whole in contrast to any one particular or individual in the said law and not that, it can be even without any reference whatsoever. The further observation therein, (SCC p. 669, para 12) "not only was the President not apprised in the instant case that his assent was sought because of the repugnancy between the State Act and the preexisting Central Act on the vesting of evacuee properties but, his assent was sought for a different, specific purpose altogether", would belie any such claim.

Per contra, it would only reinforce the principle that the consideration as well as the decision to accord consent should be a conscious one, after due application of mind, relevant and necessary for the purpose. Though, submission of a thesis on the various aspects of repugnancy involved may not be the requirement, the reservation for "consideration" would necessarily obligate an invitation of the attention of the President as to which of the pre-existing Central enactments or which provisions of those enactments are considered or apprehended to be repugnant, with reference to which the assent envisaged in Article 254(2) is sought for.

This becomes all the more necessary also for the reason that the repugnancy in respect of which predominance is sought to be secured must be shown to exist or apprehended, on the date of the State law and not in a vacuum to cure any and every possible repugnancy in respect of all laws - irrespective of whether it was in the contemplation or not of the seeker of the assent or of the President at the time of "consideration" for according assent.

75. This Court has, no doubt, held that the assent accorded by the President is not justiciable, and courts cannot spell out any infirmity in the decision arrived at, to give the assent. Similarly, when the President was found to have accorded assent

and the same was duly published, it cannot be contended that the assent was not really that of the President, as claimed. It is also not given to anyone to challenge the decision of the President according assent, on merits and as to its legality, propriety or desirability.

But that is not the same thing as approving an attempt to draw a blanket or veil so as to preclude an examination by this Court or the High Court as to the justifiability and sufficiency or otherwise of the protection or predominance claimed for the State law over the law made by Parliament or the existing law, based upon the assent accorded, resulting at times in substantial alteration, change or modification in the rights and obligations of citizen, including the fundamental rights.

When the Constitution extends a form of protection to a repugnant State law, permitting predominance and also to hold the field in the place of the law made by the Centre, conditioned upon the reservation of the State law for consideration of the President and obtaining his assent, it is to be necessarily viewed as an essential prerequisite to be effectively and meticulously fulfilled before ever availing of the protection and the same cannot be viewed merely as a ceremonial ritual.

If such a vitally essential procedure and safeguard is to be merely viewed as a routine formality which can be observed in whatever manner desired by those concerned and that it would be merely enough, if the assent has been secured howsoever obtained, it would amount to belittling its very importance in the context of distribution of legislative powers and the absolute necessity to preserve the supremacy of Parliament to enact a law on a concurrent topic in List III, for the entire country. It would also amount to acceptance of even a farce of compliance to be actual or real compliance. Such a course could not be adopted by courts except by doing violence to the language, as well as the scheme, and the very object underlying Article 254(2).

76. Different provisions of the Constitution envisage the grant of assent by the President as well as the Governor of a State. Article 111 provides for the assent of the President to a Bill passed by the Houses of Parliament, in the same manner in which Article 200 empowers the Governor of a State in respect of a Bill passed by the Legislative Assembly or by the Houses of the legislature where there is a Legislative Council in addition to the Assembly. Parliament for the Union consists of the President and two Houses as the legislature of States consists of the Governor and the House or Houses, as the case may be (vide Articles 79 and 168).

The policy-making executive power of the Union also vests with the President, as the executive power of the State vests with the Governor, and those powers have

to be exercised with the aid and advice of the Council of Ministers, for the Union headed by the Prime Minister and for the State to be headed by the Chief Minister. The President or the Governor, as the case may be, as and when a Bill after having been passed is presented, may accord assent or as soon as possible thereafter return the Bill to the Houses with a message requesting to reconsider the Bill or any provisions thereof, including the introduction of any amendment as recommended in his message and if thereafter the Houses on reconsideration of the Bill, pass the Bill again with or without amendment and present the same for the assent, the President/Governor, as the case may be, shall not withhold his assent.

Being an exercise pertaining to expression of political will, apparently, the will of the people expressed through the legislation passed by their elected representatives is given prominence by specifically providing for a compulsory consent or assent. The same could not be said with reference to the "assent" of the President envisaged under Articles 31-A, 31-C, 254(2) and 304(b) of the Constitution. In my view, the "assent" envisaged in these articles by the very nature and character of the powers conferred constitute a distinct class and category of their own, different from the normal "assent" envisaged under Articles 111 of the President or Article 200 of the Governor.

Article 201 also would indicate that even when for the second time the Houses of the State Legislature pass the Bill and present for "consideration", there is no compulsion for the President to accord assent. Therefore, the reservation of any Bill/Act for the "consideration" of the President for according his assent, keeping in view, also the avowed object envisaged under Article 254(2), renders it qualitatively different from the ordinary assent to be given by the President to a Bill passed by Parliament or that of the Governor to a Bill passed by the legislature(s) of the State concerned.

77. The assent of the President or the Governor, as the case may be, is considered to be part of the legislative process only for the limited purpose that the legislative process is incomplete without them for enacting a law and in the absence of the assent the Bill passed could not be considered to be an Act or a piece of legislation, effective and enforceable and not to extend the immunity in respect of procedural formalities to be observed inside the respective Houses and certification by the presiding officer concerned of their due compliance, to areas or acts outside and besides those formalities.

The powers actually exercised by the President, at any rate under Articles 31-A, 31-C, 254(2) and 304(b) are a special constituent power vested with the Head of the Union, as the protector and defender of the Constitution and safety valve to safeguard the fundamental rights of citizens and federal structure of the country's polity as adopted in the Constitution. A genuine, real and effective consideration

would depend upon specific and sufficient information being provided to him inviting, at any rate, his attention to the Central law with which the State law is considered or apprehended to be repugnant, and in the absence of any effort or exercise shown to have been undertaken, when questioned before courts, the State law cannot be permitted or allowed to have predominance or an overriding effect over that Central enactment of Parliament to which no specific reference of the President at all has been invited to.

This, in my view, is a must and an essential requirement to be satisfied; in the absence of which the "consideration" claimed would be one in a vacuum and really oblivious to the hoard of legislations falling under the Concurrent List in force in the country and enacted by Parliament. To uphold as valid the claim for any such blanket assent or all-round predominance over any and every such law - whether brought to the notice of the President or not, would amount to legitimization of what was not even in the contemplation or consideration on the basis of some assumed "consideration".

In order to find out the real state of affairs as to whether the "assent" in a given case was after a due and proper application of mind and effective "consideration" as envisaged by the Constitution, this Court as well as the High Court exercising powers of judicial review are entitled to call for the relevant records and look into the same. This the courts have been doing, as and when considered necessary, all along. No exception therefore could be taken to the High Court in this case adopting such a procedure, in discharge of its obligations and exercise of jurisdiction under the Constitution of India."

(Emphasis supplied)

353. It is pertinent to note that it was observed by Doraiswamy, J., that the assent of the President under Article 254(2) is not of the same nature as the assent of the President or the Governor under Article 111 and 200 of the Constitution respectively. He placed strong emphasis on the use of the expression "consideration" in Article 254(2) to hold that such a consideration by the President would be meaningless in the absence of a clear and specific reference made to him pointing out the repugnancy between the Central law and the proposed State law.

354. While the observations made in *Kaiser-I-Hind* (supra) as regards the import of the expression "consideration" were in the context of Article 254(2), the same would apply to every bill reserved for the consideration of the President under Article 201 as the expression "consideration" finds a mention in Article 201 as well. Thus, the reservation for the consideration of the President must be accompanied by a reference which contains specific details as regards the purpose why the consideration of the President is sought.

355. The reason why this Court in *Kaiser-I-Hind* (supra) insisted that the requirement of delineating the reasons necessitating the reservation of a bill by the Governor rests upon the State government is because it is the State through its Council of Ministers who are objectively better equipped in doing so, by virtue of the fact that the genesis of such bills is normally spearheaded by the Council of Ministers. Their close involvement in the deliberations that culminated into the bill, their crucial role as part of the members of the house of legislature and them being reposed with the responsibility of overall governance and well-being of the State, provides them the necessary expertise to assign robust reasons in making a reference.

The State Council of Ministers being uniquely positioned to understand the legislative requirements of the State, the policy imperatives prevailing therein, and the socio-economic conditions demanding redressal, can better voice the reasons that ought to accompany such a reference which the Governor otherwise may not be capable of reasonably and comprehensively ascertaining if not for the aid and advice of the council of ministers.

356. It is in this background that we are of the view that the Governor would be duty bound to give careful deference to the aid and advice of the State Council of Ministers and only in the limited of exceptional circumstances may he deviate from such advice tendered to him, subject to the reference being in tune with the aforesaid principles enunciated in the preceding paragraphs.

357. We have given some thought to the observations made in the aforesaid decisions as regards the non-justiciability of the assent of the President. As per the settled principles of parliamentary democracy across the world, the grant of assent to legislations is construed as a power of the head of state which is to be exercised only upon the aid and advice of the Council of Ministers. As per Articles 74(2) and 163(3) of the Constitution respectively, the question whether any, and if so what, advice was tendered by the Ministers to the President or the Governor, shall not be inquired into by any court. A perusal of Articles 111, 200 and 201 respectively makes it clear that no reasons are required to be provided by the President or the Governor for according assent to bills.

However, if the President or the Governor exercise the option of withholding of assent under Article 111 or 200 respectively, then there is a requirement to communicate the reasons for such withholding in the form of a message to the House or Houses of the legislature. Similarly, as has been discussed with great emphasis in *Kaiser-I-Hind* (supra), if there is any reservation of Bills for the consideration of the President by the Governor, then the same must be reflected by way of a specific and clear reference providing details as to why the reservation has been made so as to enable the President to "consider" the desirability of according assent to the bill so reserved.

358. The grant of assent to a bill is an exercise which generally takes place on the aid and advice of the Council of Ministers, and assenting to the bill is the only practically possible course of action available to the constitutional heads in most of the common law jurisdictions. The grant of assent may not be justiciable because, there exists an unavailability of any material upon which the courts may be able to undertake a judicial scrutiny. However, the same would not be the case as regards the withholding of assent or reservation of the bill for the consideration of the President, which can only be exercised upon furnishing of detailed reasons for the same.

359. The majority opinion of the Court in *Kaiser-I-Hind* (supra) held that the legislative procedure to be followed before the enactment of a legislation would always be amenable to judicial review and thus it would be open to the Courts to examine the reference which is made by the State government to the President seeking his assent. Applying the same logic, it could be said that the reservation of bills by the Governor for the consideration of the President is also part of legislative procedure and thus the Courts would not be precluded from examining such reference to determine its legality and its constitutional veracity.

360. In the Canadian decision in *Galati* (supra) the grant of royal assent to a bill was held as non-justiciable on the ground of separation of powers, the grant of assent having been characterised as a legislative act. However, it must be kept in mind that the characterisation of the grant of assent as a legislative act was in the context of the well settled constitutional convention of a responsible government that assent must be granted in accordance with the advice of the Prime Minister. Further, as we have discussed in the preceding paragraphs, it is not the source of power, but the contents thereof which determine the scope of judicial review under the Constitution.

361. On the contrary, Anne Twomey writes that in cases where a Constitution is prescriptive, and a constitutional breach is involved, a court is more likely to hold the breach to be a justiciable issue, even if it relates to the grant of assent to a bill. She refers to the opinion of Millhouse, J. in *Re Constitutional Reference No 1* of 2008 reported in [2009] 1 LRC 453, which held that where a country has a written Constitution, the courts always have the jurisdiction to remedy breaches of the Constitution. The said decision was also accepted by the Court of Appeal of Vanuatu in *Republic of Vanuatu v Carcasses* reported in [2010] 2 LRC 264 which held that while a court will not otherwise inquire into or adjudicate upon issues arising in Parliament, it would be empowered to interpret and determine whether there has been a breach of a constitutional right.

362. As described in *Kaiser-I-Hind* (supra), the role of the President under Article 201 is a sui-generis one, tailor made to fit the quasi-federal constitutional scheme. The role of the Governor in reserving bills for the consideration of the President

is also intrinsically linked with this constituent role of the President. It was also observed that the grant of assent is considered a legislative act only for the limited purpose that without it a bill cannot become law and also for extending immunity to certain formalities to be followed within the legislature.

This immunity does not extend to other aspects of the legal procedure which fall beyond the ambit of these limited formalities. Thus, compliance with the prescribed legislative procedure leading up to assent is open to judicial scrutiny in appropriate cases. Further, as we have discussed in the preceding paragraphs, the reservation of bills for the consideration of the President by the Governor is warranted only in certain limited situations.

363. The observations in the aforesaid decisions as regards the non-justiciability of the assent of the President under Article 201 cannot be construed to mean that the withholding of assent and reservation of bills by the Governor under Article 200, as well as withholding of assent by the President under Article 201 are beyond the scope of judicial review. The observations of nonjusticiability of assent of the President under Article 201 can be explained in light of the assent under Article 201 being predominantly a matter of federal policy of the Union government.

On certain subject matters prescribed in various provisions of the Constitution, and on subject matters falling in the Concurrent List, the Constitution has accorded primacy to the Centre over the States. On issues of repugnancy, for illustration, it is only on the approval of the President, that a State law which is repugnant to a Central legislation can become enforceable. No obligation is placed on the President to grant assent under Article 201 and it is to be decided by the President on the aid and advice of the Union Council for Ministers. It is in view of this position and for the limited extent of judicially manageable standards of evaluation that the assent under Article 201 has been described as non-justiciable.

364. However, the same is not the case when the courts have to consider the withholding of assent or reservation of bills by the Governor under Article 200. Our discussion on the scope of discretion available to the Governor makes it clear that the Governor exercises discretion in a very limited domain when discharging his functions under Article 200. He may reserve the bills for the consideration of the President only for achieving certain predetermined purposes and his personal views, disliking for the policy, or the views of the Union government are not grounds on which he may reserve a bill under Article 200.

The nature of constitutional function prescribed for the Governor under Article 200 being such, the exercise of such function can be subjected to judicial review on the standard of being within constitutional bounds. Reserving a bill for the

consideration of the President is a part of the legislative procedure and must invariably be subjected to judicial review in cases where the constitutionally prescribed procedure is not complied with, or misused.

365. The discharge of functions by the President under Article 201 stands on a different footing than that of the Governor under Article 200. While there is no political hue to the limited discretion conferred upon the Governor under Article 200, and any exercise of such discretion has to be solely on constitutional grounds, the grant of assent under Article 201 has an element of political hue by virtue of the fact that the President under Article 201 has been given the prerogative to decide whether the grant of assent in certain cases would be desirable or not.

However, at the same time, what must be remembered is that it is only in those areas where the primacy has been given to the Union would this political consideration be permissible. Additionally, this political hue is not owing to the difference in opinion or political views of the governments at the Centre and the State but is attributable to the desirability of vesting the Union government to exercise certain discretion in matters pertaining to broader issues where uniformity in national policy may be desirable. In such a case, the scope of justiciability under Article 201 would be limited to questions of arbitrariness, malafides and inaction.

366. As a logical sequitur of the above, any exercise of Article 201 in a manner which does not align with this fundamental object underlying Article 201 would be liable to a greater degree of judicial scrutiny. Thus, wherever a bill which falls within the exclusive domain of the State legislature is being referred to the President for his consideration on the ground that it attracts one of the exceptional situations where the Governor may exercise his discretion as mentioned in paragraph 300 of this judgment, it would not be open to the President to withhold assent without ascribing reasons as regards the doubt raised by the Governor to such a bill.

In such a case, the ideal course for the President would be to obtain legal opinion as regards the bill, in appropriate cases, by making reference to this Court under Article 143, and only thereafter declare the grant or withholding of assent. Where the grounds of withholding of assent are not concerned with policy areas in which the Union has primacy, the courts would have a greater degree of judicial scrutiny. We say this because on questions of legality, it is the constitutional courts which have been conferred with the power of arriving at a final decision and the object of Article 201 is not to thwart the legislative procedure of the States by withholding of assent even in areas falling within the exclusive domain of the States on grounds of legality.

367. We summarise our findings on the judicial review of the exercise of power by the Governor under Article 200 and by the President under Article 201 of the Constitution as follows:

a. Where the Governor reserves a bill for the consideration of the President in his own discretion and contrary to the aid and advice tendered to him by the State Council of Ministers, it shall be open to the State Government to assail such an action before the appropriate High Court or this Court. Such a challenge can broadly be made on the following grounds:

(i) Where the reservation is on the ground that the bill is of a description falling under the Second Proviso to Article 200 of the Constitution, it may be assailed on the ground that the bill or any provision thereof does not so derogate from the powers of the High Court so as to endanger the position which that court is designed by the Constitution to fill. The Governor while reserving a bill on this count shall be expected to provide clear reasons and also point to the specific provision(s) of the bill which, in his opinion, attract the Second Proviso.

This question being purely of a legal nature would be completely justiciable and the competent court would be, after a proper adjudication, fully authorized to approve or disapprove of such reservation by the Governor. If such a challenge finds favour with the competent court, then, subject to any other considerations, it would be a fit case for the issuance of a writ in the nature of mandamus to the Governor for appropriate action. If, however, the challenge should fail then the mechanism envisaged under Article 201 of the Constitution will spring into action.

(ii) Where the reservation is on account of the bill attracting any provision of the Constitution wherein the assent of the President is a condition precedent for the proper enactment and enforceability of such a bill as a law (such as under Article 364A2) or for the purpose of securing any immunity (such as under Article 31A) or overcoming any repugnancy that may exist qua a Central Legislation (under Article 254(2)), then the Governor is expected to make a specific and clear reference to the President properly indicating the reasons for such reservation and inviting his attention as described in *Kaiser-I Hind* (supra). Such a reservation can be assailed by the State Government, if the reference made by the Governor either fails to indicate the reasons for such reservation as discussed above or that the reasons indicated are wholly irrelevant, mala-fide, arbitrary, unnecessary or motivated by extraneous considerations.

Then such a reservation would be liable to be set aside. This question being purely of a legal nature would be completely justiciable and the competent court would be after a proper adjudication fully authorized to approve or disapprove of such reservation by the Governor. If such a challenge finds favour with the

competent court, then, subject to any other considerations, it would be fit case for issuance of a writ in the nature of mandamus to the Governor for appropriate action. If however, the challenge should fail then the mechanism envisaged under Article 201 of the Constitution will spring into action.

(iii) Where the reservation of a bill by the Governor for the consideration of the President is on the grounds of peril to democracy or democratic principles or on other exceptional grounds as mentioned in *M.P. Special Police (supra)* and *Nabam Rebia (supra)* then the Governor would be expected to make a specific and clear reference to the President properly indicating the reasons for entertaining such a belief by pinpointing the specific provisions in this regard and the consequent effect that may ensue if such a bill were to be allowed to become a law.

The Governor while making such a reference should also indicate his subjective satisfaction as to why the aforesaid consequences that may ensue cannot be possibly curtailed or contained by taking recourse to the constitutional courts of the country. It shall be open to the State Government to challenge such a reservation on the ground of failure on part of the Governor to furnish the necessary reasons as discussed aforesaid or that the reasons indicated are wholly irrelevant, mala-fide, arbitrary, unnecessary or motivated by extraneous considerations. This being a question completely capable of being determined by the constitutional courts, would be fully justiciable.

(iv) Reservation of a bill on grounds other than the ones mentioned above, such as personal dissatisfaction of the Governor, political expediency or any other extraneous or irrelevant considerations is strictly impermissible by the Constitution and would be liable to be set-aside forthwith on that ground alone. This will also encompass reservation of a bill by the Governor after having already exercised the option of withholding of assent in terms of Article 200 except in such exceptional circumstance as mentioned in paragraph 204 of this judgment.

(v) Where the Governor exhibits inaction in making a decision when a bill is presented to him for assent under Article 200 and such inaction exceeds the time-limit as has been prescribed by us in paragraph 250 of this judgment then it shall be open to the State Government to seek a writ of mandamus from a competent court against the Governor directing expeditious decision on the concerned bill as is the mandate of the Constitution, however, it is clarified that the Governor may successfully resist such a challenge on providing sufficient explanation for the delay caused.

b. Where the Governor reserves a bill for the consideration of the President and the President in turn withholds assent thereto then, it shall be open to the State

Government to assail such an action before this Court. Such a challenge can broadly be made on the following grounds:

(i) Where a State bill has been reserved by the Governor for the consideration of the President on the ground that assent of the President is required for the purpose of making the bill enforceable or securing some immunity therefor, then in such cases the withholding of assent by the President would be justiciable to the limited extent of exercise of such power in an arbitrary or malafide manner. Owing to the political nature of the assent of the President in these categories of bills, the courts would impose a self-restraint.

(ii) Where a State bill has been reserved by the Governor, in his discretion, for the consideration of the President on the ground that the bill appears to be patently unconstitutional for placing the principles of representative democracy in peril, the withholding of assent by the President would, in ordinary circumstances, involve purely legal and constitutional questions and therefore be justiciable without any impediments imposed by the doctrine of political thicket. In such cases, it would be prudent for the President to obtain the advisory opinion of this Court by way of a reference under Article 143 and act in accordance with the same to dispel any apprehensions of bias, arbitrariness or mala fides.

(iii) Where the President exhibits inaction in making a decision when a bill is presented to him for assent under Article 201 and such inaction exceeds the time-limit as has been prescribed by us in paragraph 391 of this judgment then it shall be open to the State Government to seek a writ of mandamus from this Court.

368. We summarise our findings on the judicial review of the exercise of power by the President under Article 201 in withholding assent to a bill as follows:

a. Where the bill which is under consideration is pertaining to a provision of the Constitution where primacy has been given to the Union government in taking a decision keeping in consideration the desirability of having certain uniform standards of national policy, then the limited grounds of judicial review would be based on arbitrariness, malafides, etc.

b. Where the bill which is under consideration pertains to a subject matter or domain within which State legislature has been accorded primacy, and the reservation of the bill is by the Governor contrary to the aid and advice of the State Council of Ministers, then in exercise of judicial review the courts would be competent to look into the reasons for withholding of assent and whether they are legally tenable or not, besides the grounds of malafides and arbitrariness, etc.

369. We clarify that the possible situations illustrated by above are not meant to be exhaustive and in the specific facts of a given case, the courts may evolve new

standards of judicial scrutiny to ensure that the constitutionally prescribed procedure is adhered to in letter and spirit.

vi. What is the manner in which the President under Article 201 of the Constitution is required to act once a Bill has been reserved for his consideration by the Governor under Article 200 of the Constitution?

370. As we have discussed, Article 200 provides three courses of action to the Governor when a bill is presented to him - to assent, to withhold assent or to reserve the bill for the consideration of the President. If he declares assent, then the bill becomes an Act of the State legislature. If he withholds assent, then the procedure prescribed under the first proviso springs into motion. However, the procedure which is to be followed once a bill is reserved for the consideration of the President is provided in Article 201 of the Constitution. Article 201 was adopted without any debate in the Constituent Assembly on 01st August, 1949. It reads as follows:

"201. Bills reserved for consideration. When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom: Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as is mentioned in the first proviso to article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration."

371. A plain reading of Article 201 indicates that once a bill is reserved by the Governor for the consideration of the President, the President has two options to choose from - he may either assent to the bill, which would bring the legislative process to a conclusion and the bill would become an act, or he may withhold his assent to the bill.

372. The proviso to Article 201 provides that in case of bills other than money bills, the President may direct the Governor to return the bill to the State legislature together with a message as is mentioned in the first proviso to Article 200. Once the bill is so returned, the State legislature is required to reconsider the bill in light of the suggestions of the President within a period of six months and if the Bill is passed again, with or without amendments, it shall be presented again to the President for his consideration.

373. There are some features of Article 201 which are markedly different from Articles 111 and 200. The proviso to Article 111 as well as the first proviso to

Article 200 mandate the President and the Governor respectively to assent to a bill which has been reconsidered by the Parliament and State legislature respectively and presented to them for the second time. However, the proviso to Article 201 does not place any such obligation on the President to mandatorily accord assent to a bill which is placed before him after reconsideration by the State legislature. This is evident from the absence of the expression "shall not withhold assent therefrom" in the proviso to Article 201.

This is also brought out from the difference between the language employed in Articles 111 and 200 vis-a-vis that employed in Article 201. The first proviso to Article 111 uses the expression "and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent". Similarly, the first proviso to Article 200 also uses the expression "and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent". However, the proviso to Article 201 uses the expression "and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration".

Instead of the expression "for assent", the proviso to Article 201 uses the expression "for his consideration" thereby indicating that the President is not bound to accord assent to a bill even when it is presented to him for the second time. In other words, the object behind presentation of the bill for the second time after reconsideration under Articles 111 and 200 respectively is to obtain assent, whereas under Article 201, the object of the presentation is to yet again present the bill for the consideration of the President.

374. Further, the proviso to Article 201 places an obligation on the State legislature to reconsider the bill in accordance with the suggestions of the President within a period of six months from the date of receipt of the message containing the suggestions. There is no similar obligation on the Parliament or the State legislature to reconsider the bill within a stipulated time period under Articles 111 and 200 respectively. This absence of this six-month time period under Articles 111 and 200 respectively could also be seen as an indication of the primacy which is accorded to the Parliament and State Legislature as regards the bill which is presented for assent under the said provisions. They may choose to repass the Bill after taking into account the message which has been sent without being bound by the rigours of a time-limit.

This is because it is they who ultimately decide whether the bill would see the light of day or not, as far as Articles 111 or 200 are concerned. As discussed by us in the preceding paragraphs, under Articles 111 and 200 respectively, the bill would only "fall through" if the Parliament or the State Legislature chooses or elects not to repass the concerned bill after it has been returned to them and the trust of expediency has been reposed on the constitutional head of the country

and State, being the President and the Governor respectively. However, under Article 201, the prescription of the time-limit of six months for the State legislature to reconsider the bill returned to them, is indicative of the fact that the requirement to act expediently is also placed on the State legislature.

375. Any symptoms of lethargy exhibited by the State legislature which is the recipient of a bill sent after the procedure under Article 201 is adopted, is viewed strictly by the Constitution. Here, inaction by the State legislature or delayed action by them in terms of repassing of the bill would cause the bill to "fall through" instead. The consequences of the failure to act promptly and in a punctual manner is more grave and severe for the State legislature under Article 201 since the premise is that the occasion for the reservation of a bill for the consideration of the President by the Governor may arise where a constitutional provision makes the assent of the President a condition precedent to a State legislation becoming enforceable or for the purpose of conferring some immunity upon the State legislation.

Such a requirement can be found in Articles 31A, 31C, 254(2), 288(2), 360(4)(a)(ii) etc. The second proviso to Article 200 also makes reservation for the consideration of the President mandatory. As we have also discussed, there may be certain other legitimate situations where the Governor may, in exercise of his discretion, reserve a bill for the consideration of the President. The matters attracting the aforesaid provisions require the procedure in Article 201 to be initiated since they pertain to areas wherein the Centre could be said to have precedence or an edge over the State governments.

This is because the considerations herein involve questions pertaining to the larger economic policy of the Union, safeguarding the fundamental rights of citizens and maintaining the integrity of the country as a whole. For example, the uniformity of policy across States for matters falling under the Concurrent List would be a valid arena wherein the interest of the Union might need to be paid heed to in comparison with those of the States. Hence, a higher degree of the power of scrutiny of the President would be implicit in such matters and he, having consulted the Union Council of Ministers, could be said to have the final say which has the effect of overriding those wishes of the State legislature.

376. The special object fulfilled by Article 201 and the important position it occupies in maintaining the quasi-federal structure of the country has been explained in detail by this Court in *Kaiser-I-Hind* (supra) as follows:

"76. The same could not be said with reference to the "assent" of the President envisaged under Articles 31-A, 31- C, 254(2) and 304(b) of the Constitution. In my view, the "assent" envisaged in these articles by the very nature and character of the powers conferred constitute a distinct class and category of their own,

different from the normal "assent" envisaged under Articles 111 of the President or Article 200 of the Governor.

Article 201 also would indicate that even when for the second time the Houses of the State Legislature pass the Bill and present for "consideration", there is no compulsion for the President to accord assent. Therefore, the reservation of any Bill/Act for the "consideration" of the President for according his assent, keeping in view, also the avowed object envisaged under Article 254(2), renders it qualitatively different from the ordinary assent to be given by the President to a Bill passed by Parliament or that of the Governor to a Bill passed by the legislature(s) of the State concerned.

77. The powers actually exercised by the President, at any rate under Articles 31-A, 31-C, 254(2) and 304(b) are a special constituent power vested with the Head of the Union, as the protector and defender of the Constitution and safety valve to safeguard the fundamental rights of citizens and federal structure of the country's polity as adopted in the Constitution.

A genuine, real and effective consideration would depend upon specific and sufficient information being provided to him inviting, at any rate, his attention to the Central law with which the State law is considered or apprehended to be repugnant, and in the absence of any effort or exercise shown to have been undertaken, when questioned before courts, the State law cannot be permitted or allowed to have predominance or an overriding effect over that Central enactment of Parliament to which no specific reference of the President at all has been invited to. This, in my view, is a must and an essential requirement to be satisfied; in the absence of which the "consideration" claimed would be one in a vacuum and really oblivious to the hoard of legislations falling under the Concurrent List in force in the country and enacted by Parliament."

(Emphasis supplied)

377. Dr. K.C. Markandan writes that Article 201 seeks to serve the same purpose in the legislative sphere as Article 365 seeks to do in the administrative sphere, namely, make the Constitution "unfederal" in character, to establish the fact that the distribution of legislative power between the Centre and the States is not on an exclusive basis but that the exercise of legislative power of the State is subject to the overall responsibility of the Centre and its legislative ambit. He states that no other explanation can justify the inclusion of this provision in the Constitution.³¹

378. It is in such a background and context that the prescription of the six-month time limit upon the State legislature for re-passing the Bill and presenting it before the President for his consideration assumes more significance.

Nonadherence or any absence of deference to this time-limit would prove to be detrimental to the cause of the State itself since the balance of power is inherently skewed in favour of the Union on such matters. Having said so, and also conscientiously discussed by us in the preceding paragraphs, this is why the reference by the Governor of bills for the consideration of the President must be strictly by and under the strength of clear provisions of the Constitution.

379. The features of Article 201 which have been the cause of differences in Centre-State relations over the years are as follows:

a. There is no time-limit within which the President is required to declare the grant or withholding of assent under Article 201 once the bill is reserved for his consideration by the Governor. Unlike Articles 111 and 200 respectively, the expression "as soon as possible" is also not used. Owing to this, a number of bills enacted by the legislatures of various States remain pending with the President awaiting a decision.

b. There being no obligation upon the President to mandatorily assent to a bill under Article 201, if a bill is reserved for the consideration of the President by the Governor acting in his discretion, then it has the effect of rendering the enactment of the bill by the State legislature nugatory, if the President keeps the bill pending with him or declares the withholding of assent to such a bill.

380. As regards the issue of delay under Article 201, as we have discussed in the preceding paragraphs, the Sarkaria Commission observed that the delay in the expeditious disposal of bills reserved for the consideration of the President was one of the major causes of strain in Centre-State relations. It also recommended that definite timelines must be adopted for facilitating the efficient disposal of references under Article 201. The timelines suggested by the Commission are indicated in paragraph 120 of this judgment.

381. Besides prescribing timelines, the Commission also suggested that the reference being made by the Governor must be self-contained and contain all necessary information. We have discussed that the same was also observed by this Court in *Kaiser-I-Hind* (supra) in the context of references being made under Article 254(2). The reading of a timeline in Article 201 was also suggested by the Punchhi Commission.

382. While the language of Article 201 does not provide for any timelines within which the President is required to act, the absence of a time limit cannot be construed as indicating that the discharge of functions by the President under the said Article can be done without due deference to the important nature of the role they occupy as regards the legislative machinery of the State. Any bill(s) reserved for the consideration of the President cannot become an act unless it receives the

assent as is mentioned in Article 201, and thus, long and undue delays in the disposal of references by the President would have the effect of keeping the bill(s), which are an expression of the popular will embodied by the State legislature, in an indefinite and uncertain state of abeyance.

383. Although we are cognisant of the fact that in discharge of his powers under Article 201, the President is expected to "consider" the bill and such "consideration" may be difficult to be bound by strict timelines, yet it cannot be a ground to justify inaction on part of the President.

384. We have discussed in detail in the preceding paragraphs that where no time for the exercise of a power has been stipulated, such power must be exercised in a reasonable time, so as to not render the subject matter nugatory or dilute the purpose sought to be achieved. The delay on part of the President in deciding a reference under Article 201, without any justification or necessity, would fall foul of the basic constitutional principle that the exercise of a power must not be arbitrary and capricious. The implications of inaction being of a serious nature and detrimental to the federal fabric of the Constitution, there should be no scope for unnecessary delay on part of the President under Article 201 as well.

385. At this juncture, we deem it apposite to refer to the office memorandum issued by the Ministry of Home Affairs, Government of India dated 04.02.2016 to all the Ministries/Departments of the Government of India regarding the expeditious disposal of State bills reserved for the assent of the President. The same is reproduced hereinbelow:

"Urgent
State Bill

File No. 23/18/2015-Judl & PP (Part III)

Government of India/Bharat Sarkar Ministry of Home
Affairs/Grih Mantralaya (Judicial & PP Section)

NDCG-II Building, 4th Floor Jai Singh Road, New Delhi-110001

The February 4th of 2016

OFFICE MEMORANDUM

Subject: Guidelines on State Legislations - regarding.

The undersigned is directed to invite to this Ministry's D.O. letter no: 23/33/1992-Judi dated 22.09.1992 duly conveying the guidelines formulated and approved by the Cabinet for disposal of State legislative proposals. Despite these

clear guidelines, it is observed that undue delay is caused in taking a final decision on such Bills.

2. The matter has been recently reviewed and a set of supplementary guidelines for expeditious examination and disposal of State Legislative proposals by the Central Ministries / Departments / State Governments has been formulated. These are stated below for strict adherence:

State Bills/Legislative proposals are to be examined in such a way that objections/views of the concerned Central Departments/Ministries, if any, be meaningful as addressing the unreasonable queries/observations delays the entire process.

ii). A time limit of maximum 3 months be strictly adhered to for finalizing the Bills after their receipt from the State Governments.

iii). The Ministry concerned should communicate their view on substantive issues within 15 days from the date of receipt of communication and if they are not able to communicate, they should mention the reasons for the delay. In case Departments/Ministries are not able to communicate their comments/views in a period of one month, it will be construed that they have no comments to offer on the proposal.

iv). The substantive issues involved in the Bills should be dealt by the Ministries concerned and issues relating to language/drafting and Bill's constitutional validity should be checked by the Ministry of Law.

v). As regards Ordinances, which are of urgent nature and are promulgated in view of the urgency, presently a time limit of 2 weeks has been permitted to the Ministries /Departments concerned for offering their views, but often the comments are not received within the prescribed time limit. Hence, as in the case of State Bills, if the Ministries /Departments are not able to communicate their comments/views on the Ordinances in a period of two weeks, it will be construed that they have no comments to offer on the proposal, and MHA will process in consultation with D/o Legal Affairs of the M/o Law and Justice so as to dispose the Ordinances off within a period of one month from the date of their receipt in the MHA.

3. It is requested that all State Bills / Ordinances be processed in the light of aforesaid guidelines and within the time limit as specified. All the currently pending Bills /Ordinances may be reviewed urgently in terms of above guidelines in order to ensure their disposal within three weeks' time.

4. The receipt of this letter may kindly be acknowledged.

Sd/-

Thangkholun

Under Secretary to the Govt. of Haokip India
Tel./Fax : 011-23438095"

(Emphasis supplied)

386. The aforesaid memorandum indicates that the procedure involved after a reference is made to the President by the Governor is that the Union Ministry of Home Affairs as the nodal Ministry would refer the substantive issues involved in the bill to the appropriate Ministry at the Centre which is concerned with the subject matter and issues pertaining to the bill's language, drafting or constitutional validity to the Law Ministry at the Centre.

In this process, the Office Memorandum lays down strict guidelines directing the concerned Central Departments or Ministries that the objections or views that they may have to the bill must be meaningful and precise. Such a stipulation has been laid down because the making of unreasonable queries or observations only serves to delay the entire process of consideration of a bill by the President under Article 201. The Ministry concerned with the substantive issues as regards the bill is required to communicate their views to the Home Ministry within 15 days from the date of receipt of the bill.

If there is a deviation from the said time restriction, they must assign reasons for the delay that has ensued on their part. The failure to indicate so within a maximum period of one month, is construed strictly and understood to mean that the concerned Ministry may have no comments whatsoever to offer on the proposal. A perusal of the aforesaid also makes it clear that a timeline of three months has been prescribed for the decision on bills reserved for the President. A time limit of three weeks has been prescribed for the disposal of ordinances of an urgent nature.

387. Another office memorandum was issued by the Ministry of Home Affairs to all the States/UTs on the same date in this regard and is reproduced below:

"Urgent
State Bill

File No. 23/18/2015-Judl & PP (Part III)

Government of India/Bharat Sarkar Ministry of Home
Affairs/Grih Mantralaya (Judicial & PP Section)
NDCG-II Building, 4th Floor Jai Singh Road, New Delhi-110001

The February 4th of 2016

OFFICE MEMORANDUM

Subject: Guidelines on State Legislations - regarding.

The undersigned is directed to say that the Ministry of Home Affairs is the nodal Ministry for processing and conveying a final decision with respect to State Legislations under Article 201 read with Article 254(2) of the Constitution; State Legislations requiring previous sanction of the President under Article 304(b) of the Constitution and Ordinances for the instructions of the President under Article 213(1) etc.

2. On receipt of such a reference, this Ministry examines and seeks the views of the concerned Central Departments/Ministries. Once the views of the Central Departments/Ministries concerned are obtained, these are again examined and in case of any objections, the same are shared with the State Government concerned seeking their views/clarifications so that the Central Departments/Ministries concerned can be apprised of the clarifications of the State Government. This is an integral part of the present processing system. However, it has been observed that State Governments do not send requisite clarifications/views on the comments made by the Central Departments/Ministries and thus, a decision in the matter gets unduly delayed.

3. Recently, the matter has been reviewed and a timeline of maximum three months has been fixed for disposing State Bills/cases of previous instructions/ Ordinances from the date of their receipt from the State Government. A maximum period of one month has been kept for Inter-Ministerial consultation and next one month has been kept for obtaining the comments/clarifications of the State Government on the views as conveyed by the Central Departments/Ministries.

Since a time bound disposal of State Legislations etc. is in the interest of the State Governments, it is requested that appropriate instructions may be issued to all concerned to adhere to the timeline of one month for responding to the comments/views of the Central Departments/ Ministries as conveyed by the MHA. If the requisite clarifications/views are not received from the State Government within the stipulated one month's time, it will be construed that the State Government agrees with the observation and has no comments to offer.

4. It has also been observed that many a time the Bill etc, contains drafting errors and State Governments, despite repeated persuasion, do not withdraw such Bills. Since a Bill containing errors cannot be presented to the President, State Governments are requested to kindly verify and check that a Bill is free from any drafting/typographical error. It is also observed that many a time the State Governments agree to make amendments as per the suggestions of Central

Ministries/Departments, but still keeps on insisting for assent of the Bill in its original form. It is therefore requested that once the State Government tends to agree with the objections/ views of the Central Departments/Ministries, the State Government may consider sending a consolidated proposal alongwith suggested amendments/modifications instead of insisting for assent of the Bill in their original form

4. It is requested that all concerned may be instructed to follow the aforesaid guidelines scrupulously. All the existing cases pending with the State Government may kindly be reviewed in the light of these guidelines in a time-bound manner.

5. The receipt of this letter may kindly be acknowledged.

Sd/-

Thangkholun

Under Secretary to the Govt. of Haokip India
Tel./Fax : 011-23438095"

388. The aforesaid memorandum then clarifies that when the appropriate Ministry at the Centre, which is concerned with the substantive issues, makes any objections, the same is then shared with the concerned State government for further seeking their views or clarifications on the matter. This is done with the object of apprising the concerned Central Ministry of the clarifications of the State government on the matter. A time-limit of one month has been prescribed for the same.

As aspect of concern highlighted herein was the inaction or delayed action on part of the State government to furnish these relevant clarifications which further has the ripple effect of postponing the decision of the Centre on the matter. It was further prescribed that the State Governments must rectify any drafting or typographical errors pointed out by the Central Government and once the suggestions of the Central Government are accepted, the State governments should send a consolidated proposal containing the amendments rather than insisting on the assent to bill in the original form.

389. It becomes clear upon the perusal of the guidelines that in recognition of the urgent and important nature of Article 201, the Central Government has framed clear guidelines as regards the time limits and the manner in which references under Article 201 are expected to be disposed of. The guidelines also lay down that any delay caused in the seeking of clarifications and making of suggestions by any Ministry would have to be explained by furnishing reasons, in the absence of which, it would be assumed that they have no objections.

It would be apposite for us to observe here that the idea of imposing timelines on the various stakeholders would not be antithetical or alien to the procedure that surrounds the discharge of constitutional functions under Article 201. The existence of the aforesaid two Office Memorandums further substantiates such an interpretation. Afterall, no memorandum which is contrary to the substance and spirit of Article 201 can be allowed to command any procedure between the Union and the States. The factum of its existence and acceptance reveals that the requirement of expeditious or even a strict time-bound action would be consistent with the aim and object of Article 201.

390. The recommendations made by the Sarkaria and Punchhi Commissions respectively and the guidelines framed by the Central government taken collectively indicate the expediency involved in the disposal of references under Article 201 along with the importance of the role of the President. In this backdrop, it must be made clear that the Courts would not be powerless to intervene in cases where the exercise of function by a constitutional authority is not being done without a reasonable time.

391. We, therefore, deem it appropriate to adopt the timeline prescribed by the Ministry of Home Affairs in the aforesaid guidelines, and prescribe that the President is required to take a decision on the bills reserved for his consideration by the Governor within a period of three months from the date on which such reference is received. In case of any delay beyond this period, appropriate reasons would have to be recorded and conveyed to the concerned State. The States are also required to be collaborative and extend co-operation by furnishing answers to the queries which may be raised and consider the suggestions made by the Central government expeditiously.

392. We may now advert ourselves to the question on the nature of the proviso to Article 201 and whether it is intrinsically attached to the option of withholding of assent available to the President under Article 201, similar to how the first proviso is fastened to the option of withholding assent available to the Governor under Article 200. Furthermore, how and in what scenarios would the President resort to directing the Governor to return the bill to the House or Houses together with a message?

393. This Court in *State of Punjab (supra)* had reached the conclusion that the option of withholding of assent under the substantive part of Article 200 would be tethered to the first proviso thereto, predominantly because of the clear use of the expression "shall not withhold assent therefrom" therein. It is limpid that an identical expression remains absent in the proviso to Article 201.

Despite this, we must not lose sight of the fact that it was also authoritatively laid down in the same decision that a proviso may fulfil the purpose of being an

exception or, explanation/addition to the substantive provision of a statute. Therefore, despite the absence of a similar expression mandating the President to not withhold assent in the proviso to Article 201, constitutional principles would require us to read the proviso in conjunction with the option of withholding assent which the President is empowered to choose from.

394. We say so because the scheme under which the constitutional heads of both the country and the State respectively are required to operate, does not contemplate the idea of an 'absolute veto', thereby meaning that there can be no withholding of assent without furnishing of reasons. This is owing to the fact that the simpliciter withholding of assent both by the President and the Governor would be impermissible within the fundamental principles of a constitutional democracy.

395. Since the notion of 'simpliciter withholding' is an anathema to Article 200 of the Constitution, there cannot be any gainsaying that any 'withholding of assent' in terms of Article 201 must also only take place on the strength of a specific provision of the Constitution that envisages the requirement of assent of the President in the first place i.e., those traceable to instances envisaged under Article(s) 31A, 31C, 254(2), 288(2), 360(4)(i)(a), etc. but also must be accompanied by sound and specific reasons that necessitate the withholding, by clearly outlaying the policy considerations on which such an action is predicated.

396. While in the preceding paragraphs we have elaborated that the Governor does not hold the power to exercise 'absolute veto' on any bill, we see no reason why the same standard would also not apply to the President under Article 201 as well. The President is not an exception to this default rule which permeates throughout our Constitution. Such unbridled powers cannot be said to remain in either of these constitutional posts.

The only exception that has been carved out by the Constitution as regards the exercise of powers by the Governor and that of the President under Article(s) 200 and 201 of the Constitution is that in the former, the Governor once having withheld assent from a bill would then be bound to assent upon the reconsideration of such bill, whereas in the latter no such compulsion is constitutionally imagined for the President, owing to the very fact that the grant or withholding of assent in terms of Article 201 is not the ordinary law-making procedure so far as the States are concerned, it is an extraordinary situation that only arises wherever policy considerations are involved in an otherwise State legislation but nevertheless having the propensity of a pan-country effect that is necessitated by the very quasifederal nature of our polity.

397. The natural corollary of the constitutional abhorrence to the notion of simpliciter withholding of assent within our Constitution is that a requirement

and responsibility of assigning reasons to the withholding of assent is cast upon the President. What follows from this is that the reasons assigned by the President for withholding of assent must be communicated to the State government concerned. Such an inference is legitimate since there remains no logic in assigning reasons if the same cannot be responded to and addressed by the State government. Putting the State government to proper notice of the reconsiderations or amendments to the bill, which the Council of Ministers at the Centre may have, is also an essential obligation inhered in such situations.

In the absence of such communication, there exists a real and grave danger of denying the State government the knowledge of the reasons due to which the bill passed by the State legislature had not been assented to. Furthermore, there may exist situations where the State governments may be amenable to some remedial changes or amendments. However, in the absence of any communication, they may be robbed of any chance to undertake those changes and ensure that the bill becomes law in their State.

The State governments must not be prevented from entertaining or possibly incorporating the changes or amendments to the bill which was originally referred to the President, solely due to the absence of a transparent information sharing mechanism, which the State government may be said to be entitled to in a federal polity. Entertaining such a dialogue assumes importance since the fulcrum of a healthy Centre- State relations, in a constitutional democracy, is the transparent collaboration and cooperation between the Union and the States.

398. The mandate for an effective and purposeful dialogue has been constitutionally recognised and approved through the proviso to Article 201. Making the exercise of this proviso optional or subjecting it to the discretion of the President to use wherever and whenever he deems fit would deprive the States of an important safeguard which has been clearly laid down in the Constitution. Although we are not oblivious to the fact that the Office Memorandums referred by us above provide an opportunity for the State government to respond to the objections that the concerned Ministry at the Centre may have, we must remember that such an Office Memorandum cannot be used to bypass a procedure already laid down in the text of the Constitution.

Furthermore, the sending of objections and receipt of clarifications to and from the State government while the proposed bill is under consideration of the President through the concerned Ministry at the Centre, is to enable and infuse an informed decision making in the entire process to avoid any haste or non-application of mind, before taking any decision of either grant of assent or withholding thereof in the first place.

399. However, at this stage we may clarify, that although the Memorandum mandates that there must be a channel of transparent and purposeful communication between the State Government and the Central Government, yet this does not mean that the requirement of sending a message in terms of the proviso to Article 201 is eliminated. Mere existence of any communication that may take place prior to any decision being taken under Article 201 is no reason to shirk the constitutional responsibility of officially communicating the message to the concerned State legislature.

There lies a very fundamental difference between the communication envisaged under the Memorandum and that under the proviso to Article 201. The former is only to address any preliminary objections or doubts as regards the proposed bill and which prevent a meaningful decision from being taken by the President under Article 201 whereas under the latter, the idea is to communicate the reasons as to how the President arrived at his decision to withhold assent along with specifying the provisions of the proposed bill that should be reconsidered by the State legislature.

400. In other words, the sending of preliminary objections under the Memorandum cannot be equated to the message under the proviso to Article 201, which is used to communicate the aspects of the proposed bill to be reconsidered and how they may be reconsidered by the State legislature. Unlike the memorandum, the message under Article 201 of the Constitution is of seminal significance inasmuch as it facilitates the repassing of the bill by the State legislature. What emerges from the aforesaid is that when the President declares the withholding of assent of the State legislature's proposed bill, it would be his constitutionally bounden duty to also set into motion the proviso to Article 201.

401. In short, after due consultation with the State government, the President may either declare assent to the bill or he may declare that he withholds assent thereto. It would not be appropriate for the President to declare withholding of assent without first seeking clarifications from the State government as is mentioned in the guidelines featuring in the Office Memorandums. If, in the course of discussions, the State government expresses willingness to make such changes to the bill as may be suggested by the Central government, then it would be open to the President to seek reconsideration of the bill by invoking the proviso, and upon the bill being re-considered and passed with such changes, the President may grant assent thereto.

402. At this stage, it would be prudent for the President while choosing to withhold assent to the bill and setting the proviso into motion, to address the issues, views, changes, amendments or recommendations that he may have comprehensively and in one go. Piecemeal exercise of the proviso to Article 201 must be dissuaded. This is to prevent the endless loop of sending and re-sending

of the bill that may ensue between the President acting under the proviso to Article 201 and the House or Houses of the State Legislature.

A purposive interpretation of Article 201 does not in any manner envisage a never-ending cycle of communications between the President and the State Government. Such conduct would tantamount to abusing the essence of the proviso which embodies fostering a collaborative spirit between the Union and the States. Therefore, the exercise of the power under the proviso must also be done in good faith and in a bona fide manner.

403. The object underlying Article 201 and the significance it holds for the enforceability of a State legislation would be frustrated if the procedure therein is reduced to an endless cycle of back and forth without any chance for fruition of the aspirations of the people of the State on mere technicalities. Therefore, the President is expected to follow the procedure envisaged under the proviso with a sense of responsibility whenever necessary. In the ordinary course of action, a bill must be sent back for the reconsideration of the State legislature under the proviso to Article 201, only once.

404. After the bill is sent with a message to State legislature by the President and they repass it, with or without amendments, the President would be empowered to take a final call on the giving or withholding of assent on the bill concerned. If he chooses to assent to the bill, it would become law. There is no gainsaying to the fact that the President under Article 201 is conferred with the power to withhold a bill during the second round, without activating any other procedure, effectively bringing the legislative process vis-à-vis that same bill to an end, in contrast to the scheme of Article 200 wherein the Governor must mandatorily accord his assent to a Bill which is presented to him for the second time.

405. However, if he chooses to withhold his assent, the bill will not take birth as law. It must, however, be noted that even during the withholding of assent of a bill received on the second round, the President would be required to assign clear and sufficiently detailed reasons for arriving at such a decision. Even in the second round, he has no power whatsoever to exercise absolute veto, as the Constitution does not provide anywhere that withholding of assent can be done simpliciter.

Hence, the decision to choose the option of withholding assent after having set into motion the proviso to Article 201 must not be misconstrued to mean that he is exercising an 'absolute veto' or a power of a similar nature. We say so because first, the decision has not been arrived at in the first instance without communicating reasons to the State legislature and providing them with an opportunity to reconsider the bill, and secondly, the President is mandated to

declare the withholding of assent to the repassed bill with cogent and sufficient reasons at this stage as well.

406. In cases where the reservation is on the ground of repugnancy of the State legislation with a Central legislation, or under one of the provisions where the assent of President has been envisaged for the purpose of enforceability or imparting immunity to the legislation, it would be a matter where the President would decide the question of grant of assent keeping in mind the desirability of having a uniformity in the policy across the country on the subject matter involved.

This, as was held in *Kaiser-I-Hind* (supra), is evident from the fact that the assent under Article 201 is not the same as the assent to be granted under Articles 111 and 201, and the President has been given supremacy under the Constitution as regards the bills covered under Article 201 by virtue of his constituent powers. In this regard, the observations of the Sarkaria Commission may be referred to as guiding principles by the President wherein it was observed thus:

"5.10.02 While we agree that the scrutiny by the Union Government need not be confined to the general constitutionality of the Bill or conformity with constitutional provisions under which the Bill has been reserved, we would sound a note of caution that non-conformity of a State Bill to the policy of the Union Government is not always a safe ground for withholding Presidential assent from it.

In this connection it is necessary to bear in mind the general principles that underlie the division of legislative powers between the Union and the States with reference to Lists I, II and III of the Seventh Schedule. All matters in the Concurrent List are manifestly of common interest to the Union and the States. The supervisory powers conferred on the Union under Articles 201- and 254(2) enable it to secure a broad uniformity in the main principles of the laws on Concurrent List subjects throughout the country.

5.10.03 From a functional angle, all matters in List II cannot be said to be exclusively of State or local concern. Several Entries in List II are either expressly subject to certain entries in List I or overlap to some extent matters in List I or List III. Securing uniformity and coordinating policy on the basic aspects of such matters in List II, having an interface with those in List I, cannot be extraneous to the functions exercised by the President in considering State Bills, under Article 201.

5.10.04 Articles 31A(1), 31C, 288(2) and 304(b) provide for reservation of certain types of State Bills for the consideration and assent of the President. These provisions, read with Article 201-, enable the Union Executive to ensure,

on the basic aspects of these special matters, a certain degree of uniformity in the interests of the social and economic unity of the country. Examination of the State Bills of this special category, from the point of their compatibility with the settled policy of the Union, therefore, does not involve any impropriety. President should not withhold assent merely on consideration of policy differences with respect to matters in List II

5.10.05 Apart from all such matters on which a measure of uniform coordinated policy is desirable, there remains in List II an area which is purely of local or domestic concern to the States. It is with respect to Bills falling within this area of exclusive State concern that utmost caution, circumspection and restraint on the part of the Union Executive is required in the exercise of its supervisory powers under Article 201. This is all the more necessary if the Bill has been reserved by the Governor in the exercise of his discretion, contrary to the advice of his Ministers. It may not be prudent to veto such a Bill merely on the ground that the legislative policy of the Bill, though otherwise constitutional, does not conform with what the Union Government thinks should be its policy with respect to the subject-matter of the Bill.

5.10.06 We recommend that as a matter of convention, the President should not withhold assent only on the consideration of policy differences on matters relating, in pith and substance, to the State List, except on the grounds of patent unconstitutionality such as those indicated in para 5.6.13 above."

407. Where the ground of reservation of a bill is patent unconstitutionality of a nature described in the exceptional situations in M.P. Special Police (supra), that is where the bill upon becoming law would be a peril to democracy, the decision of the President must be guided by the fact that it is the constitutional courts that have been conferred with the ultimate authority of interpretation of the Constitution and the laws.

408. When a legislation is apprehended to be patently unconstitutional of the nature described in the above paragraph, the courts as the sentinel on qui vive have been empowered by the Constitution to test the vires of such legislation and there is no bar or limitation to the power of judicial review of the courts in this regard. This is in consonance with the constitutional scheme of checks and balances between the three wings of the Government so as to ensure that absolute power does not vest in one authority. Therefore, the power of judicial review by design acts as more than a sufficient safeguard against the enactment of an unconstitutional legislation by the legislature.

409. However, in cases of challenge to legislations duly passed by the legislature and assented to by the executive, the constitutional courts temper their judicial review with the presumption that such legislation is constitutional. This is

because the courts deem it appropriate to not interfere with an enactment that has been passed in the wisdom of the legislature and symbolises the political will of our people. It is in this context, that we find it worthwhile to note the remarks of the eminent constitutional jurist, Nani Palkhivala on the object of assent by the executive to a bill - "The object of enacting these provisions [Articles 200 and 201] was perhaps that while the constitutionality of a law can be challenged in a court, its wisdom cannot be and that it would be better to prevent a clearly unconstitutional legislation from becoming law than to have it invalidated by a court later."

However, the aforesaid statement should not be construed devoid of its context, more particularly in ignorance of Article 143 of the Constitution which we shall now discuss.

410. We are in agreement that one of the object of Article 201 is also to prevent a bill that is perilous to democratic principles. However, we are also of the view that a bill appearing to be unconstitutional must be assessed by a judicial mind. It is for this reason that both the Sarkaria Commission and the Punchhi Commission categorically recommended the President to seek the opinion of this Court under Article 143 in respect of bills that may be apprehended to be patently unconstitutional.

411. Article 143 confers on the President the power to consult this Court any time when it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of this Court upon it. Therefore, the President is not just precluded but constitutionally expected to refer the question of vires of a bill to this Court as the apex judicial institution to ascertain the constitutionality thereof and accordingly enable the President to take action in respect of the said bill under Article 201.

412. We are of the considered view that although the option to refer a bill to this Court under Article 143 may not be mandatory, yet the President, as a measure of prudence, ought to seek an opinion under the said provision in respect of bills that have been reserved for the consideration of the President on grounds of perceived unconstitutionality. This is all the more necessary as there is no mechanism at the State level for the Governor to refer bills to the constitutional courts for their advice or opinion thereupon.

Under the scheme of the Constitution as we see it, there is only one possible way for the Governor to ascertain the palpable constitutionality of a bill, which is by way of reserving it for the consideration of the President who in turn is then expected to invoke Article 143. The Constitution is not a maze, but a labyrinth. Although both may semantically appear to be one and the same, yet there is a

very fine but discernible difference between the two. The difference lies in the fact that in a maze one may lose their way within the multiple overlapping paths, with the possibility of each of them leading to a dead-end, however in a labyrinth one eventually finds the way and in the process also come out more enlightened.

Similarly, any questions emanating from the Constitution or pertaining thereto such as the constitutional vires of a law must be uncovered through the foresightedness of our Constitution. Wherever, a bill is reserved by the Governor for the President on the ground of patent unconstitutionality of the nature wherein the exercise of discretion by the Governor is permissible under Article 163(1), the Constitution expects the President to be the soothsayer, easing the sails for the Governor.

413. This very same constitutional obligation cast on the President is also provided in Article 154H of the Constitution of Sri Lanka wherein if the Governor is of the opinion that a statute enacted by a provincial council is unconstitutional, then he may refer the bill to the President who in turn is obligated to make a reference to the Supreme Court of Sri Lanka for obtaining pronouncement on the constitutional vires of such bill. Where the Supreme Court holds the statute to be constitutional, then the Governor is bound to grant assent.

A similar framework is followed in the Republic of Kiribati where Section 66 of the Constitution of Kiribati allows the Beretitenti, who is the constitutional head of the State, to withhold assent to a bill only if he believes that such bill is inconsistent with the constitution. In such a case, he may return the bill back to the Parliament however, if the bill is passed again then the only option left with the Beretitenti is to either assent or to refer its vires to the High Court for a declaration. If the court declares the bill to be constitutional then the assent must be granted forthwith.

414. The object of Article 143 in context of reference of bills, whose constitutionality is under consideration by the President under Article 201, has been explained by the N.L. Untwalia, J., In Re: The Special Courts Bill, 1978 reported in (1979) 1 SCC 380. The relevant portion of his judgment is reproduced below:

"143. I see no harm in adopting the method of giving some suggestions from the Court which may obliterate a possible constitutional attack upon the vires of a Bill. It may not be necessary or even advisable to adopt such a course in all References under Article 143 of the Constitution. But if in some it becomes expedient to do so, as in my opinion in the instant one it was so, I think, it saves a lot of public time and money to remove any technical lacuna from the Bill if the Government thinks that it can agree to do so. Of course the Bill by itself is not a law. It would be a law when passed by the Parliament. But even at the stage of

the Bill when opinion of this Court is asked for, it seems to me quite appropriate in a given case to make some suggestions and then to answer the Reference on the footing of acceptance by the Government of such of the suggestions as have been accepted."

(Emphasis supplied)

415. The view taken In Re: Special Courts (supra) was that consultative jurisdiction under Article 143 may avoid any possible challenges to the vires of a bill if it becomes an Act. On basis of the dictum in the said reference, we are of the considered view that constitutional courts are not precluded from making suggestions or opining about the constitutional validity of a bill before the same becomes a law.

This is because preventing a patently unconstitutional bill from being enacted saves not only public resources but also respects the wisdom of the legislature by providing the constitutional functionaries associated with the process of passage of a legislation, to review the bill and take appropriate actions. However, the approach of prevention before cure cannot be stretched to such extent, that the very process of reservation becomes a resort for thwarting the very legislative powers of the States. The President's recourse to Article 143 also palliates any apprehensions of bias or mala fides in the Central government's approach to bills reserved under Article 200.

416. The approach to be adopted by the courts in answering references under Article 143 in respect of reserved bills also requires a perusal of constitutional provisions viz. Articles 31A, 31C, 254, 288, 360, etc. that place a requirement of assent to a bill by the President, either expressly or by necessary implication. The scope of these Articles is largely centred around social, economic and political objectives that are sought to be achieved by a State.

The necessity for Presidential assent in case of legislations under these Articles is for enabling the Central government to streamline policies and ensure uniformity in socio-economic and welfare measures across States. In contemplation of the bills under these Articles, the central government, more often than not, has policy considerations in mind and the reasons for assent or withholding thereof may not be on purely legal grounds.

417. It is in such situations that the court has to be mindful as to whether the reference received from the President under Article 143 pertains to pure legal questions regarding interpretation of the Constitution or questions that are in the nature of a policy consideration. In case of the latter, the Supreme Court, having regard to the relevant facts and circumstances, can refuse to express its advisory

opinion upon being satisfied that the questions presented to it are purely socio-economic or political questions and have no relation to the Constitution.

418. The exercise of a self-imposed restraint by the court in matters involving purely political considerations is in consonance with the doctrine of political thickets, that is, the courts do not venture into areas of governance in which the Constitution gives a prerogative solely to the executive. For instance, the question whether a State legislation repugnant to a central law should be assented to by the President or not under Article 254(2) is largely a policy decision on part of the Union Government. In such matters, the court has its hands tied and does not attempt to encroach into the functions of the executive wing.

419. However, in certain exceptional circumstances, the Governor may reserve a bill for consideration of the President on grounds that the bill is perilous to the principles of democracy and an interpretation of the Constitution is necessary to ascertain whether such legislation should be granted assent or not. In such cases where a bill has been reserved majorly on the grounds of not being in consonance with the constitutional principles and involves questions of constitutional validity, the executive is supposed to exercise restraint.

It is expected that the Union executive should not assume the role of the courts in determining the vires of a bill and should, as a matter of practice, refer such question to the Supreme Court under Article 143. We have no qualms in stating that the hands of the executive are tied when engaging with purely legal issues in a bill and only the constitutional courts have the prerogative to study and provide recommendations as regards the constitutionality of a bill.

420. Since the constitutionality of a bill is a matter which falls within the exclusive domain of the courts, the opinion rendered by the Supreme Court under Article 143 holds high persuasive value and should ordinarily be accepted by the legislature and the executive. We are no strangers to the arguments as regards the non-binding nature of the advisory jurisdiction of this Court and that even though a bill may be referred to this Court by the President under Article 143, yet the opinion delivered thereunder may not be heeded to. However, merely because the jurisdiction under Article 143 is not binding does not undermine the principles used by this Court to determine the constitutionality of the bill. This Court in *Re Special Courts* (supra) has held thus:

"34. Learned counsel for the interveners who oppose the reference urged as one of the planks of attack on the reference that it is futile for us to consider the constitutional validity of the Bill because whatever view we may take, it will still be open to the Parliament to discuss the Bill and to pass or not to pass it as it pleases. This argument proceeds upon an unrealistic basis, its assumption being that the Parliament will not act in a fair and proper manner. True, that nothing

that we say in this opinion can defer the Parliament from proceeding with the Bill or dropping it.

That is because, no court will issue a writ or order restraining the Parliament from proceeding with the consideration of a Bill pending before it. But we cannot assume, what seems to us to be unfair to that august body, that even if we hold that the Bill is unconstitutional, the Parliament will proceed to pass it without removing the defects from which it is shown to suffer. Since the constitutionality of the Bill is a matter which falls within the exclusive domain of the courts, we trust that the Parliament will not fail to take notice of the court's decision."

(Emphasis supplied)

421. In our considered view, the only reason for which the legislative or the executive wing may not take note of the opinion delivered by the Supreme Court under Article 143 is when the grounds on which a State bill was reserved for the consideration of the President, are not purely legal but also involve certain policy considerations, which may outweigh the issue of constitutionality. In such cases, if the President acts contrary to the advice of this Court and withholds assent to a bill, he must record cogent reasons and materials that justify not granting assent.

422. A lack of reasons or even insufficiency thereof may do violence to the concept of 'limited government' on which the edifice of our Constitution has been built. The whys and wherefores of the President's actions provide a basis for judicial review and allow the courts to assess the validity of the decision as well as ensure accountability between the three pillars of government which is in consonance with the idea of checks and balances in the constitutional set-up of our country.

423. In this context, we are of the considered view that the expression of intention by the President through a declaration of reasons supporting his actions under Article 201 is of paramount importance and this Court is not inhibited in any manner to make a presumption that the President and by extension, the Central government, may not have acted in a bona fide manner at the time when it exercises its powers of judicial review.

424. We would also like to make a reference to Rule 48 of the Tamil Nadu Government Business Rules, 1978. The said Rule provides that whenever there is legislative proposal for a subject matter falling within the Concurrent List, the concerned administrative department should consult the Ministry of Home Affairs, whenever possible. Similar requirement is laid down for the legislations falling under Articles 31A, 31B and 31C of the Constitution. The rules read as follows:

"(2) If a Bill which is proposed to be introduced in the Legislature falls within the concurrent Legislative Field, the administrative department principally concerned shall, whenever possible, consult the Ministry of Home Affairs of the Government of India on the proposed legislation. Consultation with the Government of India shall also be necessary in cases where a Bill may seek to amend a law falling within the concurrent legislative field, even though such law applies only to the State of Tamil Nadu. Such consultation should be made after the stage indicated in clause (1).

(3) If a Bill which is proposed to be introduced in the Legislature attracts the provisions of clause (2) of Article 31, clause (1) of Article 31-A or Article 31-C, of the Constitution or it is a Bill on Land Re-forms, the Administrative department principally concerned with the subject matter shall consult the Ministry of Home Affairs of the Government of India before the introduction of the Bill (in the Legislature:

Provided that the procedure in sub-rule (2) or sub-rule (3) need not be followed when the need for action is so urgent that prior consultation is not possible. In such cases, Ministry of Home Affairs of the Government of India shall be informed as soon as possible."

425. Thus, as a matter of prudence, the States should enter into pre-legislation consultation with the Central government before introducing legislations on matters pertaining to those provisions of the Constitution where the assent of the President may be required. Likewise, the Central government, should consider the legislative proposals sent by the State governments with due regard and expediency. Such a practice reduces friction between Centre- State relations and also ensures that future roadblocks are overcome in the beginning itself, thereby promoting public welfare.

vii. On Exercise of Article 142.

426. Article 142 of the Constitution empowers this Court, in the exercise of its jurisdiction to, pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it.

427. A three-Judge Bench of this Court in A.G. Perarivalan (supra) was dealing with the inaction on the part of the Governor of Tamil Nadu in deciding the remission petition of the petitioner therein. Despite the resolution passed by the State government in favour of granting remission to the petitioner, the Governor first kept the matter pending with him for a long duration and thereafter, without taking a decision thereupon, referred the same to the President.

428. The Court, taking into consideration the huge delay caused by inaction on the part of the Governor, and also the adverse impact of such inaction on the

liberty of the petitioner therein, exercised its powers under Article 142 of the Constitution and deemed the petitioner to have served his sentence and ordered his release forthwith. The Court observed thus:

"Given that his petition under Article 161 remained pending for two-and-a-half years following the recommendation of the State Cabinet for remission of his sentence and continues to remain pending for over a year since the reference by the Governor, we do not consider it appropriate to remand the matter for the Governor's consideration. In the absence of any other disqualification and in the exceptional facts and circumstances of this case, in exercise of our power under Article 142 of the Constitution, we direct that the appellant is deemed to have served the sentence in connection with Crime No. 329 of 1991. The appellant, who is on bail, is set at liberty forthwith."

(Emphasis supplied)

429. The Court, while summarizing its observations, further observed that the reference made by the Governor to the President had no constitutional backing and therefore the reference having been declared erroneous, and the Council of Ministers having advised in the favour of remission, there was no requirement to remand the matter to the Governor for taking a decision thereupon. The observations read thus:

"38.3. The reference of the recommendation of the Tamil Nadu Cabinet by the Governor to the President of India two-and-a-half years after such recommendation had been made is without any constitutional backing and is inimical to the scheme of our Constitution, whereby "the Governor is but a shorthand expression for the State Government" as observed by this Court [Maru Ram v. Union of India, (1981) 1 SCC 107 : 1981 SCC (Cri) 112]."

430. Coming to the facts of the present case, the Governor first withheld the ten bills under question and later despite the said Bills being repassed by the State legislature and presented before him again under the first proviso to Article 200, still reserved them for the consideration of the President. We have elaborated in detail that owing to the clear language in which the first proviso is couched, there would never arise, except in extraordinary situations, any occasion for the Governor to reserve a reconsidered bill for the consideration of the President.

The said bills, in the absence of any message given by the Governor under the first proviso, were taken up for reconsideration by the State Assembly and passed in their original form, and presented to the Governor for his assent. Thus, undoubtedly, it was not open to the Governor to reserve the bills for the consideration of the President and he ought to have granted assent.

431. Considerable time has elapsed since these ten Bills were originally passed and presented to the Governor for assent. Two out of the ten Bills even date back to 2020. It is important to keep in mind that the tenure of the State legislature is of five years and the representatives are accountable to their electorate as regards the enactment of legislations addressing the issues faced by the electorate. At the end of every five years, the elected representatives have to go back to their electorate and provide a report card, based upon which the people, in whom the ultimate sovereignty rests, cast their votes. Bills, if kept pending for long despite their passage by the State legislature, militate against this very fundamental, essential to the sustenance of a representative democracy based on direct elections.

432. The conduct exhibited on part of the Governor, as it clearly appears from the events that have transpired even during the course of the present litigation, has been lacking in bonafides. There have been clear instances where the Governor has failed in showing due deference and respect to the judgments and directions of this Court. In such a situation, it is difficult for us to repose our trust and remand the matter to the Governor with a direction to dispose of the bills in accordance with the observations made by us in this judgment.

Article 142 empowers this Court to do complete justice and in the facts of the present case, more particularly, in light of the fact that the option of granting assent to the repassed bills was the only constitutionally permissible option available with the Governor, we deem it absolutely necessary and appropriate to grant that very relief by exercising our extraordinary powers. No meaningful purpose would be served by keeping the bills, some of which have already been pending for incredulously long periods, pending for more time. Therefore, we deem the assent to have been granted.

433. Constitutional authorities are creatures of the Constitution and are bound by the limitations prescribed by it. No authority, in exercise of its powers, or to put it precisely, in discharge of its duties, must attempt to breach the constitutional firewall. The office of the Governor is no exception to this supreme command. Whenever there is an attempt by any authority to move beyond the bounds of the Constitution, this Court has been entrusted with the responsibility to act as the Sentinel on the qui vive and bring back the authority within the constitutionally permissible limits by exercising judicial review.

We are not exercising our power under Article 142 in a casual manner, or without giving a thought to it. On the contrary, it is only after deepest of deliberations, and having reached at the firm conclusion that the actions of the Governor - first in exhibiting prolonged inaction over the bills; secondly in declaring a simpliciter withholding of assent and returning the bills without a message; and thirdly in reserving the bills for the President in the second round - were all in clear

violation of the procedure envisaged under the Constitution, that we have decided to declare the deeming of assent to the ten bills, considering it to be our constitutionally bounden duty. In our view, that is the only way to ensure that complete justice is done with the parties without any delay, and without possibility of any further delay due to any inaction on the part of the Governor, or lack of deference on his part to this judgment.

H. CONCLUSION

434. In light of the aforesaid discussion, we answer the questions of law formulated by us as under:

(I) In discharge of his functions under Article 200, the Governor has three options to choose from when a bill passed by the State legislature is presented to him -

i. First, to assent;

ii. Secondly, to withhold assent; or

iii. Thirdly, to reserve the bill for the consideration of the President.

(II) The first proviso to Article 200 should be read in conjunction with the option of withholding of assent provided in the substantive part of Article 200. It is not an independent course of action and has to be mandatorily initiated by the Governor in cases where the option of withholding of assent is to be exercised. The decision of this Court in *State of Punjab (supra)* lays down the correct position of law in this regard.

(III) The expression "the bill falls through unless the procedure under the first proviso is followed" as used in *Valluri Basavaiah Chowdhary (supra)* signifies that once the Governor declares withholding of assent and returns the bill to the House or Houses, the bill would lapse or fall through unless the House or Houses reconsider the bill in accordance with the suggestions made by the Governor in his message and present it to him after repassing. The expression "unless the procedure under the first proviso is followed" cannot be construed to mean that the Governor exercises discretion in setting the machinery prescribed under the first proviso in motion. Once the Governor exercises the option of withholding assent, he is under an obligation to follow the procedure prescribed in the first proviso "as soon as possible".

(IV) The decision of this Court in *State of Punjab (supra)* cannot be said to be per incuriam. The observations made in the decision as regards attaching of the first proviso with the option of withholding of assent are supported by the observations made in *Valluri Basavaiah Chowdhary (supra)*.

(V) Neither the concept of 'pocket veto' nor that of 'absolute veto' finds place within the constitutional scheme and mechanism envisaged under Article 200 of the Constitution. The substantive part of Article 200 consciously uses the expression "shall declare" to signify that there is no scope of inaction, and whenever a bill is presented to the Governor, he is under a constitutional obligation to adopt one of the three courses of action available therein. Further, the expression "as soon as possible" in the first proviso permeates Article 200 with a sense of expediency and does not allow the Governor to sit on the bills and exercise pocket veto over them. Similarly, by virtue of the first proviso being intrinsically and inextricably attached to the option of withholding of assent, there is no scope for the Governor to declare a simpliciter withholding of assent, meaning thereby that 'absolute veto' is also impermissible under Article 200.

(VI) It goes without saying that the scheme of Article 200 is characterized by the movement of the bill from one constitutional authority to another and that too with a sense of expediency. It is trite to say that Article 200 occupies an important role of giving the bills passed by the State legislature the authority of an Act. Without the procedure envisaged under Article 200, the bills remain mere pieces of paper, skeletons without any flesh or lifeblood flowing through their veins, mere documentation of the aspirations of the people without any possibility of bringing them to fruition.

(VII) As a general rule, it is not open for the Governor to reserve a bill for the consideration of the President once it is presented to him in the second round, after having been returned to the House previously as per the first proviso. The use of the expression "shall not withhold assent therefrom" appearing in the first proviso places a clear embargo on the Governor and is a clear enunciation of the requirement that the Governor must assent to a bill which is presented to him after complying with the procedure laid down in the first proviso. The only exception to this general rule is when the bill presented in the second round is materially different from the one presented to the Governor in the first instance, as discussed in paragraph 204 of this judgment. In such a scenario, it would be open for the Governor to choose from the three options provided in the substantive part of Article 200.

(VIII) In the facts of the present case, the reservation by the Governor of the ten Bills for the consideration of the President in the second round was illegal, erroneous in law and is thus liable to be set aside. As a result, any subsequent action taken upon the said Bills by the President also does not survive and is thus set aside.

(IX) The Bills, having been pending with the Governor for an unduly long period of time, and the Governor having acted with clear lack of bona fides in reserving the Bills for the consideration of the President, immediately after the

pronouncement of the decision of this Court in State of Punjab (supra), are deemed to have been assented to by the Governor on the date when they were presented to him after being reconsidered.

(X) There is no expressly specified time-limit for the discharge of the functions by the Governor under Article 200 of the Constitution. Despite there being no prescribed time-limit, Article 200 cannot be read in a manner which allows the Governor to not take action upon bills which are presented to him for assent and thereby delay and essentially roadblock the law-making machinery in the State.

(XI) The use of the expression "as soon as possible" in the first proviso makes it clear that the Constitution infuses a sense of urgency upon the Governor and expects him to act with expediency if he decides to declare the withholding of assent.

(XII) The settled position of law is that where no time-limit for the exercise of a power is prescribed, the same must be exercised in a reasonable time period. Guided by the decisions of this Court in A.G. Perarivalan (supra) and Keisham (supra), we find that it is no more res-integra that the courts are well-empowered to prescribe a time-limit for the discharge of any function or exercise of any power which, by its very nature, demands expediency.

(XIII) Prescription of a general time-limit by this Court, within which the ordinary exercise of power by the Governor under Article 200 must take place, is not the same thing as amending the text of the Constitution to read in a time-limit which would fundamentally change the procedure and mechanism stipulated by Article 200. Prescription of such time-limits within the scheme of Article 200 is with a view to lay down a determinable judicial standard for ascertaining the reasonable exercise of such power and to curtail any arbitrary inaction. This Court while prescribing a time-limit for the exercise of power, is guided by the inherent expedient nature of the procedure prescribed under Article 200.

(XIV) Keeping in mind the constitutional significance of Article 200 and the role it plays in the federal polity of the country, the following timelines are being prescribed. Failure to comply with these timelines would make the inaction of the Governors subject to judicial review by the courts:

(i) In case of either withholding of assent or reservation of the bill for the consideration of the President, upon the aid and advice of the State Council of Ministers, the Governor is expected to take such an action forthwith, subject to a maximum period of one-month;

(ii) In case of withholding of assent contrary to the advice of the State Council of Ministers, the Governor must return the bill together with a message within a maximum period of threemonths;

(iii) In case of reservation of bills for the consideration of the President contrary to the advice of the State Council of Ministers, the Governor shall make such reservation within a maximum period of three months;

(iv) In case of presentation of a bill after reconsideration in accordance with the first proviso, the Governor must grant assent forthwith, subject to a maximum period of one-month.

(XV) As the general rule, the Governor in exercise of his functions under Article 200 is required to abide by the aid and advice tendered by the Council of Ministers. The only exceptions to this rule can be traced to the second proviso to Article 200 and Article 163(1) of the Constitution. Thus, only in instances where the Governor is by or under the Constitution required to act in his discretion, would he be justified in exercising his powers under Article 200 contrary to the advice of the Council of Ministers. Further, any exercise of discretion by the Governor in exercise of his powers under Article 200 is amenable to judicial review.

(XVI) We declare the view taken in B.K. Pavitra (supra) to be per incuriam to the extent of the following two observations made therein - First, that the Constitution confers discretion upon the Governor insofar as the reservation of bills for the consideration of the President is concerned and; Secondly, that the exercise of discretion by the Governor under Article 200 is beyond judicial scrutiny. The removal of the expression "in his discretion" from Section 75 of the GoI Act, 1935 when it was being adapted as Article 200 of the Constitution clearly indicates that any discretion which was available to the Governor under the GoI Act, 1935 in respect of reservation of bills became unavailable with the commencement of the Constitution.

The decision of B.K. Pavitra (supra) is not in consonance with the observations made by the larger bench decision of this Court in Samsher Singh (supra). The majority opinion in Samsher Singh (supra) in paragraph 28 observed that "Governor is the constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion" At the cost of repetition, we again reiterate "and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers".

The decision in Samsher Singh (supra) illustrated certain provisions of the Constitution which expressly required the Governor to exercise his powers in his discretion. The second proviso to Article 200 was one such illustration. Thus, it is amply clear from the dictum in Samsher Singh (supra) that the seven- Judge

Bench, after taking into consideration the scheme of Article 200, observed that the second proviso to Article 200 was the only instance where the Governor had been entrusted with the power to act in his own discretion.

Subsequent Constitution Bench decisions in *M.P. Special Police* (supra) and *Nabam Rebia* (supra) clarified that besides the instances where the Governor has been expressly conferred with discretionary powers, there may still be certain exceptional circumstances wherein it would be legitimate for him to act in his own discretion as indicated by us in paragraph 300. However, the general rule remains that the Governor acts upon the aid and advice of the State Council of Ministers. Under Article 200 of the Constitution, the Governor does not possess any discretion in the exercise of his functions and has to mandatorily abide by the advice tendered to him by the Council of Ministers. The only exceptions to this general rule are as follows:

(i) Where the bill is of a description as provided under the second proviso to Article 200;

(ii) Where the bill is of a nature covered by Articles 31A, 31C, 254(2), 288(2), 360(4)(a)(ii) etc. wherein assent of the President is a condition precedent before the bill can take effect as law;

(iii) Where the bill is of a nature that if allowed to take effect then it would undermine the Constitution by placing the fundamental principles of a representative democracy in peril.

The observations made in *B.K. Pavitra* (supra) that "a discretion is conferred upon the Governor to follow one of the courses of action enunciated in the substantive part of Article 200" do not take into consideration the decision of *Samsher Singh* (supra) and is for this reason per incuriam. It failed to consider that Article 200 which had been duly considered by *Samsher Singh* (supra) was found to contain only one instance where the exercise of discretion was expressly provided, that being the second proviso thereto. Besides this, as already aforesaid, it failed to notice the removal of the expression "in his discretion" from Section 75 of the GoI Act, 1935 which ultimately culminated into Article 200.

(XVII) Under Article 201, the occasion for the reservation of a bill for the consideration of the President by the Governor may arise where a constitutional provision makes the assent of the President to be a condition precedent to a State legislation becoming enforceable or for the purpose of securing some immunity to the State legislation. Such a requirement can be found in Articles 31A, 31C, 254(2), 288(2), 360(4)(a)(ii) etc. The second proviso to Article 200 also makes reservation for the consideration of the President mandatory. As we have also

discussed, there may be certain other situations where by peril to fundamental principles of representative democracy, the Governor may, in exercise of his discretion, reserve a bill for the consideration of the President.

(XVIII) There is no 'pocket veto' or 'absolute veto' available to the President in discharge of his functions under Article 201. The use of the expression "shall declare" makes it mandatory for the President to make a choice between the two options available under the substantive part of Article 201, that is, to either grant assent or to withhold assent to a bill. The constitutional scheme does not, in any manner, provide that a constitutional authority can exercise its powers under the Constitution arbitrarily.

This necessarily implies that the withholding of assent under Article 201 is to be accompanied by the furnishing of reasons for such withholding. We cannot say for a moment that the President would be allowed to not exercise the proviso to Article 201 and not communicate reasons for the withholding of assent to the State legislature, as doing so would make the very inclusion of the proviso in Article 200 redundant. Thus, the proviso to Article 201 could be said to attach with the option of withholding of assent.

(XIX) The position of law is settled that even where no time-limit is prescribed for the exercise of any power under a statute, it should be exercised within a reasonable time. The exercise of powers by the President under Article 201 cannot be said to be immune to this general principle of law. Keeping in mind the expedient nature of the provision and having regard to the reports of Sarkaria and Puncchi Commissions, as well as the Memorandum dated 04.02.2016 issued by the Ministry of Home Affairs, we prescribe that the President is required to take a decision on the bills reserved for his consideration by the Governor within a period of three months from the date on which such reference is received. In case of any delay beyond this period, appropriate reasons would have to be recorded and conveyed to the concerned State.

(XX) Whenever, in exercise of the powers under Article 200 of the Constitution, a bill is reserved for the consideration of the President on grounds of patent unconstitutionality that are of such a nature so as to cause peril to the principles of representative democracy, the President, must be guided by the fact that it is the constitutional courts which have been entrusted with the responsibility of adjudicating upon the questions of constitutionality and legality of an executive or legislative action. Therefore, as a measure of prudence, the President ought to make a reference to this Court in exercise of his powers under Article 143 of the Constitution.

(XXI) Judicial review and justiciability are not synonymous concepts. The power of judicial review in a written constitution is implicit. Unless expressly excluded

by a provision of the Constitution, the power of judicial review is available in respect of exercise of powers under any of the provisions of the Constitution. On the other hand, justiciability relates to a particular field falling within the purview of the power of judicial review.

(XXII) The determining factor in deciding whether a power would be subject to judicial review is the subject-matter of such power and not its source. Indra Sawhney (supra) observed that the yardstick of subjecting an act or a decision to judicial review is not whether it is a legislative act or an executive decision on a policy matter but whether it violates any constitutional guarantee or the rights under Part III of the Constitution. The Governor, wherever he acts in his discretion under the Constitution, does so by virtue of his position as the constitutional and formal head of the State. It has been held in a catena of decisions that exercise of any power under the Constitution must conform to the limits set by the Constitution itself. Article 200 is no exception to this general rule.

(XXIII) In light of this, the observations made by this Court in Hoechst (supra) that the assent of the President is non-justiciable, cannot be stretched to mean that as a general rule, the exercise of powers by the Governor under Article 200 in his discretion would also be immune from judicial review. While grant of assent by the Governor or the President, being acts which are generally taken upon the aid and advice of the Council of Ministers, may not be justiciable, the withholding of assent or reservation of bills for the consideration of the President by the Governor in exercise of his discretion which is subject to the limits defined by the Constitution, would be justiciable on the touchstone of judicially determinable standards.

(XXIV) We summarise our findings on judicial review of the exercise of power by the Governor under Article 200 and the exercise of power by the President under Article 201 as follows:

a. Where the Governor reserves a bill for the consideration of the President in his own discretion and contrary to the aid and advice tendered to him by the State Council of Ministers, it shall be open to the State Government to assail such an action before the appropriate High Court or this Court. Such a challenge can broadly be made on the following grounds:

(i) Where the reservation is on the ground that the bill is of a description falling under the Second Proviso to Article 200 of the Constitution, it may be assailed on the ground that the bill or any provision thereof does not so derogate from the powers of the High Court so as to endanger the position which that court is designed by the Constitution to fill. The Governor while reserving a bill on this

count shall be expected to provide clear reasons and also point to the specific provision(s) of the bill which, in his opinion, attract the Second Proviso.

This question being purely of a legal nature would be completely justiciable and the competent court would be, after a proper adjudication, fully authorized to approve or disapprove of such reservation by the Governor. If such a challenge finds favour with the competent court, then, subject to any other considerations, it would be a fit case for the issuance of a writ in the nature of mandamus to the Governor for appropriate action. If, however, the challenge should fail then the mechanism envisaged under Article 201 of the Constitution will spring into action.

(ii) Where the reservation is on account of the bill attracting any provision of the Constitution wherein the assent of the President is a condition precedent for the proper enactment and enforceability of such a bill as a law (such as under Article 364A2) or for the purpose of securing any immunity (such as under Article 31A) or overcoming any repugnancy that may exist qua a Central Legislation (under Article 254(2)), then the Governor is expected to make a specific and clear reference to the President properly indicating the reasons for such reservation and inviting his attention as described in *Kaiser-I-Hind* (supra).

Such a reservation can be assailed by the State Government, if the reference made by the Governor either fails to indicate the reasons for such reservation as discussed above or that the reasons indicated are wholly irrelevant, mala fide, arbitrary, unnecessary or motivated by extraneous considerations. Then such a reservation would be liable to be set aside. This question being purely of a legal nature would be completely justiciable and the competent court would be after a proper adjudication fully authorized to approve or disapprove of such reservation by the Governor. If such a challenge finds favour with the competent court, then, subject to any other considerations, it would be fit case for issuance of a writ in the nature of mandamus to the Governor for appropriate action. If however, the challenge should fail then the mechanism envisaged under Article 201 of the Constitution will spring into action.

(iii) Where the reservation of a bill by the Governor for the consideration of the President is on the grounds of peril to democracy or democratic principles or on other exceptional grounds as mentioned in *M.P. Special Police* (supra) and *Nabam Rebia* (supra) then the Governor would be expected to make a specific and clear reference to the President properly indicating the reasons for entertaining such a belief by pinpointing the specific provisions in this regard and the consequent effect that may ensue if such a bill were to be allowed to become a law.

The Governor while making such a reference should also indicate his subjective satisfaction as to why the aforesaid consequences that may ensue cannot be possibly curtailed or contained by taking recourse to the constitutional courts of the country. It shall be open to the State Government to challenge such a reservation on the ground of failure on part of the Governor to furnish the necessary reasons as discussed aforesaid or that the reasons indicated are wholly irrelevant, mala-fide, arbitrary, unnecessary or motivated by extraneous considerations. This being a question completely capable of being determined by the constitutional courts, would be fully justiciable.

(iv) Reservation of a bill on grounds other than the ones mentioned above, such as personal dissatisfaction of the Governor, political expediency or any other extraneous or irrelevant considerations is strictly impermissible by the Constitution and would be liable to be set-aside forthwith on that ground alone. This will also encompass reservation of a bill by the Governor after having already exercised the option of withholding of assent in terms of Article 200 except in such exceptional circumstance as mentioned in paragraph 204 of this judgment.

(v) Where the Governor exhibits inaction in making a decision when a bill is presented to him for assent under Article 200 and such inaction exceeds the time-limit as has been prescribed by us in paragraph 250 of this judgment then it shall be open to the State Government to seek a writ of mandamus from a competent court against the Governor directing expeditious decision on the concerned bill as is the mandate of the Constitution, however, it is clarified that the Governor may successfully resist such a challenge on providing sufficient explanation for the delay caused.

b. Where the Governor reserves a bill for the consideration of the President and the President in turn withholds assent thereto then, it shall be open to the State Government to assail such an action before this Court. Such a challenge can broadly be made on the following grounds:

(i) Where a State bill has been reserved by the Governor for the consideration of the President on the ground that assent of the President is required for the purpose of making the bill enforceable or securing some immunity therefor, then in such cases the withholding of assent by the President would be justiciable to the limited extent of exercise of such power in an arbitrary or malafide manner. Owing to the political nature of the assent of the President in these categories of bills, the courts would impose a self-restraint.

(ii) Where a State bill has been reserved by the Governor, in his discretion, for the consideration of the President on the ground that the bill appears to be patently unconstitutional for placing the principles of representative democracy

in peril, the withholding of assent by the President would, in ordinary circumstances, involve purely legal and constitutional questions and therefore be justiciable without any impediments imposed by the doctrine of political thicket. In such cases, it would be prudent for the President to obtain the advisory opinion of this Court by way of a reference under Article 143 and act in accordance with the same to dispel any apprehensions of bias, arbitrariness or mala fides.

(iii) Where the President exhibits inaction in making a decision when a bill is presented to him for assent under Article 201 and such inaction exceeds the time-limit as has been prescribed by us in paragraph 391 of this judgment then it shall be open to the State Government to seek a writ of mandamus from this Court.

435. For all the foregoing reasons we have reached the following conclusion:

a. The reservation of the ten Bills which are the subject-matter of challenge in the present petition by the Governor for the consideration of the President on 28.11.2023 after their due reconsideration by the State legislature in terms of the first proviso to Article 200 being in contravention of the procedure prescribed under Article 200 as explained by us hereinabove is declared to be erroneous in law, non-est and thus, is hereby set-aside.

b. As a result of the above, any consequential steps that might have been taken by the President on these ten Bills is equally non-est and is hereby set-aside.

c. Having regard to the unduly long period of time for which these Bills were kept pending by the Governor before the ultimate declaration of withholding of assent and in view of the scant respect shown by the Governor to the decision of this Court in State of Punjab (supra) and other extraneous considerations that appear to be writ large in the discharge of his functions, we are left with no other option but to exercise our inherent powers under Article 142 of the Constitution for the purpose of declaring these ten Bills as deemed to have been assented on the date when they were presented to the Governor after being reconsidered by the State legislature i.e., on 18.11.2023.

436. We are in no way undermining the office of the Governor. All we say is that the Governor must act with due deference to the settled conventions of parliamentary democracy; respecting the will of the people being expressed through the legislature as-well as the elected government responsible to the people. He must perform his role of a friend, philosopher and guide with dispassion, guided not by considerations of political expediency but by the sanctity of the constitutional oath he undertakes. In times of conflict, he must be the harbinger of consensus and resolution, lubricating the functioning of the State machinery by his sagacity, wisdom and not run it into a standstill. He must be the

catalyst and not an inhibitor. All his actions must be impelled keeping in mind the dignity of the high constitutional office that he occupies.

437. The Governor before he assumes office undertakes an oath to discharge his functions to the best of his ability in order to preserve, protect and defend the Constitution and the rule of law, along with avowing to devote himself to the service and well-being of the people of the State. Therefore, it is imperative that all his actions be guided in true allegiance to his oath and that he faithfully executes his functions that he is entrusted with by and under the Constitution.

There is a reason why a specific reference is made to the well-being of the people of the State in his oath, there is a reason why he is sworn in to pledge himself to the service of the same people; the Governor as the constitutional head of the State is reposed with the responsibility to accord primacy to the will and welfare of the people of the State and earnestly work in harmony with the State machinery, as his oath not only makes this mandate anything but clear but rather also demands it of the Governor owing to the intimate and delicate nature of the functions that he performs and the potency of the ramifications that could ensue or be unleashed upon the State.

Due to this, the Governor must be conscious to not create roadblocks or chokehold the State Legislature in order to thwart and trade the will of the people for political edge. The members of the State Legislature having been elected by the people of the State as an outcome of the democratic expression are better attuned to ensure the wellbeing of the people of the State. Hence, any action contrary to the express choice of the people, in other words, the State legislature would be a renege of his constitutional oath.

438. Before we part with the matter, we find it apposite to observe that constitutional authorities occupying high offices must be guided by the values of the Constitution. These values that are so cherished by the people of India are a result of years of struggle and sacrifice of our forefathers. When called upon to take decisions, such authorities must not give in to ephemeral political considerations but rather be guided by the spirit that underlies the Constitution. They must look within and reflect whether their actions are informed by their constitutional oath and if the course of action adopted by them furthers the ideals enshrined in the Constitution. If the authorities attempt to deliberately bypass the constitutional mandate, they are tinkering with the very ideals revered by its people upon which this country has been built.

439. We take this opportunity to quote Dr. B.R. Ambedkar's concluding speech in the Constituent Assembly, which is as relevant today as it was in 1949 - "However good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution

may be, it may turn out to be good if those who are called to work it, happen to be a good lot".

440. It is our duty as the highest constitutional court to recognize such evil and increasingly strengthen our initiative to remove them. In the last, we may say with the utmost responsibility and all the humility at our command that it is only when the constitutional functionaries exercise their powers by and under the Constitution that they show deference to the people of India who have given the Constitution to themselves.

441. The soul of India is its Constitution. Our Republic, the foresight of dynamic visionaries. What a great edifice, they built, ensuring sovereignty with democratic values. The Constitution is our bedrock ensuring our safety and security. It outlines a process that keeps us rooted in values. We read it for reference and for every policy decision. Without it, we would be lost and make many mistakes. It is now seventy-five years old, but we still keep turning to it, why? Because it guarantees our rights and sets benchmarks for our responsibilities. The laws and rules that uplift all people sprout from its pristine womb, welfare of all is its primary concern, but its sanctity and safety should be our prime concern.

442. We would also like to refer to a snippet of history from the days of infancy of the Constitution and the Indian Republic, which has been narrated in the "Eminent Parliamentarians Monograph Series on Dr. Rajendra Prasad" published by the Lok Sabha Secretariat in 1990 (pp. 102). In the matter concerning the constitutional role of the President in legislative processes, an issue arose during the deliberations on the Hindu Code Bill, wherein the first President of India, Dr. Rajendra Prasad, expressed reservations and sought to assert his independent authority to withhold assent to the legislation.

A reference was made to the first Attorney General for India, M.C. Setalvad, who clarified that the role of the President under the Indian Constitution was analogous to that of the British monarch and he was expected to serve as a constitutional figurehead. The Attorney General opined that the President does not possess the authority to act contrary to the advice of the Council of Ministers. The opinion of the Attorney General was, with respect and magnanimity, accepted by the President and thus the ensuing controversy between the Prime Minister and the President was laid to rest.

443. Such was the commitment shown by the stalwarts to upholding the spirit of the Constitution.

444. We hope and trust that the Governor and the State Government would work in tandem and harmoniously keeping the interests and well-being of the people as their paramount consideration.

445. We direct the Registry to send one copy each of this judgment to all the High Courts and the Principal Secretaries to the Governors of all States.

446. In the result, the present writ petition stands disposed of in the aforesaid terms.

447. Pending application(s), if any, stand disposed of.

.....**J. (J.B. Pardiwala)**

.....**J. (R. Mahadevan)**

New Delhi;

April 08, 2025

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IN THE SUPREME COURT OF INDIA

**Rakesh Kumar Verma
Vs.
HDFC Bank Ltd.**

[Civil Appeal No. 2282/2025]

**HDFC Bank
Vs.
Deepti Bhatia**

[Civil Appeal No. 2286/2025]

HEADNOTE – Exclusive jurisdiction clauses in employment contracts, which confers exclusive jurisdiction on the courts of a particular location to decide disputes relating to the contract, are not barred by Section 28 of the Contract Act.

Section 28 declares void any agreement that restricts a party from enforcing their rights under a contract through legal proceedings, or limits the time within which they can do so, except in cases of arbitration agreements.

For an exclusive jurisdiction clause to be valid, it should be :

- (a) In consonance with Section 28, i.e., it should not absolutely restrict any party from initiating legal proceedings pertaining to the contract,
- (b) The Court that has been given exclusive jurisdiction must be competent to have such jurisdiction in the first place, i.e., a Court not having jurisdiction as per the statutory regime cannot be bestowed jurisdiction by means of a contract and, finally,
- (c) The parties must either impliedly or explicitly confer jurisdiction on a specific set of courts.

JUDGMENT

Dipankar Datta, J.

THE CHALLENGE

1. In the lead appeal¹, Rakesh has called in question the judgment and order of the High Court of Judicature at Patna² dated 25th January, 2022, allowing a civil revisional application³ filed by HDFC Bank.

2. In the connected appeal⁴, HDFC Bank has taken exception to the judgment and order of the High Court of Delhi⁵ dated 12th November, 2011, dismissing its civil revisional application⁶.

THE FACTS

3. The lead appeal rests on a simple set of facts, which are as follows:

I. Vide letter dated 24th July, 2002, HDFC Bank appointed Rakesh on the post of Executive, Transaction Banking Group (Operation), in the Wholesale Banking Operations. Pursuant thereto, Rakesh joined his service at Wholesale Banking Operations at Exhibition Road, Patna.

II. The appointment letter of Rakesh had an exclusive jurisdiction clause, reading as under:

"The terms and conditions set out in this letter of appointment constitute service conditions applicable to your employment in the Bank and with regard to any dispute thereof, the Bombay Courts will have exclusive jurisdiction."

III. Service of Rakesh was terminated on 28th August, 2016 due to allegations of fraud and misconduct.

IV. Aggrieved thereby, Rakesh instituted a civil suit⁷ in the court of the Sub-Judge-1, Patna, seeking the following relief:

"a) Declaration that termination letter dated 28.06.2016 being annexure - C hereto is illegal, arbitrary, unreasonable, unwarranted, unconstitutional, mala fide, bad in law as well as without jurisdiction, violative of illegible on facts, principles of natural justice and the same may be adjudged null and void and cancelled.

b) Ad-interim injunction restraining the defendants from giving any effect to the termination letter dated 28.06.2016 and further directing the defendants to forthwith reinstate the plaintiff in service with all consequential benefits.

c) Direction to the defendants to reinstate forthwith the plaintiff in service with all consequential benefits including the arrears of salary with 18% interest per annum."

V. On receipt of summons, HDFC Bank filed a petition under Order VII, Rule 11 of the Code of Civil Procedure, 1908⁸ for rejection of the plaint on the ground that it is the courts in Mumbai which have jurisdiction and not the court where the suit was instituted.

VI. The petition filed by HDFC Bank came to be dismissed by the trial court, vide order dated 14th December, 2018.

VII. Dissatisfied with the dismissal of the said petition, HDFC Bank filed the revisional application before the Patna High Court, which has since succeeded.

4. The connected appeal too rests on similar set of facts, which are as follows:

I. Deepti was appointed as "Clerk" in Lord Krishna Bank, which was merged with HDFC Bank in 2009. Vide Employment Agreement dated 23rd March, 2009, Deepti was appointed as an officer in the Retail Banking Branch at Janak Puri, Delhi. This agreement also included a similar exclusive jurisdiction clause as the one in the case of Rakesh. In terms thereof, any dispute between the parties leading to legal action had to be thrashed out in the competent court in Mumbai.

II. Service of Deepti was terminated on 31st May, 2017, also due to allegations of fraud and misconduct.

III. Aggrieved thereby, Deepti instituted a civil suit⁹ in the court of the Senior Civil Judge, Rohini Courts, Delhi, seeking inter alia the following relief:

"a) Declare the termination letter dated 31.05.2017 as null and void since the same is illegal and quash the same;

b) Direct the Defendant to reinstate the Plaintiff in service with all consequential benefits including back wages and continuity of services."

IV. HDFC Bank filed its written statement stating that the cause of action arose wholly in Mumbai and the courts in Delhi have no jurisdiction.

V. The trial court, vide order dated 17th April, 2021, answered the preliminary issue as to whether it had jurisdiction to try the suit and held that the exclusive jurisdiction clause did not fully oust the jurisdiction of the courts in Delhi.

VI. Dissatisfied with the order of the trial court, HDFC Bank filed the civil revisional application before the Delhi High Court which, as noted above, stands dismissed.

THE IMPUGNED JUDGMENTS

5. The impugned judgment in the lead appeal, after condoning the delay in filing of the civil revisional application, allowed the same on the ground that courts in Patna do not have the jurisdiction in light of the exclusive jurisdiction clause and that such a clause would operate in matters of termination of service too.

Relying on the decision of the Supreme Court in *Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.*¹⁰, the Patna High Court observed that while the general principle is that the suit could be instituted at any place where a substantial part of the cause of action arises, however, when a clause such as the one in the instant case exists, the jurisdiction will lie with the court at the place which has been expressly agreed to by and between the parties, i.e., the courts in Bombay in the instant case.

6. The impugned judgment and order in the connected appeal dismissed the civil revisional application on the ground that Deepti was residing in Delhi, was working in Rohini, Delhi and the termination letter was served upon her in Delhi and that the exclusive jurisdiction clause in the employment agreement did not oust the jurisdiction of the courts in Delhi. The learned Judge relied on the decision of a coordinate Bench of the Delhi High Court in *Vishal Gupta v. L & T Finance*¹¹ while declining to grant relief to HDFC Bank in exercise of revisional jurisdiction.

THE QUESTION

7. The pure question of law arising for decision on these appeals is, whether the civil suits could have been instituted in courts in Patna and Delhi by Rakesh and Deepti, respectively, in view of the specific clause(s) in the appointment letter/employment agreement that the courts in Mumbai would have exclusive jurisdiction to decide disputes by and between the contracting parties?

ANALYSIS AND REASONS

8. Before we proceed to appreciate the rival claims, it would be appropriate to notice the applicable legal regime.

9. Section 28 of the Indian Contract Act, 1872¹² ordains:

28. Agreements in restraint of legal proceedings, void.- Every agreement,-

(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or

(b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to the extent."

10. It is also important to refer to Section 20 of the CPC which is reproduced hereunder:

20. Other suits to be instituted where defendants reside or cause of action arises.-

Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

(c) The cause of action, wholly or in part, arises.

Explanation.-A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

11. This is the umpteenth time that this Court has been called upon to deal with a clause in contracts restricting adjudication of disputes exclusively to the jurisdiction of a court of a party's choice, not disagreed by the other party¹³. In fact, the principles pertaining to institution of suits and the jurisdiction of the courts in a case where the parties have by agreement, conferred jurisdiction on courts at a particular place, have been laid down by this Court in numerous cases which are entirely consistent and have not required a relook. A perusal of a couple of these decisions may not be inapt for a proper decision on these appeals.

12. This Court in *Hakam Singh v. Gammon (India) Ltd.*¹⁴ held that:

4. The Code of Civil Procedure in its entirety applies to proceedings under the Arbitration Act. The jurisdiction of the courts under the Arbitration Act to entertain a proceeding for filing an award is accordingly governed by the provisions of the Code of Civil Procedure. By clause 13 of the agreement it was expressly stipulated between the parties that the contract shall be deemed to have been entered into by the parties concerned in the city of Bombay. In any event the respondents have their principal office in Bombay and they were liable in respect of a cause of action arising under the terms of the tender to be sued in the courts at Bombay.

It is not open to the parties by agreement to confer by their agreement jurisdiction on a Court which it does not possess under the Code. But where two courts or

more have under the Code of Civil Procedure jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy. Such an agreement does not contravene Section 28 of the Contract Act.

(emphasis supplied)

13. A decade later, another coordinate Bench had the occasion to deal with a similar exclusive jurisdiction clause in *Globe Transport Corpn. v. Triveni Engg. Works*¹⁵. One sentence in paragraph 3 captures the essence of the law, reading as follows:

3. It is now settled law that it is not competent to the parties by agreement to invest a court with jurisdiction which it does not otherwise possess but if there are more than one forums where a suit can be filed, it is open to the parties to select a particular forum and exclude the other forums in regard to claims which one party may have against the other under a contract.

14. A few years later came the decision in *A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem*¹⁶. This Court held that:

21. From the foregoing decisions it can be reasonably deduced that where such an ouster clause occurs, it is pertinent to see whether there is ouster of jurisdiction of other courts. When the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless the absence of ad idem can be shown, the other courts should avoid exercising jurisdiction.

As regards construction of the ouster clause when words like "alone", "only", "exclusive" and the like have been used there may be no difficulty. Even without such words in appropriate cases the maxim "expressio unius est exclusio alterius" - expression of one is the exclusion of another - may be applied. What is an appropriate case shall depend on the facts of the case. In such a case mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract an intention to exclude all others from its operation may in such cases be inferred. It has therefore to be properly construed.

15. In *Swastik Gases (P) Ltd. (supra)*, a three-judge Bench of this Court succinctly articulated the purport of an exclusive jurisdiction clause in any contract in the following words:

32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like "alone", "only", "exclusive" or

"exclusive jurisdiction" have not been used but this, in our view, is not decisive and does not make any material difference.

The intention of the parties-by having Clause 18 in the agreement-is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like Clause 18 in the agreement, the maxim *expressio unius est exclusio alterius* comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another.

By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner.

(emphasis supplied)

16. There are multiple other decisions of this Court upholding similar exclusive jurisdiction clauses. The decisions in *Patel Roadways Ltd. v. Prasad Trading Co.*¹⁷, *Angile Insulations v. Davy Ashmore India Ltd.*¹⁸, *New Moga Transport Co. v. United India Insurance Co. Ltd.*¹⁹, *Shree Subhlaxmi Fabrics (P) Ltd. v. Chand Mal Baradia*²⁰, *Rajasthan SEB v. Universal Petrol Chemicals Ltd.*²¹ and *A.V.M. Sales Corpn. v. Anuradha Chemicals (P) Ltd.*²² are some of them providing ample guidance in this behalf.

17. The issue as to how an exclusive jurisdiction clause has to be read and understood is, thus, no longer *res-integra*.

18. A bare perusal of the above decisions leads to the conclusion that for an exclusive jurisdiction clause to be valid, it should be (a) in consonance with Section 28 of the Contract Act, i.e., it should not absolutely restrict any party from initiating legal proceedings pertaining to the contract, (b) the Court that has been given exclusive jurisdiction must be competent to have such jurisdiction in the first place, i.e., a Court not having jurisdiction as per the statutory regime cannot be bestowed jurisdiction by means of a contract and, finally, (c) the parties must either impliedly or explicitly confer jurisdiction on a specific set of courts. These three limbs/criteria have to be mandatorily fulfilled.

19. *Swastik Gases (P) Ltd.* (supra) is wholly applicable to the facts at hand, and being a larger Bench decision, binds us.

20. However, in none of the precedents of this Court, noticed above, did an service/employment contract fell for consideration. According to Mr. Deshmukh and Mr. Chaturvedi, learned counsel for Rakesh and Deepti, respectively, the decision in Vishal Gupta (supra) correctly explains the legal position vis-à-vis service/employment contracts and, therefore, this Court may consider accepting the forward-looking posture and practical view expressed by the learned Judge. It has been contended that in an unequal battle between the mighty lion (employer) and the timid rabbit (employee), where the dice is heavily loaded from the inception against the employee, no further embargo ought to be placed in his/her pursuit for justice by pinning him/her down to the courts in the city (Mumbai) mentioned in the appointment letter/employment agreement.

21. At this stage, it would be appropriate to glance through a legal position having a bearing on these appeals. There is a gulf of difference between a public service and a service contract with a private employer. The origin of government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office, the government servant acquires a status and his rights and obligations are no longer determined by the consent of both the parties, but by the statute or statutory rules as framed. In other words, the legal position of a government servant is more one of status than that of contract.

A government servant may not be tied down by his employer to a court at a particular place, should a dispute arise for adjudication by a law court. Articles 14, 16 and 21 could stand in the way. On the other hand, service in the private sector is governed by the terms of the employment contract entered into by and between the parties inter-se. Like any other contract, even in an employment contract, a concluded contract presupposes the existence of at least two parties with mutual rights and obligations.

Once a concluded contract comes into existence, it is axiomatic that such rights and obligations of the parties are governed by the terms and conditions thereof. Since there is a prior meeting of minds of the contracting parties, their intentions have to be gathered from the contract (appointment letter/employment agreement, here) and looking at the same, it can safely be inferred that the contracting parties were ad idem on the terms of the appointment letter/employment agreement which specified courts in Mumbai exclusively as the situs of dispute resolution.

22. Nowadays, the private sector employs individuals pan-India for providing services to reach people in the last mile. Therefore, it may not be possible for all employers in the private sector to contest suits at far-off places from the registered office. This seems to be the overwhelming reason why exclusion clauses are inserted. Rakesh and Deepti having accepted the terms and conditions of the appointment letter/employment agreement and acted upon its terms by joining their respective posts, they could not have possibly avoided the contract

on a second thought that a term contained therein may not be beneficial for them at a subsequent stage.

23. As long as an employment contract does not offend the provisions of any applicable legislation, such as the Contract Act or the CPC, ordinarily, there should be no reason to interfere. It cannot but be gainsaid that the scope of interference, in such matters, is quite narrow.

24. The contention on behalf of Rakesh and Deepti that the decisions referred to above would not be applicable in the case of a service contract has not really impressed us. A contract - be it commercial, insurance, sales, service, etc. - is after all a contract. It is a legally binding agreement, regardless of the parties involved or their inter se strengths.

To make a distinction for employment contracts on the specious ground that a mighty lion and a timid rabbit are the contracting parties would violate the principle of equality, in the sense that rights and liabilities would not be dependent on the parties' status, power or influence. Contracts should be treated equally, without bias or distinction. The fact that one party is more powerful or influential (the mighty lion) and the other more vulnerable (the timid rabbit) does not justify making exceptions or distinctions in the application of contractual principles.

25. We may also emphasize that unequal bargaining power is not unique to contracts of personal service. In many areas, such as business, commerce, or real estate, contracts may involve parties with dissimilar levels of strength, resources or negotiating power. As and by way of illustration, we can cite instances where big builders sub-contract a part of the development work entrusted to them to sub-contractors. Such contracts too involve the mighty lion and, though not a timid rabbit, but a weak lamb. Based on the status of the parties, the latter cannot escape from the consequences if the former seeks to enforce a condition in the contract which the latter perceives is oppressive or the latter, refusing to perform any of its obligations considering it as onerous faces a law suit for breach of contract.

26. Law treats all contracts with equal respect and unless a contract is proved to suffer from any of the vitiating factors, the terms and conditions have to be enforced regardless of the relative strengths and weakness of the parties.

27. Thus, we are unable to approve the law laid down in Vishal Gupta (supra).

28. Upon a perusal of the service contract and the exclusive jurisdiction clause under consideration in the instant appeals, we are convinced that the Patna High Court has offered a sound legal opinion with reference to the facts at hand while the Delhi High Court has erred in dismissing the civil revisional application

placing entire reliance on the decision in Vishal Gupta (supra). All the three applicable mandatory criteria to hold that the clause is valid have been fulfilled in the instant appeals. We propose to assign brief reasons for each of the applicable limbs.

29. First, Section 28 of the Contract Act does not bar exclusive jurisdiction clauses. What has been barred is the absolute restriction of any party from approaching a legal forum. The right to legal adjudication cannot be taken away from any party through contract but can be relegated to a set of Courts for the ease of the parties. In the present dispute, the clause does not take away the right of the employee to pursue a legal claim but only restricts the employee to pursue those claims before the courts in Mumbai alone.

30. Secondly, the Court must already have jurisdiction to entertain such a legal claim. This limb pertains to the fact that a contract cannot confer jurisdiction on a court that did not have such a jurisdiction in the first place. The explanation to Section 20 of the CPC is essential to decide this issue. In the instant case, considering that the decision to employ Rakesh and Deepti were taken in Mumbai, the appointment letter in favour of Rakesh was issued from Mumbai, the employment agreement was dispatched from Mumbai, the decision to terminate the services of Rakesh and Deepti were taken in Mumbai and the letters of termination were dispatched from Mumbai, we are convinced that the courts in Mumbai do have jurisdiction.

31. Lastly, the clause in the contract has clearly and explicitly barred the jurisdiction of all other courts by using the word "exclusive". A profitable reference may be made to the extract of ABC Laminart (supra) reproduced above.

RELIEF

32. HDFC Bank is, thus, justified in its claim that the suits ought to have been instituted in an appropriate court in Mumbai.

33. We hasten to observe that the Patna High Court, while correctly holding in favour of HDFC Bank on the point of law, has committed a fundamental error. It has allowed the application of HDFC Bank under Order VII, Rule 11 of the CPC meaning thereby the plaint stands rejected. Since the courts in Mumbai have the jurisdiction to decide the dispute raised by Rakesh and his plaint is not otherwise liable to rejection on attraction of any of the clauses of Rule 11, the proper course for the Patna High Court would have been to direct return of the plaint by the trial court under Order VII, Rule 10 of the CPC to Rakesh for its presentation before the competent court in Mumbai. While directing the trial court to return the plaint to Rakesh and to make the necessary endorsement in terms of sub-rule (2) of

Rule 10, we grant him the liberty to present such plaint in the competent court in Mumbai.

34. If Rakesh wishes to institute a fresh suit in a competent court in Mumbai, in such a case he need not take back the plaint but may have the suit instituted by him withdrawn.

35. Insofar as the suit instituted by Deepti too is concerned, the plaint has to be returned to her for presentation in a court in Mumbai. In the alternative, she may have her pending suit withdrawn and file a fresh suit in a competent court in Mumbai.

36. We have also noticed from the pleadings and prayers made in the respective plaints by Rakesh and Deepti that the same are defective. We grant them liberty to seek amendment of their respective plaints. If applications in this behalf are made, the trial courts may, in their discretion, allow the prayers therein. If fresh suits are instituted, this liberty would cease to operate.

37. If fresh suits are instituted, Rakesh and Deepti may plead in their plaints the grounds on which exemption from the law of limitation is claimed in terms of Order VII, Rule 6 of the CPC.

CONCLUSION

38. The impugned judgment and order of the Patna High Court is affirmed to the extent mentioned above and the lead appeal is dismissed. The connected appeal, however, stands allowed and the impugned judgment and order of the Delhi High Court is set aside.

39. We clarify that the merits of the disputes have not been examined and all points are left open.

40. No order as to costs.

.....J. (Dipankar Datta)

.....J. (Manmohan)

New Delhi;

April 08, 2025.

1 Civil Appeal No. 2282/2025

2 Patna High Court, hereafter

- 3 Civil Revision No. 23 of 2020
- 4 Civil Appeal No. 2286/2025
- 5 Delhi High Court, hereafter
- 6 Civil Revision Petition No. 79/2021
- 7 Title Suit No. 212 of 2017
- 8 CPC
- 9 Civil Suit No. 1164 of 2017
- 10 (2013) 9 SCC 32
- 11 2009 SCC OnLine Delhi 2806
- 12 Contract Act
- 13 exclusive jurisdiction clause
- 14 (1971) 1 SCC 286
- 15 (1983) 4 SCC 707
- 16 (1989) 2 SCC 163
- 17 (1991) 4 SCC 270
- 18 (1995) 4 SCC 153
- 19 (2004) 4 SCC 677
- 20 (2005) 10 SCC 704
- 21 (2009) 3 SCC 107
- 22 (2012) 2 SCC 315

IN THE SUPREME COURT OF INDIA

Nikhila Divyang Mehta & Anr.

Vs.

Hitesh P. Sanghvi & Ors.

**[Civil Appeal No. _____ of 2025
arising out of S.L.P. (C) No. 13459 of 2024]**

HEADNOTE – The limitation period starts from the date when the cause of action first accrued to the plaintiff, and not when he acquired 'full knowledge' about the same under Article 58 of Limitation Act, 1963.

It is a settled law that time-barred suits must be dismissed even if the limitation is not pleaded as a defence. An argument was made that the limitation period begins not from the date the first cause of action arises but from the date he acquired complete knowledge of the dispute.

It is a complete fallacy to make any distinction between “knowledge” and “full knowledge”. First of all, the limitation has to run from the date when the cause of action first accrued and not any subsequent date for the cause of action.

JUDGMENT

Pankaj Mithal, J.

1. Leave granted.
2. Heard Shri Gaurav Agarwal, learned senior counsel for the appellants and Shri Bhadrish S. Raju, learned counsel for the respondent(s).
3. The plaint of the civil suit was rejected by the court of first instance on an application of the defendants filed under Order VII Rule 11 of the Code of Civil Procedure¹. The High Court has reversed the aforesaid order and has allowed the appeal of the defendant restoring the plaint for decision on merits.
4. The impugned judgment and order of the High Court dated 08.02.2024 setting aside the order dated 23.10.2018 of the Chamber Judge, City Civil Court, Ahmedabad, and directing to restore the Civil Suit No.1758/2017 for decision on merits in accordance with law, has been assailed in this appeal.
5. The plaintiff-Shri Hitesh P. Sanghvi instituted Suit No.1758/2017 in the City Civil Court, Ahmedabad, against four persons including Smt. Harshaben Vijay Mehta, Smt. Nikhila Divyang Mehta, Smt. Ami Rajesh Parikh and Shri Nilav Divyang Mehta as defendant Nos.1, 2, 3 and 4 respectively seeking direction

from the court to declare the Will dated 04.02.2014 and the Codicil dated 20.09.2014 executed by his late father Pramod Kesurdas Sanghavi and all consequential actions thereof to be null and void as also for grant of permanent injunction restraining the defendants from entering into any transaction in furtherance of the aforesaid Will and Codicil.

6. The plaint categorically states that the plaintiff-Shri Hitesh P. Sanghvi is the son of deceased Pramod Kesurdas Sanghavi who died at his residence on 21.10.2014. He was survived by his wife, his three daughters-defendant Nos.1, 2 and 3 and a grandson-defendant No.4 (son of defendant No.2). The plaint further categorically, in unequivocal terms, states that the deceased took his last breath on 21.10.2014. Then in the first week of November, 2014, defendant Nos.1, 2 and 3 revealed to the plaintiff that the deceased had executed a Will and a Codicil as referred to above and he was taken by surprise.

7. The plaintiff further stated that the cause of action for the suit had arisen on three occasions, first on 04.02.2014 i.e., when the Will executed by his father was registered, again on 20.09.2014 i.e., when the Codicil was registered and then finally on 21.10.2014 when his father died.

8. The dispute per se in the suit is inter se the family members i.e., the son and daughters of the deceased Pramod Kesurdas Sanghavi in connection with his Will and Codicil and for the purposes of seeking the reliefs claimed in the plaint i.e., for declaration of the Will and the Codicil to be null and void, the plaintiff contended that the cause of action for such a suit arose first on 04.02.2014, secondly on 20.09.2014 and lastly on 21.10.2014.

9. In the above background, defendant No.2 moved an application (Exh.25) purported to be under Order VII Rule 11 CPC for the rejection of the plaint on the allegation that the plaintiff had not made any averment with regard to the suit to be within limitation and it is the primary duty of the plaintiff to show that the suit was instituted within the prescribed period of limitation. In the absence of such pleadings, the plaint is liable to be rejected under Order VII Rule 11 CPC.

10. A similar application was filed by defendant No.3 again under Order VII Rule 11 (Exh.28) for the rejection of the plaint contending that the suit has not been instituted within the prescribed period of limitation and the plaintiff has failed to aver, show and establish that the suit has been filed within time. The plaintiff had acquired knowledge of both the Will and the Codicil in the first week of November, 2014, but the suit was not instituted within three years from the first week of November, 2014, rather it was filed on 21.11.2017 and as such is ex-facie barred by limitation.

11. Another application (Exh. 33) to the same effect was filed by defendant No.4, contending that it is the primary duty of the plaintiff to show that the suit is prima facie instituted within the prescribed period of limitation. As the suit was filed on 21.11.2017, it was more than three years after the plaintiff came to know about the Will and the Codicil and as such is clearly barred by law of limitation on the plain reading of the averments of the plaint.

12. The plaintiff filed response to the above applications contending that the suit was instituted within time and that the parties should be allowed to adduce the evidence to prove as to whether the same is within time or beyond the period of limitation.

13. The above three applications (Exh. 25, 28 and 33) under Order VII Rule 11 came up for consideration before the City Civil Court, Ahmedabad. The court, upon the plain reading of the averments made in the plaint, held that the action for the suit first arose in the first week of November, 2014 whereas the suit was filed on 21.11.2017.

As per the averments made by the plaintiff that he had come to know of the Will and the Codicil in the first week of November, 2014, in view of Article 58 of the Limitation Act, 1963, the suit ought to have been filed within three years when the right to sue first accrued. Since the suit was not filed within three years i.e., by the first week of November, 2017, it is patently barred by limitation. Accordingly, applications Exh.25, 28 and 33 were allowed and the plaint was ordered to be rejected under Order VII Rule 11 CPC.

14. The above judgment and order was, however, reversed by the High Court by the impugned judgment and order dated 08.02.2024 for the reason that the parties ought to have been permitted to lead evidence on the point of limitation and that the plaint was not liable to be rejected in part, as apart from seeking declaration of the Will and the Codicil to be null and void, there were other reliefs which were sought in the plaint.

15. In the above factual background, we have been called upon in this appeal to express our opinion if the suit instituted on 21.11.2017 for the declaration of the Will dated 04.02.2014 and the Codicil dated 20.09.2014 as null & void, is barred by limitation in the light of the averments contained in the plaint.

16. It is clear from the plaint that the prayers made therein are primarily for seeking declaration of the aforesaid Will and Codicil to be null and void as also all actions in pursuance thereof. The relief for permanent injunction is dependent upon the success of the first relief. Therefore, the relief of permanent injunction is simply a consequential relief. The primary relief being for declaring the Will and the Codicil to be null and void.

17. There is no dispute to the fact that the Will was executed and registered by the father of the plaintiff on 04.02.2014 and the Codicil came to be executed and registered on 20.09.2014. The plaintiff, as per his own averments in plaint, had acquired knowledge of the aforesaid Will and Codicil through defendant Nos. 1, 2 and 3 (sisters), only in the first week of November, 2017.

18. Admittedly, a suit for declaration has to be governed by Part III of the Schedule contained in the Act. Part III of the Schedule provides for the limitation for filing suits relating to declarations. Article 56 deals with declaration with regard to the forgery of an instrument issued or registered and Article 57 relates to declaration in respect to adoption.

19. The relief of declaration claimed in the suit at hand does not fall under Articles 56 and 57 and, therefore, by necessary implication, Article 58 would stand attracted which provides for a limitation period of three years to obtain any other declaration other than that mentioned under Articles 56 and 57. It provides that for such a declaration, the limitation is three years from the date when the right to sue first accrues.

20. The use of the words "when the right to sue first accrues" as mentioned in Article 58 is very relevant and important. It categorically provides that the limitation of three years has to be counted from the date when the right to sue first accrues.

21. It would be beneficial to reproduce paragraph 3 (o), paragraph 4 and paragraph 6 of the plaint which contains averments about the knowledge of the Will and the Codicil, the cause of action and the reliefs claimed:

"3 (o). After a brave struggle with Cancer, the deceased took his last breath on 21.10.2014 at 10.35 pm. Pursuant to his death, defendant nos. 1 to 3 in the first week of November, 2014 disclosed to the plaintiff that the deceased had not only executed a Will but had even executed a Codicil.

4. The cause of action has arisen on 04.02.2014, when the Will bearing Registration No. 707 was registered before the Sub-Registrar-3 (Memnagar), which was executed by the father of the Plaintiff Shri Pramodray Sanghavi and the cause of action further arose on 20.09.2014, when Codicil to the said Will bearing Registration No. 6213 was executed before the Sub-Registrar-3 (Memnagar). The cause of action also arose on 21.10.2014, when the father of the Plaintiff expired and thereafter, the Will and Codicil of the father of the Plaintiff came to the knowledge of the Plaintiff.

The said Will and Codicil are absolutely illegal, false and fabricated and therefore, are required to be declared as null and void. Further, an injunction is required to be ordered against the Defendants for not to sell, transfer or alienate

any of the properties as per the directions of the Will and to maintain status quo till the final disposal of the Suit. Hence, the present Suit.

6. The plaintiff prays as under:

a. The Hon'ble Court may be pleased to declare the Will dated 04.02.2014, bearing Registration No. 707 was registered before the Sub-Registrar-3 (Memnagar) as well as the Codicil dated 20.09.2014, bearing Registration No. 6213 was registered before the Sub-Registrar-3 [Memnagar] as null and void;

b. The Hon'ble Court may be pleased to grant permanent injunction against the defendants, restraining them from entering into any transaction in furtherance of the directions in the Will or Codicil;

c. The Hon'ble Court may be pleased to declare all the subsequent action taken in furtherance of the said Will and Codicil as null and void status quo ante may be restored;

d. Such other and further relief/s as may be deemed fit and appropriate may be granted;"

22. A bare reading of paragraph 3(o) of the plaint would reveal that the father of the plaintiff died on 21.10.2014 and that the plaintiff acquired knowledge of the Will and the Codicil left behind by him in the first week of November, 2014. Paragraph 4 of the plaint reveals that the cause of action for filing of the suit first arose on 04.02.2014, then on 20.09.2014 and finally on 21.10.2014 i.e., when the Will was executed, when the Codicil was executed and when the father of the plaintiff died respectively. Therefore, according to the plaintiff's own admission, the cause of action for filing the suit commenced on 04.02.2014 and ended on 21.10.2014.

23. In view of the above, according to the plaintiff's own averments the suit had to be brought within time of three years either from the commencement of the cause of action on 04.02.2014 or lastly on 21.10.2014 when his father died or at best when he acquired knowledge of the Will and the Codicil i.e., the first week of November, 2014.

24. There is no dispute to the fact that the limitation for filing of the suit falls under Article 58 of the Schedule to the Act wherein the limitation prescribed is three years. It may be pertinent to note that the limitation of three years is from the date when the cause of action first arose. So, according to the plaintiff's case, the cause of action first arose on 04.02.2014 and, therefore, the limitation would end on 04.02.2017.

However, even if the limitation is calculated from the date of knowledge of the Will and/or the Codicil, it would run from the first week of November, 2014 and would end in the first week of November, 2017. The suit admittedly was instituted on 21.11.2017; much beyond the first week of November, 2017 and as such is apparently barred by limitation, for which neither any defence is required to be looked into nor any evidence in support is needed to be adduced.

25. Section 3 of the Act contemplates that every suit instituted after the period prescribed under the Act shall be dismissed even if limitation has not been set up as a defence. The aforesaid provision is of a mandatory nature and cannot be ignored by the courts even if not pleaded or argued by the defence. It is obligatory upon the court to dismiss the suit if it is, on the face of it, barred by limitation. The aforesaid provision has been enacted for public good and to give quietus to a remedy after lapse of a particular period, as a matter of public policy, though without extinguishing the right in certain cases. Therefore, once a limitation prescribed for instituting a cause of action expires and even if limitation is not set up as a defence, it obliges the court to dismiss the suit as barred by limitation.

26. In the present case, the plaintiff not only categorically states that he acquired knowledge of the Will and the Codicil in the first week of November, 2014 but also that the cause of action for the suit first arose on 04.02.2014 and lastly on 21.10.2014. The suit was filed on 21.11.2017. As such on the own averments of the plaintiff, the suit was instituted beyond limitation attracting Order VII Rule 11 (d) CPC.

27. The submission that limitation is a mixed question of law and fact and that it cannot be decided without allowing the party to lead evidence is of no substance. In the present case, we have earlier noted that the suit was admittedly instituted on 21.11.2017 whereas according to the plaint averments the cause of action first arose on 04.02.2014. Even assuming that the cause of action last arose in the first week of November, 2014, the suit ought to have been filed by 07.11.2017. The suit was filed on 21.11.2017. It was ex-facie barred by limitation for which, no evidence was required to be adduced by the parties. The above issue is purely an issue of fact and in the admitted facts as per the plaint, allegations stand concluded for which no evidence is needed.

28. The other contention that the plaintiff acquired knowledge of the Will and Codicil in the first week of November, 2014, but that was not a complete knowledge as probably he could read the same subsequently. In dealing with the submission, the appellate Court distinguished between "having knowledge" and "full knowledge" to hold that the suit is not barred by limitation as the limitation would reckon from the date of full knowledge.

It is a complete fallacy to make any distinction between "knowledge" and "full knowledge". First of all, the limitation has to run from the date when the cause of action first accrued and not any subsequent date for the cause of action. According to the plaintiff himself, the cause of action for the suit had arisen much earlier. Secondly, the plaintiff has not pleaded any date on which he acquired complete knowledge and that such argument is only an afterthought and appears to be a simple creation of the first appellate Court.

29. Lastly, the first appellate Court has ruled that in the suit, the plaintiff has claimed different reliefs and even if the plaint is barred by limitation in respect of one of the reliefs, it cannot be rejected in toto. The aforesaid submission is also without substance as upon the plain reading of the prayers made in the plaint, it is apparent that the primary relief claimed therein is to declare the Will and the Codicil to be null and void and also all subsequent proceedings thereto.

In addition to it, the plaintiff has claimed permanent injunction. The other reliefs are dependent upon the first relief and cannot be granted until and unless the plaintiff succeeds in the first relief. Therefore, once the plaint or the suit in respect of the main relief stands barred by time, the other ancillary relief claimed therein also falls down.

30. In view of the aforesaid facts and circumstances and the discussion, we are of the opinion that the High Court manifestly erred in law in passing the impugned judgment and order dated 08.02.2024, reversing the judgment and order dated 23.10.2018 of the court of first instance rejecting the plaint of the plaintiff in exercise of powers under Order VII Rule 11 CPC.

31. Accordingly, the judgment and order of the High Court dated 08.02.2024 is set aside and that of the trial court is restored. The plaint stands rejected as barred by limitation under Order VII Rule 11 (d) CPC.

32. The appeal is allowed accordingly.

.....**J. (Pankaj Mithal)**

.....**J. (S.V.N. Bhatti)**

New Delhi;

April 15, 2025

1 In short 'CPC'

2 Hereinafter referred to as 'the Act'

IN THE SUPREME COURT OF INDIA

S.C. Garg

Vs.

State of Uttar Pradesh & Anr.

[Criminal Appeal No(s). 438 of 2018]

HEADNOTE – The principle of res judicata is applicable to criminal proceedings, and hence, the findings of fact recorded by a criminal court would be binding on both parties in any subsequent proceedings involving the same issue.

JUDGMENT

Prashant Kumar Mishra, J.

1. Challenge in this Criminal Appeal is to the final judgment and order dated 28.04.2017 passed by the High Court of Judicature at Allahabad whereby the appellant's petition under Section 482 of the Criminal Procedure Code, 1973¹ seeking quashment of Criminal Case No. 7489 of 2002 pending on the file of Chief Judicial Magistrate, Ghaziabad for offences under Section 420 of the Indian Penal Code, 1860², has been dismissed.

2. Brief facts necessary for disposal of the criminal appeal are that the appellant/S.C. Garg³ was the Managing Director of the Company Ruchira Papers Ltd.⁴ which was engaged in manufacturing craft papers. The Company had business dealings with ID Packaging, a partnership concern of respondent no. 2/R.N. Tyagi⁵. In conduct of business between two entities, the parties used to maintain a running account and Tyagi used to issue cheques from time to time in favour of ID Packaging. Between 22.12.1997 to 30.01.1998, Tyagi issued 11 cheques which were initially dishonoured due to insufficiency of funds in the account.

To maintain business relations, both the parties agreed to present the 11 cheques again at a later stage upon instructions from Tyagi. In relation to the liabilities other than the amount involved in the 11 cheques, Tyagi made payment by issuing 03 demand drafts in the name of the appellant's company. On 08.06.1998, 11 cheques were again presented for encashment upon which only four cheques were cleared leaving the remaining 07 cheques to be dishonoured again. The appellant's company filed a complaint under Section 138 of the Negotiable Instruments Act, 1881⁶ against ID Packaging and Tyagi in relation to the 07 dishonoured cheques.

3. On 25.10.2002, the learned Magistrate convicted Tyagi for offence under Section 138 of the NI Act. His defence, that there is no enforceable debt as the amount involved in 07 cheques has already been paid through the demand drafts, was rejected with a specific finding that the demand drafts pertained to other liabilities of Tyagi to the company and were not towards liquidating the liability arising under the cheques in question. Tyagi was sentenced to imprisonment till rising of Court and pay fine of Rs. 3,20,385/- (i.e. cumulative amount of the 7 dishonoured cheques). The appeal preferred by Tyagi challenging his conviction under Section 138 of the NI Act was dismissed by the learned Additional Sessions Judge on 17.03.2005 by affirming the finding, conviction and sentence awarded to him.

4. Tyagi and his Company/ID Packaging challenged the appellate order by preferring criminal revision and vide order dated 10.10.2012 the High Court disposed of criminal revision as well as two other proceedings between the parties basis compromise between them. When the criminal revision challenging his conviction was pending, the sentence was suspended upon deposit of R. 3,20,385/-. The High Court disposed of three different proceedings between the parties by observing thus in paragraph nos. 5 & 6 of the order:

"5. When these petition/appeal/ revision were taken up today, Sh. R.N. Tyagi, who is present in Court along with his counsel Sh. Rampal Tyagi and Ashok Tyagi expressed his desire to put an end to the entire controversy on the condition that the amount deposited by him in this Court by demand draft pursuant to the orders passed in the Criminal Revision (supra) along with interest be paid to M/s Ruchira Papers in full satisfaction of all their claims, subject matter of criminal appeal No. 752 of 2002, CMPMO No. 305 of 2012 and in Civil Suit No. 47/1 of 2005/01, titled as M/s Ruchira Papers versus M/s I.D. Packings, decreed on 23.09.2005. Statement of Sh. R.N. Tyagi, who is present in Court, to this effect has been recorded separately, which statement has been accepted by Sh. Sanjeev Sood, learned counsel on behalf of M/s Ruchira Papers.

6. In these circumstance, all three cases are being disposed of the following directions:

a) Criminal Appeal No.752 of 2002, titled M/s Ruchira Papers Ltd., versus M/s I.D. Packings and another is disposed of as not pressed.

b) Criminal Revision No. 52 of 2005, titled M/s I.D. Packings and another versus M/s Ruchira Papers and another is disposed of with the directions that the amount lying deposited in FDR A/c No. 042704PR00001211 dated 11.09.2012 along with interest satisfies the entire claim of the respondents M/s Ruchira Papers subject matter of the revision.

c) CMPMO No. 305 of 2012, titled R.N. Tyagi and another versus M/s Ruchira Papers Ltd., is also disposed of with this direction that the decree passed in Civil Suit No.47/1 of 2005/01, titled M/s Ruchira Papers versus M/s I.D. packing shall stand fully satisfied on the FDR along with interest having been paid to respondents M/s Ruchira Papers Limited.

d) The registry is directed to remit the amount of aforesaid FDR account along with interest accrued thereon to the bank account of M/s Ruchira Papers Limited for which purpose they shall submit the photocopy of their current account to the Registry."

5. From the above extracted order of the High Court, it appears that Garg had instituted a suit for recovery of the amount involved under the 07 dishonoured cheques in which ex-parte decree was passed and that too has been compromised upon payment of Rs. 3,20,385/- by Tyagi to Garg.

6. When 138 NI Act proceedings were pending between the parties, Tyagi moved an application under Section 156 (3) Cr.P.C. seeking registration of an FIR against Garg and company inter alia alleging that despite payment of amount involved in 07 dishonoured cheques, by way of separate demand drafts, Garg again presented 11 cheques and fraudulently realised the amount from 04 out of 11 cheques thereby cheating Tyagi. FIR No. 549 of 1998 (present FIR) came to be registered against Garg based upon the above allegations. However, the company was not made an accused in this FIR.

The chargesheet filed against Garg on account of being the Managing Director of the Company and Mukesh Kumar Behal, director of M/s. M.V. Agency is again without joining the company. The learned Magistrate took cognizance of the alleged offence and summoned the accused persons including the appellant vide order dated 19.06.2002. Garg preferred a petition under Section 482 Cr.P.C. for quashing of the chargesheet and the summoning order dated 19.06.2002 which has been dismissed by the High Court under the impugned judgment and order.

7. Mr. Siddharth Aggarwal, learned senior counsel appearing for the appellant would vehemently urge that the appellant cannot be prosecuted for an offence allegedly committed by the company without arraying it as an accused that too without making any specific allegation against Garg. He would submit that the impugned prosecution has been instituted as a counterblast to the concluded proceedings under Section 138 of the NI Act in which Tyagi was convicted and it eventually concluded by way of compromise before the High Court. It is also argued that the summoning order is without any reasoning showing complete non-application of mind.

8. Per contra, Mr. Vikas Bansal, learned counsel appearing for the respondent would submit that it is a subject matter of trial as to whether Garg encashed the amount involved in 04 cheques despite having received the amount by way of demand drafts separately given to him by Tyagi after all the cheques were dishonoured on the first occasion. According to him, it is a clear case of receiving double payment for the same dues, thus, committing cheating.

9. Having heard learned senior counsel for the parties and upon perusal of the material on record we are satisfied that the appeal deserves to be allowed, and the impugned chargesheet/criminal proceedings deserve to be quashed on the reasoning hereafter stated.

10. It is to be noted that in 138 NI Act proceedings against Tyagi, he raised a specific defence that there is no outstanding debt qua 07 cheques as the amount involved therein has already been paid by separate demand drafts. Learned Magistrate in its order dated 25.10.2002 rejected the said defence by recording a finding that no request was made by Tyagi to the complainant company to return the bounded cheques to the accused company when the demand drafts were allegedly sent by the accused persons to the complainant company. The Trial Magistrate specifically recorded a finding in paragraph No. 16 in the following manner:

"16. Moreover, it may be stated that the accused company was having business dealing with the complainant company. The complainant company has also placed on record the copy of statement of account Ex. P-16 pertaining to the transaction of the accused firm with the complainant company. In the said statement of account, the impugned demand draft No. 859562 for Rs. 55,000/- D.D. No. 859879 for Rs. 50,000/- D.D. No. 859797 for Rs. 50,000/-, D.D. No. 4123761 for Rs. 1,50,000/- and D.D. No. 860060 for Rs. 1,11,357/- have been accounted for against liability of accused person and ultimately, liability of the accused firm to the tune of Rs. 3,31,151/- is shown outstanding in favour of the complainant company. From this statement of account Ex.P-16, to can be safety presumed that these demand drafts pertaining to some other liability of the accused persons and these demand drafts were not issued to liquidate the liability of impugned cheques Ex.P-2 to Ex.P-8."

11. The above finding of the Trial Magistrate was affirmed by the Sessions Court in its order dated 17.03.2005 by observing thus in paragraph No. 16

"16. I have closely scrutinised the evidence of DW1 and DW2, the statement of the aforesaid witnesses does not inspire confidence particularly in view of the facts that the accused himself did not appear in the witness box to state so. From the statement of account Ext.P16 placed on record by the complainant company, it can be gathered that the demand drafts No. 859562 for Rs. 55,000/- 859797 for

Rs.50,000/-, 4123761 for Rs. 1,50,000/- and 860060 for Rs.1,11,356/- have been accounted for against liability of the accused persons and ultimately, liability of the accused firm to the tune of Rs. 3,31,151/- which is shown outstanding in favour of the complainant company. Therefore, from the statement of account Ext.P16 it can be presumed that these demand drafts were pertaining to some other liability of the appellants and were not issued to liquidate the liability of the impugned cheques Ext.P2 to Ext. P8"

12. It is thus apparent that the finding recorded by the jurisdictional criminal court in 138 NI Act proceedings between the parties would be binding to both the parties in any subsequent proceedings involving the same issue.

13. The question as to the applicability of principle of res judicata in criminal matters have been considered by this Court in several decisions. In the matters of Pritam Singh & Anr. vs. The State of Punjab⁷, Bhagat Ram vs. State of Rajasthan⁸ & The State of Rajasthan vs. Tarachand Jain⁹, this Court has consistently laid down the principle that the principle of res judicata is equally applicable in criminal matters.

However, in two later decisions, namely, Devendra & Ors. vs. State of Uttar Pradesh & Anr.¹⁰ and Muskan Enterprises & Anr. Vs. The State of Punjab & Anr.¹¹ in which one of us was a member (Justice Prashant Kumar Mishra), this Court observed in the context of maintainability of second petition under Section 482 Cr.P.C. that principle of res judicata has no application in a criminal matter. Considering divergence of opinion, it would be appropriate for us to have deeper examination and reading of the law laid down by this Court in the earlier decisions.

14. In Pritam Singh (supra), a three Judge Bench of this Court speaking through Natwarlal Harilal Bhagwati, J. placing reliance on Sambasivam vs. Public Prosecutor, Federal of Malaya¹², decided by a Bench of Five Judges of the Judicial Committee, opined that maxim res judicata is no less applicable to criminal than to civil proceedings. In the said matter, accused Pritam Singh was earlier tried for an offence under the Arms Act basing recovery of a weapon from him. In the said case Pritam Singh was acquitted. In a subsequent trial, the same recovery was again sought to be used by the prosecution as one of the circumstances in an offence of murder. In these set of facts, this Court recorded the following findings as to the applicability of principle of res judicata in criminal matters:

"15. In regard to the recovery of Ex. P-14 the learned Additional Sessions Judge had not put any reliance on the acquittal of the accused by the learned Additional Sessions Judge, Faridkot, of the offence under the Arms Act, observing that any

expression of opinion contained in the judgment was not only not binding on him but was irrelevant under the Indian Evidence Act.

On a perusal of the evidence led by the prosecution in this behalf he had held that the recovery of Ex. P-14 was proved against the accused and considered that as connecting Pritam Singh Lohara with the incident. The High Court, on the other hand, relied upon the observations of Lord MacDermott at p.479 in *Sambasivam v. Public Prosecutor, Federal of Malaya*, 1950 A.C. 458(A):-

"The effect of a verdict of acquittal pronounced by a competent Court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication.

The maxim '*res judicata pro veritate accipitur*' is no less applicable to criminal than to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any steps to challenge it at the second trial."

15. In *Bhagat Ram* (supra), a two Judge Bench of this Court speaking through H.R. Khanna, J. again applied and approved *Sambasivam* (supra) and *Pritam Singh* (supra).

16. Thereafter in *Tarachand Jain* (supra), this Court referred to *Bhagat Ram* (supra) and *Sambasivam* (supra) to hold thus:

"13. The question as to what is the binding effect of a decision in subsequent proceedings of the same original matter was considered by this Court in the case of *Bhagat Ram v. State of Rajasthan*, [(1972) 2 SCC 466 : 1972 SCC (Cri) 751] and it was held that the principle of *res judicata* is also applicable to criminal proceedings and it is not permissible in the subsequent stage of the same proceedings to convict a person for an offence in respect of which an order for his acquittal has already been recorded.

Reliance in this context was placed upon the observations of the Judicial Committee in the case of *Samba Sivam v. Public Prosecutor, Federation of Malaya*. [1950 AC 458] In *Bhagat Ram* case [(1972) 2 SCC 466 : 1972 SCC (Cri) 751] a Single Judge of the High Court to whom a limited question had been referred because of a difference of opinion between two Judges of the Division Bench, not only decided the question referred to him, he also interfered with the acquittal of the accused regarding certain offences in respect of which an order for acquittal had already been made earlier by the Division Bench.

It was held that it was not within the competence of the Single Judge to reopen the matter and pass the above order of conviction in the face of the earlier order of the Division Bench for acquittal. Although Bhagat Ram case [(1972) 2 SCC 466 : 1972 SCC (Cri) 751] related to acquittal, the principle laid down in that case, in our opinion, holds good in a case like the present wherein the question is about the binding effect of the earlier Division Bench judgment regarding the validity of the sanction for the prosecution of the accused-respondent."

17. We shall now have a look at the subsequent matters Devendra (supra) and Muskan Enterprises (Supra) wherein it is held that principle of res judicata is not applicable in criminal proceedings. In Devendra (supra) was a case where after dismissal of first petition under Section 482 Cr.P.C. seeking quashing of the FIR, the appellants therein preferred another application under Section 482 Cr.P.C., after the Magistrate took cognizance of the matter, which was dismissed by the High Court. In this Court, it was argued by the opposite party that the first order of the High Court dismissing the petition under Section 482 Cr.P.C. would operate as res judicata. Negating the said argument, a two Judge Bench of this Court held in para 25 as under:

"25. Mr. Das, furthermore, would contend that the order of the High Court dated 17-10-2005 would operate as res judicata. With respect, we cannot subscribe to the said view. The principle of res judicata has no application in a criminal proceeding. The principles of res judicata as adumbrated in Section 11 of the Code of Civil Procedure or the general principles thereof will have no application in a case of this nature."

18. In Muskan Enterprises (supra), similar was the position. The first petition under Section 482 Cr.P.C. was dismissed as withdrawn without liberty obtained to apply afresh, the High Court dismissed the second petition under Section 482 Cr.P.C. as not maintainable. Referring to Devendra (supra), a two Judge Bench of this Court of which one of us was a member (Prashant Kumar Mishra, J.) observed thus in para 17:

"17. That the principle of res judicata has no application in a criminal proceeding was reiterated by this Court in Devendra vs. State of U.P."

19. Reading three earlier decisions vis-à-vis the two later decisions parallelly, we do not think that considering the context and the stage of the proceedings in which the matters stood and agitated before this Court, there is any diversion in the applicability of the principle of res judicata. While three earlier decisions in Pritam Singh (Supra), Bhagat Ram (supra) and Tarachand Jain (supra) were decided basis acquittal in previous trial, the subsequent decision in Devendra (supra) and Muskan Enterprises (supra) have been decided at the stage of

quashing petition under Section 482 Cr.P.C., thus, in both the matters, there was no final adjudication of merits.

While in Devendra (supra), the first petition was for quashing of the FIR and the second petition was preferred after the Magistrate took cognizance of the matter; in Muskan (supra), the first petition was dismissed as withdrawn whereas the second petition was held not maintainable due to earlier withdrawal without any liberty. Thus, these two cases are totally distinguishable. In addition, it is important to bear that Sambasivam (supra) was decided by Five Judges of the Judicial Committee and Pritam Singh (supra) was decided by a three Judge Bench, whereas all subsequent decisions have been rendered by the two Judges Bench. Therefore, Pritam Singh (supra) is binding insofar as the issue concerning the applicability of principle of res judicata in a criminal proceeding is concerned.

20. For the above reason it is absolutely clear that Tyagi cannot maintain a prosecution on the basis of allegations which were precisely his defence in the earlier proceedings wherein he was an accused. Thus, the present criminal proceedings deserve to be quashed on this ground alone.

21. It is also to be seen that the business relation was between the two companies. The cheques and the demand drafts, as the case may be, were issued by one company to the other company and no payment was made by Tyagi to Garg individually. In Sharad Kumar Sanghi vs. Sangita Rane¹³ this Court held thus in paragraph 11 & 13:

"11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the Company, the Company has not been made a party and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the Company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened under certain statutes. It has been so held by a three-Judge Bench in Aneeta Hada v. Godfather Travels and Tours (P) Ltd. (2012) 5 SCC 661 in the context of the Negotiable Instruments Act, 1881.

13. When the company has not been arraigned as an accused, such an order could not have been passed. We have said so for the sake of completeness. In the ultimate analysis, we are of the considered opinion that the High Court should have been well advised to quash the criminal proceedings initiated against the appellant and that having not been done, the order is sensitively vulnerable and accordingly we set aside the same and quash the criminal proceedings initiated by the respondent against the appellant."

22. Again in the matter of Dayle De' Souza vs. Government of India¹⁴ this Court held thus in para 22 to 30:

"22. There is yet another difficulty for the prosecution in the present case as the Company has not been made an accused or even summoned to be tried for the offence. The position of law as propounded in State of Madras v. C.V. Parekh (1970) 3 SCC 491, reads: (SCC p. 493, para 3)

"3. The learned counsel for the appellant, however, sought conviction of the two respondents on the basis of Section 10 of the Essential Commodities Act under which, if the person contravening an order made under Section 3 (which covers an order under the Iron and Steel Control Order, 1956), is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

It was urged that the two respondents were in charge of, and were responsible to, the Company for the conduct of the business of the Company and, consequently, they must be held responsible for the sale and for thus contravening the provisions of clause (5) of the Iron and Steel Control Order. This argument cannot be accepted, because it ignores the first condition for the applicability of Section 10 to the effect that the person contravening the order must be a company itself. In the present case, there is no finding either by the Magistrate or by the High Court that the sale in contravention of clause (5) of the Iron and Steel Control Order was made by the Company.

In fact, the Company was not charged with the offence at all. The liability of the persons in charge of the Company only arises when the contravention is by the Company itself. Since, in this case, there is no evidence and no finding that the Company contravened clause (5) of the Iron and Steel Control Order, the two respondents could not be held responsible. The actual contravention was by Kamdar and Vallabhdas Thacker and any contravention by them would not fasten responsibility on the respondents. The acquittal of the respondents is, therefore, fully justified. The appeal fails and is dismissed."

23. However, this proposition was later deviated from in Sheoratan Agarwal v. State of M.P.(1984) 4 SCC 352. This case pertained to the *pari materia* provision under Section 10 of the Essential Commodities Act, 1955. The Court held that any one among : the company itself; every person in-charge of and responsible to the company for the conduct of the business; or any Director, manager, secretary or other officer of the company with whose consent or connivance or because of whose neglect offence had been committed, could be prosecuted alone. However, the person in-charge or an officer of the company could be held guilty in that

capacity only after it has been established that there has been a contravention by the company as well. However, this will not mean that the person in-charge or an officer of the company must be arraigned simultaneously along with the company if he is to be found guilty and punished.

24. Relying upon the reasoning in Sheoratan Agarwal and limiting the interpretation of C.V. Parekh (1970) 3 SCC 491, this Court in Anil Hada v. Indian Acrylic Ltd.(2000) 1 SCC 1 had held that: (Anil Hada case, SCC pp. 7-8, para 13)

"13. If the offence was committed by a company it can be punished only if the company is prosecuted. But instead of prosecuting the company if a payee opts to prosecute only the persons falling within the second or third category the payee can succeed in the case only if he succeeds in showing that the offence was actually committed by the company. In such a prosecution the accused can show that the company has not committed the offence, though such company is not made an accused, and hence the prosecuted accused is not liable to be punished.

The provisions do not contain a condition that prosecution of the company is sine qua non for prosecution of the other persons who fall within the second and the third categories mentioned above. No doubt a finding that the offence was committed by the company is sine qua non for convicting those other persons. But if a company is not prosecuted due to any legal snag or otherwise, the other prosecuted persons cannot, on that score alone, escape from the penal liability created through the legal fiction envisaged in Section 141 of the Act."

25. However, subsequent decisions of this Court have emphasised that the provision imposes vicarious liability by way of deeming fiction which presupposes and requires the commission of the offence by the company itself as it is a separate juristic entity. Therefore, unless the company as a principal accused has committed the offence, the persons mentioned in sub-section (1) would not be liable and cannot be prosecuted.

Section 141(1) of the Negotiable Instruments Act, extends vicarious criminal liability to the officers of a company by deeming fiction, which arises only when the offence is committed by the company itself and not otherwise. Overruling Sheoratan Agarwal and Anil Hada, in Aneeta Hada v. Godfather Travels & Tours (P) Ltd.(2012) 5 SCC 661, a three- Judge Bench of this Court expounding on the vicarious liability under Section 141 of the Negotiable Instruments Act, has held : (Aneeta Hada case, SCC pp. 686 & 688, paras 51 & 59)

"51. We have already opined that the decision in Sheoratan Agarwal runs counter to the ratio laid down in C.V. Parekh which is by a larger Bench and hence, is a binding precedent. On the aforesaid ratiocination, the decision in Anil Hada has

to be treated as not laying down the correct law as far as it states that the Director or any other officer can be prosecuted without impleadment of the company. Needless to emphasise, the matter would stand on a different footing where there is some legal impediment and the doctrine of *lex non cogit ad impossibilia* gets attracted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself.

We say so on the basis of the ratio laid down in *C.V. Parekh* which is a three-Judge Bench decision. Thus, the view expressed in *Sheoratan Agarwal* does not correctly lay down the law and, accordingly, is hereby overruled. The decision in *Anil Hada* is overruled with the qualifier as stated in para 51. The decision in *Modi Distillery (1987) 3 SCC 684* has to be treated to be restricted to its own facts as has been explained by us hereinabove."

26. The proposition of law laid down in *Aneeta Hada* was relied upon by this Court in *Anil Gupta v. Star India (P) Ltd.*(2014) 10 SCC 373: (*Anil Gupta case*, SCC pp. 379-80, para 13)

"13. In the present case, the High Court by the impugned judgment dated 13-8-2007 held that the complaint against Respondent 2 Company was not maintainable and quashed the summons issued by the trial court against Respondent 2 Company. Thereby, the Company being not a party to the proceedings under Section 138 read with Section 141 of the Act and in view of the fact that part of the judgment referred to by the High Court in *Anil Hada* has been overruled by a three-Judge Bench of this Court in *Aneeta Hada*, we have no other option but to set aside the rest part of the impugned judgment whereby the High Court held that the proceedings against the appellant can be continued even in absence of the Company. We, accordingly, set aside that part of the impugned judgment dated 13-8- 2007 passed by the High Court so far as it relates to the appellant and quash the summons and proceeding pursuant to Complaint Case No. 698 of 2001 qua the appellant."

27. In *Sharad Kumar Sanghi v. Sangita Rane* (2015) 12 SCC 781, this Court observed that : (SCC p. 785, paras 11 & 13)

"11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the Company, the Company has not been made a party and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations

are against the Company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened under certain statutes. It has been so held by a three-Judge Bench in *Aneeta Hada v. Godfather Travels & Tours (P) Ltd.* in the context of the Negotiable Instruments Act, 1881.

13. When the company has not been arraigned as an accused, such an order could not have been passed. We have said so for the sake of completeness. In the ultimate analysis, we are of the considered opinion that the High Court should have been well advised to quash the criminal proceedings initiated against the appellant and that having not been done, the order is sensitively vulnerable and accordingly we set aside the same and quash the criminal proceedings initiated by the respondent against the appellant."

28. This position was again clarified and reiterated by this Court in *Himanshu v. B. Shivamurthy* (2019) 3 SCC 797. The relevant portion of the judgment reads thus : (SCC pp. 799-802, paras 6-7 & 12-13)

"6. The judgment of the High Court has been questioned on two grounds. The learned counsel appearing on behalf of the appellant submits that firstly, the appellant could not be prosecuted without the company being named as an accused. The cheque was issued by the company and was signed by the appellant as its Director. Secondly, it was urged that the observation of the High Court that the company can now be proceeded against in the complaint is misconceived.

The learned counsel submitted that the offence under Section 138 is complete only upon the issuance of a notice of demand and the failure of payment within the prescribed period. In absence of compliance with the requirements of Section 138, it is asserted, the direction of the High Court that the company could be impleaded / arraigned at this stage is erroneous.

7. The first submission on behalf of the appellant is no longer *res integra*. A decision of a three-Judge Bench of this Court in *Aneeta Hada v. Godfather Travels & Tours (P) Ltd.* governs the area of dispute. The issue which fell for consideration was whether an authorised signatory of a company would be liable for prosecution under Section 138 of the Negotiable Instruments Act, 1881 without the company being arraigned as an accused. The three-Judge Bench held thus : (SCC p. 688, para 58)

'58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other

categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.' In similar terms, the Court further held : (Aneeta Hada case , SCC p. 688, para 59)

'59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself.'

12. The provisions of Section 141 postulate that if the person committing an offence under Section 138 is a company, every person, who at the time when the offence was committed was in charge of or was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished.

13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused.

29. Applying the same proposition of law as laid down in Aneeta Hada, this Court in Hindustan Unilever Ltd. v. State of M.P. (2020) 10 SCC 751 applying *pari materia* provision in the Prevention of Food Adulteration Act, 1954, held that : (Hindustan Unilever case, SCC p. 762, para 23)

"23. Clause (a) of sub-section (1) of Section 17 of the Act makes the person nominated to be in charge of and responsible to the company for the conduct of business and the company shall be guilty of the offences under clause (b) of sub-section (1) of Section 17 of the Act. Therefore, there is no material distinction between Section 141 of the NI Act and Section 17 of the Act which makes the company as well as the nominated person to be held guilty of the offences and/or liable to be proceeded and punished accordingly. Clauses (a) and (b) are not in the alternative but conjoint.

Therefore, in the absence of the company, the nominated person cannot be convicted or vice versa. Since the Company was not convicted by the trial court,

we find that the finding of the High Court to revisit the judgment will be unfair to the appellant-nominated person who has been facing trial for more than last 30 years. Therefore, the order of remand to the trial court to fill up the lacuna is not a fair option exercised by the High Court as the failure of the trial court to convict the Company renders the entire conviction of the nominated person as unsustainable."

30. In terms of the ratio above, a company being a juristic person cannot be imprisoned, but it can be subjected to a fine, which in itself is a punishment. Every punishment has adverse consequences, and therefore, prosecution of the company is mandatory. The exception would possibly be when the company itself has ceased to exist or cannot be prosecuted due to a statutory bar. However, such exceptions are of no relevance in the present case. Thus, the present prosecution must fail for this reason as well."

23. Similarly in the matter of Delhi Race Club (1940) Ltd. & Ors. vs. State of Uttar Pradesh & Anr.¹⁵, this Court has held that a person cannot be vicariously prosecuted, especially for offences under the IPC, merely on account of the fact that he holds a managerial position in a company without there being specific allegations regarding his involvement in the offence. The following has been held in paras 13 and 14:

"13. This Court has time and again reminded that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto.

He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. [See: Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749].

14. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the CrPC, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of appellants Nos. 2 and 3, respectively herein who are none other than office bearers of the appellant No. 1 Company. When appellant No. 1

is the Company and it is alleged that the company has committed the offence then there is no question of attributing vicarious liability to the office bearers of the Company so far as the offence of cheating or criminal breach of trust is concerned.

The office bearers could be arrayed as accused only if direct allegations are levelled against them. In other words, the complainant has to demonstrate that he has been cheated on account of criminal breach of trust or cheating or deception practised by the office-bearers. The Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that appellants Nos. 2 and 3 herein were personally liable for any offence.

The appellant No. 1 is a body corporate. Vicarious liability of the office bearers would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability."

24. This Court in *Iqbal @ Bala & Ors. vs. State of Uttar Pradesh & Ors.*¹⁶ has underlined the court's duty to look into the FIR closely and with care when the challenge is thrown on the ground that the prosecution is manifestly frivolous or vexatious. The following is held in paras 9, 10 and 11:

"9. At this stage, we would like to observe something important. Whenever an accused comes before the court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the court owes a duty to look into the FIR with care and a little more closely.

10. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc. then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.

11. In frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."

25. For all the aforestated reasons, we unhesitatingly conclude that the present is a fit case for allowing the appeal to quash the impugned criminal proceedings instituted against the appellant for offences under Section 420 of the IPC.

Accordingly, Criminal Case No. 7489 of 2002 arising out of Crime No. 13 of 1998 pending in the Court of Chief Judicial Magistrate, Ghaziabad is quashed. The appeal is allowed.

.....J. (Pankaj Mithal)

.....J. (Prashant Kumar Mishra)

New Delhi;

April 16, 2025.

1 'Cr.P.C.'

2 'IPC'

3 'Garg'

4 'Company'

5 'Tyagi'

6 'NI Act'

7 AIR 1956 SC 415

8 (1972) 2 SCC 466

9 ((1974) 3 SCC 72

10 (2009) 7 SCC 495

11 (2024) INSC 1046

12 (1950) AC 458

13 (2015) 12 SCC 781

14 (2021) 20 SCC 135

15 (2024) SCC online SC 2248

16 (2023) 8 SCC 734

IN THE SUPREME COURT OF INDIA

Directorate of Revenue Intelligence

Vs.

Raj Kumar Arora & Ors.

[Criminal Appeal No. 1319 of 2013]

[Criminal Appeal No. 272 of 2014]

HEADNOTE – The power under Section 216 Cr.P.C./Sec. 239 BNSS cannot be invoked to delete charges already framed against an accused, as it can only be used to add or alter the existing charges.

Once charges have been framed by the Trial Court in exercise of the powers under Section 228 CrPC, the accused cannot thereafter be discharged, be it through an exercise of the powers under Sections 227 or 216 CrPC.

The language of Section 216 CrPC provides only for the addition and alteration of charge(s) and not for the deletion or discharge of an accused. If the Legislature had intended to empower the Trial Court with the power to delete a charge at that stage, the same would have been expressly and unambiguously stated. Therefore, at such a stage of the trial, the accused must necessarily either be convicted or acquitted of the charges that were so framed against him. No shortcuts must be allowed.

JUDGMENT

J.B. Pardiwala, J.:

For the convenience of exposition, this judgment is divided into the following parts:

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- ii. Criminal Appeal No. 272 of 2014

B. SUBMISSIONS OF THE PARTIES

- i. Submissions on behalf of the Appellant(s)
- a. Criminal Appeal No. 1319 of 2013
- b. Criminal Appeal No. 272 of 2014

- ii. Submissions on behalf of the Respondent(s)

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- a. Object of the NDPS Act and the United Nations Convention on Psychotropic Substances, 1971.

- b. Relevant Statutory Provisions of the NDPS Act and its Rules

- c. Analysing the treatment of substances mentioned in the Schedule to the Act and not in Schedule I of the Rules by previous decisions of this Court.

- d. The provisions of the NDPS Act and its Rules are "in addition to" the D&C Act and the Rules made thereunder.

- ii. Whether the decision in Sanjeev V. Deshpande (supra) should operate with prospective effect?

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- c. The doctrine of "Prospective Overruling" and factors which may lead to the application thereof.

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- e. Applicability or non-applicability of doctrine of prospective overruling in criminal matters, so far....

- f. Article 20(1) considerations on the retrospective applicability of the decision in Sanjeev V. Deshpande (supra).

- iii. The scope of Section 216 of the CrPC

- a. What is the meaning of the expression "alter" occurring in Section 216 CrPC.

- b. Whether charges could be deleted or the accused be discharged under Section 216 CrPC....

E. CONCLUSION

1. Since the issues raised in both the captioned appeals are the same, those were taken up for hearing analogously and are being disposed by this common judgment and order.

2. These appeals arise from the Judgment and Order passed by the High Court of Delhi in Criminal Revision Petition No. 494 of 2007 dated 13.07.2011 and in Criminal M.C. No. 2335 of 2010 dated 20.03.2013 respectively, by which the High Court rejected the respective petitions having found no legal infirmity in the orders passed by the Trial Court arriving at the conclusion that no offence under Sections 8, 22 and 29, and under Section 8(c) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter, the "NDPS Act"), respectively, could be said to have been made out since the psychotropic substance in question do not figure in Schedule I of the NDPS Rules, 1985. The Trial Court ultimately transferred the matter to the court of Metropolitan Magistrate with a direction to proceed in accordance with the provisions of the Drugs and Cosmetics Act, 1940 (hereinafter, the "D&C Act").

A. FACTUAL MATRIX

i. Criminal Appeal No. 1319 of 2013

3. On 27.09.2003, an officer of the Department of Revenue Intelligence Headquarter (hereinafter, the "DRI(HQ)") received an information that several glass ampoules containing the injectable preparation of Buprenorphine were stored in an office premises located at 198, Office Complex, Jhandewalan Extn., Cycle Market, New Delhi.

The further information was that the injections had been illegally manufactured and cleared by M/s. Win Drugs Ltd., Bhiwani Road, Jind, Haryana and that a few injections along with the raw materials of Buprenorphine could also be found at that location. Two teams of DRI(HQ) officers were deputed - one team to undertake the search of the premises in Delhi and another team who coordinated their action with the office of Central Excise Commissionerate, Rohtak (hereinafter, the "CEC") for the purpose of search at the premises of Win Drugs Ltd. at Jind, Haryana.

4. On the same day, i.e., 27.09.2003, at around 08:15 pm, the DRI(HQ) officers visited the premises in Delhi with a search authorisation under Section 41 of the NDPS Act along with two witnesses. It is stated that upon entering the premises, Raj Kumar Arora (hereinafter, "respondent no. 1") who was the proprietor of M/s Kanishka Cargo Service, was present in the office premises. The DRI(HQ) officers recovered 25 corrugated card board cartons which contained small packets, each having ten unlabelled glass ampoules with a water coloured liquid,

along with several sheets of printed labels which read as "Buprenorphine Hydrochloride".

They also recovered one labelled glass ampoule containing the same coloured liquid from the table drawer of the respondent no. 1. Upon preparing a detailed inventory, it was stated that 1 labelled and 40,000 unlabelled glass ampoules containing Buprenorphine Hydrochloride which is a substance listed in the Schedule to the NDPS Act were recovered. Since the respondent no. 1 was unable to provide any permission or licence for the possession of the recovered glass ampoules, they were seized under the provisions of the NDPS Act.

The samples were drawn and the test memo was prepared in the presence of the respondent no. 1 and the witnesses. On 27.09.2003, i.e., on the same day, the officers of CEC, Rohtak are said to have seized 23400 injections of Buprenorphine along with 100 grams of Buprenorphine in its powder form, from M/s Win Drugs Ltd at Jind, Haryana as well.

5. In response to the summons issued, the respondent no. 1 appeared and is said to have made a voluntary statement in writing dated 28.09.2003 which mentioned that during the course of his business as a customs clearing agent, he came in contact with one Mohd. Shebar Khan (hereinafter, "respondent no. 2") who handled the customs clearance of the drugs and medicines on behalf of Devang Bipin Parekh (hereinafter, "respondent no. 3") of M/s Sarvodiya Enterprises, Mumbai. The statement further revealed the fact that the respondents were collectively involved in the illegal manufacture, storage, transport, sale and purchase of Buprenorphine Hydrochloride along with one Naresh Mittal of Win Drugs Ltd.

6. On 28.09.2003, the respondent no. 1 was arrested for the alleged commission of the offence punishable under Sections 22 and 29 of the NDPS Act respectively and was remanded to judicial custody. Since Naresh Mittal of M/s Win Drugs Ltd. had failed to appear despite repeated summons, a complaint for non-compliance of summons was filed against him before the Court of ACMM, New Delhi. The court took cognizance of the alleged offence and also issued a non-bailable warrant for his arrest.

7. The respondent no. 2 was summoned and is said to have tendered a voluntary statement dated 13.11.2004. The respondent no. 2 stated that during the course of his import business, he came in contact with one person named Mohd. Abdul who showed him three ampoules of Buprenorphine and enquired whether the respondent no. 2 could procure one lakh ampoules of Buprenorphine manufactured by Neon Laboratories Ltd. or in the alternative, procure unlabelled drug ampoules of a similar size and shape having a red ring on the neck of the ampoules for him. Mohd. Abdul is said to have given an advance of Rs. 2,50,000.

The respondent no. 2, thereafter, contacted the respondent no. 1 for the purpose of procuring the same and paid him the advance amount he had received along with three samples of the drug which he had obtained from Mohd. Abdul. Initially, 2,000 and 10,000 ampoules respectively, were procured and delivered. On 27.09.2003, the respondent no.1 informed the respondent no.2 that another consignment of 40,000 ampoules had been received by him at his office.

When the respondent no.2 tried to contact the respondent no. 1 at around 09:15 pm, on the same day, he came to know of the fact that the office premises of respondent no. 1 had been raided by a government agency. The respondent no. 2 further stated that upon complete delivery of one lakh ampoules, Mohd. Abdul had promised to give him an additional amount of Rs. 25,000. In light of the same, on 13.11.2003, the respondent no. 2 was also arrested for having committed the offence punishable under Sections 22 and 29 of the NDPS Act respectively and was remanded to judicial custody.

8. In the meanwhile, the DRI officers of the Mumbai Zonal Unit visited the premises of M/s Sarvodaya Enterprises, which is run by the respondent no. 3 and during the search recovered certain documents in the presence of witnesses. The respondent no. 3 was then summoned. He gave a voluntary statement dated 03.12.2003 stating that as a part of his business, his company had bought Buprenorphine in its powder form from M/s Pioneer Agro Industries, Mumbai and were selling the same to the manufacturers like M/s Win Drugs Ltd. He further stated that he knew the respondent no. 1 since he used to clear their pharmaceutical import consignments on a need basis.

The respondent no. 3 further stated that he was the one who had directed the respondent no.1 to contact Naresh Mittal of M/s Win Drugs Ltd for the purchase of Buprenorphine injections and that he had also spoken to Naresh Mittal in that regard despite knowing that the respondent no. 1 did not possess any licence to deal with the said psychotropic substance. The respondent no. 3 is also said to have intervened when the consignments were not being received in time from M/s Win Drugs Ltd and used to get the delivery to the respondent no. 1 expedited.

In the transaction in question which involved the supply of one lakh ampoules to the respondent no. 1, the respondent no. 3 was to get Rs. 1 Lakh from M/s Win Drugs Ltd in addition to some amount from the respondent no.1, for his involvement. As a result, on 03.12.2003, the respondent no. 3 was also arrested for alleged commission of the offence punishable under Sections 22 and 29 of the NDPS Act respectively and was remanded to judicial custody.

9. The Chemical Examiner of the Central Revenue Control Laboratory, New Delhi, vide his report dated 20.11.2003 opined that, upon chemical analysis

conducted by him, the samples were found to be of Buprenorphine which is a psychotropic substance under the NDPS Act. It is the case of the appellant that despite their best efforts, Naresh Mittal of M/s Win Drugs Ltd. could not be summoned and therefore, it was decided that the prosecution qua him and all other concerned persons would be considered as and when they would be available for enquiry.

10. On 25.03.2004, a criminal complaint as regards the offence punishable under Sections 22 and 29 of the NDPS Act respectively was filed against the respondents by one Mr. R. Roy (hereinafter, the "complainant"), an intelligence officer of the Directorate of Revenue Intelligence, New Delhi, (hereinafter, the "appellant") before the Special Court for NDPS cases, New Delhi.

11. On 03.02.2005, the Special Court observed that Buprenorphine is a psychotropic substance as per the Schedule to the NDPS Act and its commercial quantity is fixed at 20 gms. The test memo as regards the present seizure indicated that the contents of each of the ampoules varied between 0.23 mg to 0.34 mg. On a consideration of the above and the attendant circumstances, including that the respondent no. 1 did not possess any permission or licence for dealing in the substance and that all the respondents had conceded to their involvement in the crime, the Special Judge held that a prima facie contravention of Section 22 along with a case of conspiracy under Section 29 of the NDPS Act was made out.

The Special Judge was also prima facie of the view that meticulous examination of the evidence is not required to be assessed at the stage of framing of charge and a mere strong suspicion of involvement in the crime is sufficient. Stating so, charge was directed to be framed. The charge was formally framed by the Special Judge on 08.02.2005.

12. The respondents applied for bail before the Special Judge and the same was declined. However, the High Court vide a common Judgment and Order dated 11.01.2005 granted bail to the respondent no. 3 along with several others. The respondent nos. 1 and 2 respectively, had also moved the High Court for bail and vide a common Judgment and Order dated 22.08.2005, the High Court stated that no offence under the NDPS Act was made out and directed that the respondent nos. 1 and 2 be released on bail upon furnishing a personal bond in the sum of Rs. 25,000 with one surety of the like amount to the satisfaction of the concerned trial court.

The High Court in its common Judgement and Order dated 22.08.2005 had framed two questions of law for the purpose of considering the plea for bail - (a) Whether Buprenorphine Hydrochloride is a "psychotropic substance" within the meaning of the NDPS Act?, and (b) If yes, whether Buprenorphine

Hydrochloride is a "psychotropic substance" to which Chapter VII of the Narcotic Drugs and Psychotropic Substances Rules, 1985 (hereinafter, the "NDPS Rules") apply and to what effect?

The first question was answered in the affirmative, however, on the second question, it was concluded that since Buprenorphine Hydrochloride is a psychotropic substance not included under Schedule I of the NDPS Rules, its manufacture, possession, sale and transport etc. would neither be prohibited nor regulated by the NDPS Rules and consequently by the NDPS Act. It was observed that an examination of Schedule H of the Drugs and Cosmetics Rules, 1940 (hereinafter, the "D&C Rules") made it clear that Buprenorphine Hydrochloride was listed therein as a "Prescription Drug" and therefore, the offence would fall within the rigours of the D&C Act and its Rules.

13. The appellant had preferred a petition for Special Leave to Appeal against both the orders of the High Court granting bail to the respondents. Vide order dated 31.03.2006, this Court declined to interfere with the grant of bail, however, made it clear that the observations of the High Court that Buprenorphine Hydrochloride would not be covered under the NDPS Act and that no offence under the NDPS Act and its rules was made out, would not have any persuasive effect when the matter would be finally considered before the Special Judge on merits.

14. The respondents thereafter preferred an application under Section 216 of the Code of Criminal Procedure, 1973 (hereinafter, the "CrPC") before the Special Judge for amendment/alteration of charge. Before filing the application under Section 216 CrPC, the respondent no. 3 had filed a Criminal Revision Petition No. 204 of 2005 before the High Court challenging the order dated 03.02.2005 and 08.02.2005 respectively, which framed charge against the respondents herein. Vide judgment and order dated 01.08.2006, the High Court disposed of the petition by observing that the application under Section 216 pending before the Special Judge shall be decided first before the matter is proceeded with. The relevant observations are as follows:

"This revision petition is directed against the order on charge dated 03.02.2005 as well as the formal charge framed on 08.02.2005 against the petitioner under Section 29 of the Narcotic Drugs And Psychotropic Substances Act, 1985. Mr. Sud, the learned Senior counsel for the petitioner has pointed out that the main issue involved in the present case is whether Buprenorphine Hydrochloride I.P. would be a psychotropic substance covered under the NDPS Act and Rules.

According to Mr. Sud, this matter has been considered by this Court in the case of R Gupta v State: 123 (2005) DLT 55. This decision came after the order which is impugned in the present proceedings was passed. Mr. Sud, also submitted that

he had moved an application under Section 216 of Code of Criminal Procedure 1973 for amendment/alteration of the charge. That application, I have been told, is pending before the learned Additional Sessions Judge. In these circumstances it would be appropriate if the application under Section 216 of the Code of Criminal Procedure which has been filed by the petitioner is disposed of taking into account, inter alia, the said decision of this Court.

While disposing of the application under Section 216 Code of Criminal Procedure, the learned Sessions Courts shall not be influenced by what has been held in the impugned order and shall consider the entire issue afresh. The Learned Sessions Court shall decide the application under Section 216 Code of Criminal Procedure first before proceeding further with the matter. It is, of course, goes without saying that not only the counsel for the petitioner but the counsel for the State shall also be heard on all submissions. In view of above, terms this revision petition stands disposed of."

(Emphasis supplied)

15. The Special Judge heard the submissions of the counsel with respect to the Section 216 CrPC application made before him. Vide order dated 30.11.2006, the Special Judge echoed the reasoning adopted by the High Court while granting bail to the respondents and also arrived at the conclusion that the respondents are to be tried under the D&C Act and the Rules thereunder. The Special Judge allowed the application filed under Section 216 CrPC taking the view that since the offence under the NDPS Act was not made out, the file be sent to the ACMM, New Delhi for further proceedings. The relevant observations are as thus:

"12. I have heard the Ld. Counsel for the parties at length. The Ld. Counsel for the DRI also has not made out any other arguments which have been already dealt in the Hon'ble High Court in passing the judgment. Moreso, the accused has placed on record one order passed by Sh. N. K. Gupta, Special Judge in the matter, Manoj Kumar Gupta Versus State of NCT and said discussed above, since offence is made out under D & C Act which are triable by Ld. MM and not by the Court of Sessions.

Accordingly, the matter was remanded back to Ld. ACMM to dealt with the judgment in accordance with law. Since Ld. Counsel for the DRI could not place any other material on record to come out with a different view that Buprenorphine Hydrochloride is covered under NDPS Act or Rule. It remains a substance to be dealt under D & C Act or Rules, Previous case of Manoj Kumar Gupta Versus State of NCT with similar allegations were ordered to be charged and tried under D & C Act and Rules and so it has to face the same consequences and not to be dealt differently.

13. In these circumstance of the matter, I allow the application of the accused U/s 216 of Cr. P.C. and say that the charge framed by my Ld. Predecessor dated 08.02.2005 for the offence under NDPS Act is not made out against them and it has to be a case under D & C Act which are triable by Ld. MM and not by the court of Sessions. Accordingly, let the file be sent to Ld. ACCMM, New Delhi for further proceeding in accordance with law by herself or by assigning it to any other court of competent jurisdiction. The accused is directed to appear before Ld. ACMM on 11.12.2006. The file be sent immediately to the said Court."

16. Aggrieved by the aforesaid order dated 30.11.2006 passed by the Special Judge, the appellant preferred Criminal Revision Petition No. 494 of 2007. Vide judgment and order dated 13.07.2011, the High Court dismissed the revision petition. The High Court followed the rationale adopted by this Court in State of Uttranchal v. Rajesh Kumar Gupta reported in (2007) 1 SCC 355 wherein it was observed that if any particular drug does not find mention in the Schedule I appended to the NDPS Rules, then the provisions of Section 8 of the NDPS Act would have no application whatsoever.

On the question of the respondents being discharged under Section 216 CrPC, the High Court remarked that it would not be right to say that the Special Judge had discharged the respondents. The matter was accordingly remitted to the Metropolitan Magistrate to proceed in accordance with the provisions of the D&C Act. The relevant observations have been reproduced below:

"17. I am not in agreement with learned counsel for the Petitioner that by interpreting the Statute and the Rules, a penal offence be made out and the Respondents should be tried thereof. Thus, I am of the considered view that the possession and transportation intra country of Buprenorphine Hydrochloride would not be an offence under the Act and hence not punishable under Section 22 and 29 of the Act and the learned Trial Court had rightly remanded the matter to the learned Metropolitan Magistrate holding that no case for offence under the NDPS Act was made out and the learned MM would examine the same in the light of the provisions of D&C Act.

25. There is no denying that the above decision was rendered in the context of an order granting bail and when the Supreme Court was considering as to whether it should exercise its jurisdiction under Article 136 of the Constitution of India to interfere with the order passed by the High Court. But that does not enable us to detract from the position that the Supreme Court, while considering the question, did examine the relevant provisions of the NDPS Act and the NDPS Rules and came to the conclusion that if the drugs did not find place in Schedule-I appended to the Rules, the provisions of Section 8 of the NDPS Act would have no application whatsoever.

This, of course, was in the context of phenobarbitone which was also a Schedule 'H' drug under the Drugs and Cosmetics Rules, 1945. Mr Malhotra, as pointed out above, wanted us to ignore this decision because, according to him, it did not lay down the law or settle the issue inasmuch as the Supreme Court was only concerned with a bail order and consequently was required to take a prima facie view. We are not impressed by this argument advanced by Mr Malhotra.

The aforementioned detailed narration concerning the said decision indicates that the Supreme Court had specifically gone into the issue and had interpreted the provisions of the NDPS Act as well as the NDPS Rules. Mr Malhotra, the learned ASG, is asking us to shut our eyes to the clear dictum of the Supreme Court which is before us in black and white. We cannot do that. The Constitutional scheme of things which sets out the judicial hierarchy does not permit us to do that. Mr Malhotra submitted that the observations in *Rajesh Kumar Gupta (supra)* are in the nature of obiter dicta and do not constitute the ratio of the said decision.

28. From these decisions, it is clear that, in the first place, the observations with regard to the provisions of the NDPS Act and the NDPS Rules in *Rajesh Kumar Gupta (supra)* cannot be construed as obiter dicta. This is so because the discussion and conclusion with regard to the said provisions as appearing in *Rajesh Kumar Gupta (supra)* cannot be regarded as unnecessary to the decision.

29. Secondly, even if we assume for the sake of argument that the observations are in the nature of obiter dicta, they are normally binding on the High Courts in the absence of any direct pronouncement on that question by the Supreme Court. There is no other direct pronouncement of the Supreme Court on this issue and, therefore, even if the observations are regarded as obiter dictum, they would be binding on this Court.

30. Thirdly, apart from this, even if it is assumed that the observations of the Supreme Court in *Rajesh Kumar Gupta (supra)* are not binding on us, the said observations will, in the least, be required to be construed as having considerable weight and of great persuasive value. We are in full agreement with the observations of the Supreme Court and are indeed persuaded by the line of thought adopted in the said decision in *Rajesh Kumar Gupta (supra)*. Thus, viewed from any angle, the submission of Mr Malhotra to ignore the decision of the Supreme Court in *Rajesh Kumar Gupta (supra)*, deserves rejection.

35. Till the matter is resolved by the larger bench of the Hon'ble Supreme Court this court is bound by the decision rendered in *State of Uttaranchal (supra)* and *Rajesh Sharma (supra)*. Thus, I find no infirmity in the impugned order on this count.

36. I also do not find any merit in the contention of the learned counsel for the Petitioner that the Learned Trial Court erred in discharging the Respondents on an application under Section 216 Cr.P.C. Firstly the impugned order was not passed as an order in review but on an application under Section 216 Cr.P.C. duly permitted by this Court. Moreover the Respondents have not been discharged but the matter has been remanded to the Learned Metropolitan Magistrate to proceed in accordance with the provisions of D & C Act and Rules."

(Emphasis supplied)

17. In such circumstances referred to above, the appellant is here before this Court with the present appeal.

ii. Criminal Appeal No. 272 of 2014

18. On 07.10.2004, the Delhi Zonal Unit of the Narcotics Control Bureau (hereinafter, the "NCB") received an information from the Ahmedabad Zonal Unit that they had recovered and seized 50,000 ampoules of Buprenorphine and during the course of their investigation it was revealed that a huge quantity of these ampoules was also supplied by M/s Rusan Health Care Ltd. to their stockists in Delhi. One Monish Nayyar the proprietor of M/s Belsons was summoned in this regard. M/s Belsons had originally distributed the said ampoules to M/s Rusan Health Care Ltd.

In his statement, he disclosed that his firm had a drug licence and therefore, they had received large quantities of the said psychotropic substance from their suppliers out of which the major chunk was sold to one M/s International Drugs. Sajesh Sharma (hereinafter, the "respondent no. 1" had taken delivery of the substance on behalf of M/s International Drugs. Pursuant to this information, summons were issued to the respondent no. 1 who admitted that his firm was selling the ampoules of Buprenorphine Hydrochloride/bunogesic injections after purchasing them from M/s Belsons with a valid invoice.

The respondent no. 1 then stated that he had sold 2,50,400 injections to a person named Shakeel without an invoice or consignment note as required under Rule 67 of the NDPS Rules and that he was not aware whether Shakeel had a valid drug licence or permission in accordance with law. In the absence of any further information on Shakeel, it is the case of the appellant that no further action could be taken against him. However, on 09.10.2004, the respondent no. 1 was arrested and remanded to judicial custody.

19. On 02.03.2005, the appellant through its Intelligence Officer filed a complaint against the respondent no. 1 under Sections 8(c) and 22(c) of the NDPS Act respectively and on 04.05.2005, upon a prima facie case being made against the accused, a charge for the offence under Section 22(c) was framed. On

28.11.2006, in the midst of the trial and during the stage of recording evidence, the respondent filed an application under Section 216 CrPC drawing the attention of the Special Judge to the decision rendered by the Delhi High Court in Rajender Gupta v. State reported in 2005 SCC OnLine Del 873 which held that dealing in substances mentioned in the Schedule to the NDPS Act and not mentioned in Schedule I of the NDPS Rules would not constitute an offence under the NDPS Act. As a consequence, the respondent no. 1 prayed that the charge be altered and the case be remitted to the appropriate court for trial under the D&C Act.

20. On 06.07.2009, the appellant moved an application before the Special Judge for stay of the proceedings since the matter on this issue was sub-judice before this Court by way of an SLP and also that the decision of the Delhi High Court in Rajender Gupta (supra) was challenged in appeal. Since this application was not being heard, the appellant also preferred a petition before the High Court seeking stay of the further proceedings. Vide order dated 16.09.2009, the High Court directed the Special Judge to hear and dispose of the said application in the first instance before proceeding with the main matter.

21. Vide order dated 17.04.2010, the Special Judge observed that the judgement rendered in Rajender Gupta (supra) was not stayed by this Court in appeal. In fact, the same was even approved by this Court in Rajesh Kumar Gupta (supra). Therefore, the application dated 06.07.2009 made by the appellant was rejected. In the same breath, the Special Judge held that Buprenorphine Hydrochloride is a Schedule "H" drug under the D&C Act read with its Rules. Despite it being a psychotropic substance under the NDPS Act, it was not included in Schedule I of the NDPS Rules.

That being the case, dealing in the said substance is not prohibited under the NDPS Act and the offence under Sections 8 and 22 of the NDPS Act respectively, were not made out. However, it was observed that the respondent no. 1 was involved in the illegal sale of the said substance since no record had been maintained in that regard. In such a scenario, the case was remanded to the Court of the Metropolitan Magistrate, Delhi to deal with in accordance with law. The relevant observations of the Special Judge are reproduced hereinbelow:

"19. There is no order of the stay of proceedings under the NDPS Act in this case by the Apex Court or in any other case on this issue. The operation of the judgment in Rajender Gupta's case supra has not been stayed by the Supreme Court. Further Rajender Gupta's decision had been considered and dealt with by the Supreme Court in Rajesh Kumar Gupta case supra where the Supreme Court has specifically approved of the same. In that case the Supreme Court had made observations with regard to the legal question. The Supreme Court has given its conclusive verdict thereon. Keeping this view in the matter I do not find any merit in the application. Same is accordingly dismissed.

27. Section 36 of the Act provides for constitution of special courts for providing speedy trial of offences under NDPS Act. The Special Courts are authorised to take cognizance of the case without its commitment by a Magistrate. The offences committed under NDPS Act are to be tried by the court of sessions. Section 80 of the Act provides that the provisions of this Act or the rules made thereunder shall be in addition and not in derogation of, the Drugs and Cosmetics Act 1940 or the Rules made thereunder. The cases under Drugs and Cosmetics Act are triable by the Court of Metropolitan Magistrate. The provisions of the Code of Criminal Procedure are applicable besides the provisions contained in the NDPS Act.

Section 228 of the code of Criminal Procedure provides that if, after such consideration and hearing as aforesaid, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence which is not exclusively triable by the Court of Sessions, he may transfer 'the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for trial in warrant cases. Section 32 of the Drugs and Cosmetics Act, 1940 provides that even if the complaint is not filed by the Drug Inspector, the cognizance against the accused is not bad. The prosecution can be launched by any Gazetted Officer of the Central Government authorised in writing in this behalf by the Central Government or a person aggrieved.

28. As indicated above, Buprenorphine Hydrochloride is a Schedule 'H' drug under the Drugs and Cosmetic Act and Rules and though it is a psychotropic substance under the NDPS Act, it is not included in Schedule I to the NDPS Rules. That being the case, its manufacture, possession or sale is not prohibited. As such, there is no contravention of the provisions of the NDPS Rules. Consequently, the offence under Section 8 of the NDPS Act is not made out. Obviously, punishment under Section 22 of the NDPS Act is also not attracted.

29. In the present case, the accused has not maintained any record by way of consignment/ Form VI. He is involved in illegal sale of Buprenorphine Hydrochloride, a Schedule 'H' drug. As per CRCL report, the samples gave positive for the test of the Buprenorphine. Thus it being Schedule 'H' drug, it would fall within the rigors of Drugs and Cosmetics Act and Rules.

30. The offences under Drugs and Cosmetics Act and Rules are triable by the court of Metropolitan Magistrate and not by the Special Hon'ble or Court of Sessions. As such this case is remanded to Ld Chief Metropolitan Magistrate, Delhi to deal with the case in accordance with law. Ld CMM may also assign the case to any other Metropolitan Magistrate as may deem fit. It is made clear that question of limitation would not stand in the present case. Parties are directed to appear before Ld CMM on 07.05.2010."

(Emphasis supplied)

22. Aggrieved by the aforesaid order, the appellant preferred a Criminal M.C. No. 2335 of 2010 under Section 482 of the CrPC before the High Court. However, vide impugned Judgement and Order dated 20.03.2013, the High Court dismissed the petition being devoid of any merit and observed as thus:

"14. It is true that in Rajinder Gupta the learned Single Judge had taken the view while dealing with the bail application. The reasoning, however, as stated by me earlier fully applies even while dealing with the question whether the person is guilty for the offence punishable under Section 22 of the NDPS Act.

15. In this view, I also find support from another judgment of the Coordinate Bench of this Court in DRI v. Raj Kumar Arora & Anr. where relying on Rajinder Gupta and Rajesh Kumar Gupta, the learned Single Judge of this Court held that a person found in possession of Buprenorphine Hydrochloride will not be guilty under Section 22 of the NDPS Act.

16. In view of the foregoing discussion, the Petition is devoid of any merit; the same is accordingly dismissed.

17. Pending Applications stand disposed of."

(Emphasis supplied)

23. In such circumstance referred to above, the appellant is here before this Court with the present appeal.

B. SUBMISSIONS OF THE PARTIES

i. Submissions on behalf of the Appellant(s)

a. Criminal Appeal No. 1319 of 2013

24. Mr. Vikramjit Banerjee, the learned Additional Solicitor General appearing on behalf of the appellant, submitted that, in the present case, there was a recovery of 40,001 injections of buprenorphine, which is a psychotropic substance mentioned in the Schedule to the NDPS Act. Therefore, the Respondent could be said to have contravened section 8(c) of the NDPS Act which prohibits the production, manufacturing, possession, selling, purchasing, transporting, warehousing, using, consuming, importing inter- State, exporting inter-State, importing into India, exporting from India or transshipment of any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder.

25. It was submitted that the respondent no. 3 and respondent nos. 1 and 2 respectively were granted bail by the High Court vide its orders dated 11.01.2005 and 22.08.2005 respectively. However, in doing so, the High Court had observed that Buprenorphine Hydrochloride is beyond the pale of Chapter VII of the NDPS Rules and owing to it being a Schedule H drug under the D&C Act and its Rules, the offence under Section 8 of the NDPS Act would not be made out.

Consequently, it was observed that the accused cannot be punished under Sections 22 and 29 of the NDPS Act respectively. Being aggrieved by the aforesaid observation made by the High Court, the appellant filed a Special Leave Petition against both the orders granting bail to the respondents and this Court vide its order dated 31.03.2006 had clarified and directed that the observations made by the High Court shall not have any binding effect when the matter is finally considered before the Special Judge on merits.

26. It was further submitted that the High Court committed an error in placing reliance on the decision in State of Uttaranchal vs. Rajesh Kumar Gupta reported in 2007 (1) SCC 355 as the said decision is not applicable to the facts of the present case. In the said case, the accused who possessed an Ayurveda Shashtri Degree was running a clinic while being assisted by eight other medical practitioners who were Allopathic and Ayurvedic doctors.

A total of 7 medicines were seized and all of them were mentioned in Schedules G & H of the D&C Rules and the same were said to be used for medical purposes. However, in the present case, the contraband found in the illegal possession of the respondent no. 1 was without any label. Furthermore, the respondents are neither registered medical practitioners nor were they able to produce any document, permit or license to deal with said substances or medicines.

27. It was vehemently submitted that the High Court had erred in holding that Rules 53 and 64 of the NDPS Rules respectively, only pertain to the psychotropic substances mentioned in Schedule I to the NDPS Rules and since Buprenorphine Hydrochloride is a psychotropic substance mentioned in the Schedule to the NDPS Act but not in Schedule I to the NDPS Rules, the offence under the NDPS Act would not be made out.

It was argued that the said observation was contrary to the subsequent judgement passed by this Court in Union of India & Anr. Vs. Sanjeev V. Deshpande reported in 2014 13 SCC 1, wherein it has been clearly held that the prohibition under 8 of the NDPS Act is attracted in respect of the psychotropic substances listed in Schedule to the NDPS Act as well as Schedule I to the NDPS Rules framed under the Act. It was further held that the NDPS Act does not contemplate the framing of rules for prohibiting activities involving drugs and

psychotropic substances for the reason that Section 8(c) of the NDPS Act already prohibits such activities.

28. As regards the issue of prospective overruling, the counsel submitted that the decision of this Court in *Sanjeev V. Deshpande* (supra) overruled the decision in *Rajesh Kumar Gupta* (supra) without a specific declaration that the same was prospectively overruled. In the absence of such a declaration, the interpretation of law in *Sanjeev V. Deshpande* (supra) must be held to be retrospectively applicable to all cases, including those which have been pending before different courts.

29. It was then submitted that Section 80 of the NDPS Act provides that the provisions of the NDPS Act and Rules made thereunder, shall be in addition to, and not in derogation of the D&C Act, 1940 or the Rules made thereunder. Therefore, the High Court wrongly held that the psychotropic substance in the present case is governed exclusively by the D&C Act without attracting an offence under the NDPS Act.

30. In the last, the learned counsel submitted that subsequent to bail being granted, the respondents, as a clever device, filed an application under section 216 of the CrPC, seeking alteration of charges. The Special Judge, in complete disregard to the direction passed by this Court, allowed the application and held that the offence under the NDPS Act is not made out qua all the respondents, and that the case rather pertains to the D&C Act.

Such an order could not be said to be in tune with the judgement rendered by this Court in *K. Ravi vs. State of Tamil Nadu & Anr.* reported in (2024) SCC OnLine SC 2283, wherein it was specifically held that Section 216 of the CrPC does not entitle the accused to file a fresh application seeking discharge, once the charges have been framed by the Court. It was further stated therein that an application under Section 216 CrPC is sometimes filed due to the ignorance of law and also with an aim to deliberately delay the trial proceedings. In the present case, the application filed under Section 216 CrPC was absolutely misconceived and was with a sole intent to derail the trial proceedings.

b. Criminal Appeal No. 272 of 2014

31. Mr. Arvind Kumar Sharma, the learned counsel appearing on behalf of the appellant herein adopted the submissions canvassed by the learned ASG. In addition, the counsel submitted that there is nothing to indicate that Rule 64 is the "governing rule" under Chapter VII of the NDPS Rules and since Rule 64 pertains only to Schedule I substances, all the other rules must also necessarily apply to Schedule I substances.

The language of Rules 66 and 67 respectively, is unambiguous and they clearly apply to "any psychotropic substance" which cannot be read to exclude the substances which only find mention in the Schedule to the NDPS Act. Furthermore, Rules 65 and 66 respectively, adopt the provisions of the D&C Rules rather than excluding it. Therefore, the resultant effect must be that the contravention of the D&C Rules would ipso facto tantamount to a violation of Rules 65 and 66 of the NDPS Rules respectively, thereby attracting punishment under the NDPS Act.

32. It was submitted that certain drugs are regulated by both the NDPS Act and the D&C Act simultaneously since they can be used as both psychotropic substances as well as medicinal drugs in view of their narcotic properties. This does not necessarily mean that an accused would be absolved of his guilt under the NDPS Act once the substance finds mention under the D&C Rules.

33. In the last, both the counsels prayed that the impugned orders of the High Court be set aside and the appeals be allowed.

ii. Submissions on behalf of the Respondent(s)

34. Mr. Yash Pal Dhingra, the learned counsel appearing on behalf of the respondents submitted that the drug/substance in question is covered by the exception to Section 8 of the NDPS Act i.e., non-applicability of the prohibition in case the substance is to be used for "medical or scientific purposes". Furthermore, he argued that an offence under Section 8 cannot be said to have been committed unless the substance also finds mention under Schedule I of the NDPS Rules. To fortify his contention, the learned counsel placed reliance on the decisions of the Delhi High Court in *Rajender Gupta & Ors. v. State* reported in 2005 SCC OnLine Del 873 and *Rajesh Sharma v. Union of India* reported in 2009 SCC OnLine Del 1330 along with the decision of this Court in *Rajesh Kumar Gupta* (supra).

35. The counsel vehemently submitted that the decision in *Sanjeev V. Deshpande* (supra) must strictly be held to be prospectively applicable. If not, it would serve to cause immense prejudice to the respondents who have already been discharged by the Special Judge.

36. It was submitted that the decision of the Delhi High Court in *Rajesh Sharma* (supra) cannot be said to be inapplicable solely because it was rendered in the context of a bail application. It was submitted that while dealing with an application for bail under the NDPS Act, the Court must get over the rigour contained in Section 37(1)(b)(ii) of the NDPS Act. Therefore, only after giving an opportunity to the Public Prosecutor and recording a satisfaction to the effect that there are reasonable grounds for believing that the accused is not guilty of

such offence, a decision to grant bail is arrived at. Hence, the findings rendered in a bail application are also extremely relevant while deciding the question whether an offence under Section 8 of the NDPS Act is made out or not.

37. In the last, the counsel submitted that there being no merit in the appeals, those may be dismissed.

C. ISSUES FOR DETERMINATION

38. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:

I. Whether the production, manufacture, possession, sale, purchase, transport, warehouse, use, consumption, import inter-State, export inter-State, import into India, export from India or transshipment of a psychotropic substance which is listed under the Schedule to the NDPS Act but not mentioned under Schedule I of the NDPS Rules would constitute an offence under Section 8(c) of the NDPS Act?

II. Whether the decision of this Court in Sanjeev V. Deshpande (supra) must operate with prospective effect?

III. Once, the charge has been framed by a competent court under Section 228 of the CrPC, can an accused thereafter seek for discharge/deletion of a particular offence from the charge under Section 216 CrPC?

D. ANALYSIS

i. Whether an offence under Section 8(c) could be said to have been made out when an accused "deals with" psychotropic substances mentioned in the Schedule to the NDPS Act but not figuring in Schedule I of the Rules thereunder.

a. Object of the NDPS Act and the United Nations Convention on Psychotropic Substances, 1971.

39. Before we advert to the rival submissions canvassed on either side, it would be apposite to first look into the object and history behind the enactment of the NDPS Act and its Rules along with the broad scheme of the United Nations Convention on Psychotropic Substances, 1971.

40. As per its Preamble, the NDPS Act, 1985 seeks to consolidate and amend the law relating to narcotic drugs, make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances

and implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances, amongst others. This Court in *State of Rajasthan v. Uday Lal* reported in (2008) 11 SCC 408 elaborated that the NDPS Act is a special Act which has been enacted with a view to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances and stated as thus:

"10. Before analysing the same, it is relevant to mention that in order to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances, Parliament enacted the NDPS Act in the year 1985. This is a special Act and it has been enacted with a view to make stringent provisions for the control and regulation of operations relating to the narcotic drugs and psychotropic substances."

(Emphasis supplied)

41. Another decision of this Court in *Hira Singh v. Union of India* reported in (2020) 20 SCC 272 opined that while determining the "small or commercial quantity" of the narcotic drug or psychotropic substance in cases of seizure of a mixture of narcotic drugs or psychotropic substances with one or more neutral substances, the quantity of the neutral substance(s) is not to be excluded and is to be taken into consideration along with the actual content by weight of the offending drug. While declaring so, the Court also discussed the object of the NDPS Act and highlighted that the enactment was intended to be a deterrent against the use of narcotic drugs and psychotropic substances. The relevant observations are reproduced below:

"10. As per the Preamble of the NDPS Act, 1985, it is an Act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operation relating to narcotic drugs and psychotropic substances. To provide for forfeiture of the property derived from or use in illicit traffic in Narcotic Drugs and Psychotropic Substance. The Statement of Objects and Reasons and the Preamble of the NDPS Act imply that the Act is required to act as a deterrent and the provisions must be stringent enough to ensure that the same act as deterrents.

10.5. The problem of drug addicts is international and the mafia is working throughout the world. It is a crime against the society and it has to be dealt with iron hands. Use of drugs by the young people in India has increased. The drugs are being used for weakening of the nation. During the British regime control was

kept on the traffic of dangerous drugs by enforcing the Opium Act, 1857, the Opium Act, 1875 and the Dangerous Drugs Act, 1930. However, with the passage of time and the development in the field of illicit drug traffic and during abuse at national and international level, many deficiencies in the existing laws have come to notice.

Therefore, in order to remove such deficiencies and difficulties, there was urgent need for the enactment of a comprehensive legislation on narcotic drugs and psychotropic substances, which led to enactment of the NDPS Act. As observed hereinabove, the Act is a special law and has a laudable purpose to serve and is intended to combat the menace otherwise bent upon destroying the public health and national health. The guilty must be in and the innocent ones must be out. The punishment part in drug trafficking is an important one but its preventive part is more important.

Therefore, prevention of illicit traffic in the Narcotic Drugs and Psychotropic Substances Act, 1985 came to be introduced. The aim was to prevent illicit traffic rather than punish after the offence was committed. Therefore, the courts will have to safeguard the life and liberty of the innocent persons. Therefore, the provisions of the NDPS Act are required to be interpreted keeping in mind the object and purpose of the NDPS Act; impact on the society as a whole and the Act is required to be interpreted literally and not liberally which may ultimately frustrate the object, purpose and Preamble of the Act."

(Emphasis supplied)

42. There exist three Conventions (collectively referred to as the "International Drug Control Conventions") under the auspices of the United Nations which form the current normative framework for the control of narcotic drugs, psychotropic substances and precursor chemicals. They are:- The Single Convention on Narcotic Drugs, 1961; The Convention on Psychotropic Substances of 1971; and the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. India has acceded to and is therefore, a party to the abovementioned International Drug Control Convention framework.

43. The Preamble to the Convention on Psychotropic Substances, 1971 (hereinafter, the "Convention"), elucidates that the Convention was adopted keeping in mind the primary concern as regards the health and welfare of mankind along with the public health and social problems which arise as a result of abuse of certain psychotropic substances. It called for a collective and determinative action from all States to prevent and combat the abuse of such substances and the rise in illicit trade thereof.

Rigorous measures were considered necessary to restrict the use of psychotropic substances to legitimate purposes while simultaneously acknowledging that their use for medical and scientific purposes must not be unduly restricted or curtailed. The Convention is annexed with four Schedules containing controlled psychotropic substances, where arguably, Schedule I substances are the most restricted while Schedule IV substances are the least restricted.

44. Article 1(e) of the Convention defines a "psychotropic substance" as any substance, natural or synthetic, or any natural material in Schedules I, II, III or IV of the Convention. Article 4 provides that, as regards the substances other than those mentioned in Schedule I i.e., in Schedule II, II and IV respectively, the States may permit - (a) the carrying by international travellers of small quantities of lawfully obtained preparations for personal use; (b) the use of such psychotropic substances in industry for the manufacture of non-psychotropic substances or products subject to the application of control measures until the psychotropic substances come to be in such a condition that they will not be abused or recovered in practice; and (c) the use of such psychotropic substances for the capture of animals by specifically authorised persons subject to the application of control measures.

Article 5, in addition, states that the manufacture, export, import, distribution, stocking, trade, use and possession, of substances in Schedules II, III and IV respectively, must be limited to medical and scientific purposes, except for those purposes already enumerated under Article 4. Furthermore, Article 5 states that it would be desirable if States do not permit the possession of substances mentioned in Schedules II, III and IV respectively, except under legal authority.

45. As per Article 8, the manufacture of, trade in, and distribution of substances listed in Schedules II, III and IV respectively, must also be under a licence or other similar control measures, provided that the requirements of licencing or other control measures need not apply to persons who are duly authorised to perform or are performing therapeutic or scientific functions. Article 9 states that the substances in Schedules II, III and IV respectively, shall be supplied or dispensed for use by individuals only pursuant to a medical prescription except when being lawfully obtained, used, dispensed or administered in the duly authorised exercise of therapeutic or scientific functions.

46. In so far as the substances mentioned in Schedule I are concerned, Articles 4 and 7 respectively state that their use shall be prohibited except for scientific and very limited medical purposes, by duly authorized persons in medical or scientific establishments, which are either directly under the control of the government or specifically approved by them. Such persons performing medical or scientific functions must be required to maintain records concerning the acquisition of the substances and the details of their use which must be preserved

for at least two years after the last use recorded therein. States must also require that the manufacture, trade, distribution and possession of Schedule I substances be under a special licence or prior authorization and be closely supervised.

The quantity of Schedule I substances supplied to a duly authorised person must also be restricted to such level as required for his authorized purpose. The export and import of Schedule I substances shall be prohibited except when both the exporter and importer are the competent authorities or agencies of the exporting or importing country, or other persons or enterprises which are specifically authorised for that purpose. During the export and import as enumerated above, the authorities or persons specifically authorized must have export and import authorizations for the substances mentioned in Schedule I.

47. Article 11 elaborates on record-keeping and provides that-

(a) In respect of substances in Schedule I, manufacturers and all other authorised persons under Article 7 shall maintain records indicating the details of the quantity manufactured, the quantity held in stock and, for each acquisition and disposal, the details of the quantity, date, supplier and recipient;

(b) In respect of substances in Schedules II and III respectively, manufacturers, wholesale distributors, exporters and importers must keep records showing details of the quantity manufactured and, for each acquisition and disposal, details of the quantity, date, supplier and recipient;

(c) In respect of substances mentioned in Schedule II, retail distributors, institutions for hospitalization and care, and scientific institutions must keep records showing for each acquisition and disposal, details of the quantity, date, supplier and recipient;

(d) Information regarding the acquisition and disposal of substances in Schedule III by retail distributors, institutions for hospitalization and care, and scientific institutions must be made readily available through appropriate methods and by taking into account the professional and trade practices of the respective States; and

(e) In respect of substances in Schedule IV, manufacturers, exporters and importers must keep records indicating the quantity manufactured, exported and imported.

48. Article 12 elaborates on the provisions relating to international trade and states that every State permitting the export or import of substances in Schedules I or II respectively, shall require a separate import or export authorization which shall state the international non-proprietary name or the designation of the substance in the Schedule, the quantity to be exported or imported, the

pharmaceutical form, the name and address of the exporter and importer, and the period within which the export or import must be effected.

Additionally, the export authorization shall also state the number and date of the import authorization and the authority by whom it has been issued. Before an export authorization is issued, the States shall require an import authorization issued by the competent authority of the importing country or region which certifies that the importing of the substance(s) referred to therein is approved and such an authorization shall be produced by the person or establishment while applying for the export authorization.

A copy of the export authorisation is to accompany each consignment and the government issuing the export authorisation shall also send a copy to the government of the importing country or region. When the importation has been effected, the government of the importing country or region shall then return the export authorization to the government of the exporting country or region, with an endorsement certifying the amount of the substance which has actually been imported.

49. With respect to the export of substances mentioned in Schedule III, Article 12 states that exporters must draw up a declaration in triplicate, on a form, which contains information including the name and address of the exporter and importer, the international non-proprietary name or the designation of the substance in the Schedule, the quantity and the pharmaceutical form in which the substance is exported, the name of the preparation, if any, and the date of despatch. Exporters must furnish two copies of the declaration to the competent authorities of their country or region and attach the third copy to their consignment.

Thereafter, the State from whose territory a Schedule III substance has been exported, shall not later than 90 days after the date of despatch, send to the competent authorities of the importing country or region, one copy of the declaration received from the exporter by registered mail with return of receipt requested. The States may also require that after the consignment has been received, the importer shall transmit the copy of the declaration accompanying the consignment which has been duly endorsed stating the quantities received and the date of the receipt, to the competent authorities of the importing country or region.

50. On a conspectus of the aforementioned Articles of the Convention, it can be seen that the substances mentioned in Schedules I, II, III and IV respectively are subject to different treatment and restrictions on their manufacture, use, possession, import and export, amongst others. While Schedule I substances are to be used for limited purposes by the authorized persons under a special licence

or prior authorization, the substances mentioned under Schedule II, III and IV respectively, are used for a comparatively wider range of purposes by the licence holders and its supply is allowed to be made pursuant to a medical prescription.

Therefore, it cannot be stated that the substances other than the Schedule I substances are completely unregulated or allowed to be dealt with in any manner whatsoever. These substances also have the potential to be misused or abused and hence are subject to certain restrictions and procedural requirements albeit not up to the standards as strict as the Schedule I substances.

51. On a closer look at the substances mentioned in the Schedules to the Convention, it is evident that Buprenorphine and its salt Buprenorphine Hydrochloride is listed under Schedule III. Therefore, according to the scheme of the Convention, the manufacture, distribution, stocking, and possession of Buprenorphine and its salt Buprenorphine Hydrochloride shall be limited to medical and scientific purposes in addition to the limited purposes as provided in Article 4. The Convention casts a mandate upon States that the manufacture of, trade in and distribution of Buprenorphine and its salt Buprenorphine Hydrochloride be under a licence or other similar control measure. The only exception being that such a licence or other control measure need not necessarily apply to persons who are duly authorised to perform therapeutic or scientific functions.

b. Relevant Statutory Provisions of the NDPS Act and its Rules

52. Section 2(xxiii) of the NDPS Act defines a "Psychotropic substance" as - "any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule" A bare reading of the definition would indicate that all items listed in the Schedule to the Act along with its salts and preparations come within the purview of a "psychotropic substance" under the NDPS Act.

53. Section 8 of the NDPS Act prohibits certain operations and reads as thus:

8. Prohibition of certain operations.- No person shall -

(a) cultivate any coca plant or gather any portion of coca plant; or

(b) cultivate the opium poppy or any cannabis plant; or

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the

provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation:

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.

(Emphasis supplied)

54. The mandate under Section 8 is that no person shall produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship (hereinafter collectively referred to as "deal in/dealing in") any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder.

In a case where any such provision imposes any requirement by way of licence, permit or authorisation, the narcotic drugs and psychotropic substances must also be dealt in accordance with the terms and conditions of such licence, permit or authorisation. The term "psychotropic substance" mentioned in Section 8 must be seen in light of Section 2(xxiii) which refers to the Schedule to the Act and all the psychotropic substances mentioned therein. Additionally, to bring a case within the exception carved out under Section 8, each of the conditions specified therein must be satisfied.

In other words, for the accused to take the plea that his dealing in the narcotic drug or psychotropic substance does not constitute an offence under Section 8, it must be proved that the drug or substance was being dealt with (a) for medical or scientific purposes AND; (b) in the manner and to the extent provided by the provisions of the NDPS Act or the NDPS Rules or the orders made thereunder AND; (c) in accordance with the terms and conditions of the licence, permit or authorisation, if any.

55. It is just not enough to prove or establish that the narcotic drug or psychotropic substance is capable of being used for a medical or scientific

purpose. That would give unnecessary leeway to persons to indiscriminately deal with narcotic drugs and psychotropic substances under the garb that they could also be potentially used for medical or scientific purposes. Moreover, several of these drugs and substances are inherently of such a nature that they have widespread medicinal and scientific applications.

Therefore, an expansive interpretation of the exception that the mere potential for usage of the narcotic drug or psychotropic substance, for medical or scientific purpose, is sufficient would run counter to the object of the Act which seeks to act as a deterrent to the widespread dealing in narcotic drugs and psychotropic substances. What must, therefore, be proved to take the benefit of the exception is that the narcotic drug or psychotropic substances was being dealt in for a specified and real medical or scientific purpose, in the manner and to the extent provided by the provisions of the Act, the rules and orders made thereunder and, in case such provisions impose any requirement by way of licence, permit or authorisation, in accordance with the terms and conditions of such licence, permit or authorisation.

56. Therefore, if any psychotropic substance mentioned in the Schedule to the Act is being dealt with for a purpose other than medical or scientific purposes, an offence under Section 8(c) of the NDPS Act would be made out. Furthermore, if any psychotropic substance mentioned in the Schedule to the Act is being dealt with for a medical or scientific purpose, but not in accordance with other provisions of the Act, rules, orders or, the terms and conditions of the licence, permit or authorisations, if any, then also, an offence under Section 8(c) of the NDPS Act could be said to have been made out. It is only when the exception is complied with entirely or wholly, that an accused can lay claim to the benefit provided under the said provision.

57. Section 9 of the NDPS Act empowers the Central Government to permit and regulate certain activities subject to the provisions of Section 8. The same reads thus:

"9. Power of Central Government to permit, control and regulate.-

(1) Subject to the provisions of section 8, the Central Government may, by rules-

(a) permit and regulate-

(vi) the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances;

(vii) the import into India and export from India and transshipment of narcotic drugs and psychotropic substances;

(b) prescribe any other matter requisite to render effective the control of the Central Government over any of the matters specified in clause (a).

(2) In particular and without prejudice to the generality of the foregoing power, such rules may-

(i) prescribe the forms and conditions of licences or permits for the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances, the authorities by which such licences or permits may be granted and the fees that may be charged therefor;

(j) prescribe the ports and other places at which any kind of narcotic drugs or psychotropic substances may be imported into India or exported from India or transhipped; the forms and conditions of certificates, authorisations or permits, as the case may be, for such import, export or transshipment; the authorities by which such certificates, authorisations or permits may be granted and the fees that may be charged therefor."

58. Section 76 of the NDPS Act also empowers the Central Government to make rules for carrying out the purposes of the NDPS Act and reads thus:

"76. Power of Central Government to make rules.-

(1) Subject to the other provisions of this Act, the Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(e) the conditions and the manner in which narcotic drugs and psychotropic substances may be supplied for medical necessity to the addicts registered with the Central Government and to others under sub-section (1) of section 71;

(h) any other matter which is to be, or may be, prescribed."

59. The NDPS Rules, 1985, have been brought into being by the Central Government in exercise of its powers under Sections 9 and 76 of the NDPS Act, respectively referred to above. However, what must necessarily be kept in mind is that the power conferred upon the Central Government under Sections 9 and 76 of the NDPS Act, respectively, is subject to Section 8 and this is evident by the use of the phrase "subject to the provisions of Section 8" and "subject to the other provisions of the Act" in both the provisions. Therefore, the NDPS rules must not be understood as laying down standards different from or inconsistent with the substantive provisions of the NDPS Act, especially Section 8 and the Schedule to

the NDPS Act. The underlying object of the NDPS rules is to "permit and regulate" certain activities for carrying out the purposes of the NDPS Act and not to "prohibit" those activities.

60. Rule 2(k) of the NDPS Rules, 1985, states that - "words and expressions used herein and not defined, but defined in the Act shall have the meanings respectively assigned to them in the Act.". Therefore, any reference to "psychotropic substances" under the NDPS Rules must relate to the definition provided under Section 2(xxiii) of the NDPS Act, which consists of the entire list of psychotropic substances enumerated under the Schedule to the Act. Chapter VI of the NDPS rules relate to the import, export and transshipment of narcotic drugs and psychotropic substances and Chapter VII deals with the manufacture, sale, purchase, consumption, use, possession and transport of psychotropic substances.

Chapter VIIA details certain special provisions regarding the manufacture, possession, transport, import-export, purchase and consumption of narcotic drugs and psychotropic substances for medical, scientific and training purposes. It would be apposite to mention at this stage that the NDPS rules have undergone some significant changes over the years. However, our inquiry would be limited to the version of the NDPS Rules as it existed during the time the offence is alleged to have been committed in the present case i.e., as on 27.09.2003.

61. Chapters VI and VII respectively, contain Rules 53 to 63 and 64 to 67 respectively. Under Chapter VI, Rule 53 provides for a general prohibition and states that subject to the other provisions of this Chapter, the import into and export out of India of the narcotic drugs and psychotropic substances specified in "Schedule I appended to the Rules" is prohibited. However, an exception to this general rule was carved out under its first proviso by stating that nothing in this rule shall apply in case "the drug substance" is imported into or exported out of India subject to an import certificate or export authorisation issued under the provision of this Chapter and for the purpose mentioned under Chapter VIIA.

The expression "the drug substance" mentioned in the proviso must naturally be read to mean a "Schedule I substance" since the language of Rule 53 is phrased such that it alludes to a Schedule I substance only. Therefore, in short, the import and export of narcotic drugs and psychotropic substances specifically mentioned under Schedule I of the Rules is generally disallowed provided that person may import and export them, with a valid import certificate or export authorisation, for the limited purposes mentioned under Chapter VIIA.

62. Rule 55 on the 'Application for an Import Certificate' provides that, subject to Rule 53 as enumerated above, no narcotic drug or psychotropic substance specified in the "Schedule of the Act" shall be imported into India without an import certificate, in respect of the consignment, issued by the issuing authority,

as per the form appended to the Rules. Rule 57 on 'Transit' states that subject to the provisions of Section 79 of the NDPS Act and Rule 53, no consignment of any narcotic drug or psychotropic substance specified in the "Schedule of the Act" shall be allowed to be transited through India unless such consignment is accompanied by a valid export authorisation in this behalf issued by the Government of the exporting country.

Rule 58 relating to the 'Application for Export Authorisation' provides that, subject to Rules 53 and 53A, no narcotic drugs or psychotropic substances specified in the "Schedule of the Act" shall be exported out of India without an export authorisation in respect of the consignment, issued by the issuing authority in the requisite form appended to the Rules. Rule 60 relating to 'Transshipment' provides that, subject to the provisions of Section 79 of the NDPS Act and Rule 53, no consignment of narcotic drug or psychotropic substance specified in the "Schedule to the Act" shall be allowed to be transhipped at any port in India save with the permission of the Collector of Customs. Rule 61 on the 'Procedure for Transshipment' states that while allowing any consignment of narcotic drug or psychotropic substance specified in the "Schedule to the Act" to be transhipped, the Collector of Customs shall inter alia satisfy himself that the consignment is accompanied by a valid export authorisation issued by the exporting country.

63. What is discernible from the aforementioned rules under Chapter VI is that the import into and export out of India of all psychotropic substances (as listed in the Schedule to the Act) must be accompanied by a valid import certificate and export authorisation issued by the issuing authority in India. As regards the transit and transshipment of any psychotropic substance (as listed in the Schedule to the Act) in India, a valid export authorisation issued by the exporting country is a requisite.

On the other hand, what Rule 53 seeks to achieve is to restrict the import and export of substances enumerated in Schedule I of the Rules to a pre-determined set of purposes as explained under Chapter VIIA, despite having obtained an import certificate or export authorisation under the other rules of this Chapter. This provision i.e., Rule 53 relating to the Schedule I substances must not be flouted and this is especially evident through the phrase "subject to Rule 53" featuring in almost every rule under this Chapter.

It is therefore, clear that, as far as import or export is concerned, the substances mentioned in Schedule I appended to the Rules are more strictly regulated or restricted in comparison to the larger list of psychotropic substances mentioned in the Schedule to the Act. However, this is not to say that the psychotropic substances mentioned only in the Schedule to the Act are unregulated. Furthermore, it also cannot be said that the substances mentioned in Schedule I of the NDPS Rules are absolutely prohibited from being imported or exported as per

Section 8 of the NDPS Act since they are clearly allowed to be validly imported and exported for the limited purposes enumerated under Chapter VIIA.

64. Under Chapter VII, Rule 64 on 'General Prohibition' states that no person shall manufacture, possess, transport, import inter-State, export inter-State, sell, purchase, consume or use any of the "psychotropic substances specified under Schedule I" of the Rules. Rule 65 relating to the 'Manufacture of psychotropic substances', under sub-rule (1), provides that, subject to the provisions of subrule (2), the manufacture of any of the psychotropic substances other than those specified in Schedule I (i.e., those mentioned only under the Schedule to the Act) shall be in accordance with the conditions of a licence granted under the Drugs and Cosmetics Rules, 1945 framed under the Drugs and Cosmetics Act, 1940, by an authority in charge of Drugs Control in a State appointed by the State Government in this behalf.

Sub-rule (2) states that the authority in charge of drugs control in a State/the Licensing Authority shall consult the Drugs Controller (India) with regard to the assessed annual requirements of each of the psychotropic substance (which has been referred to in sub-rule (1) i.e., the substances mentioned only under the Schedule to the Act) in bulk form in the country and after taking into account the requirement of such psychotropic substances in the State, as also the quantity of such substance required for supply to other manufacturers outside the State and the quantity of such substance required for reasonable inventory to be held by a manufacturer, the authority in charge of drugs control in a State/the Licensing Authority shall specify, by order, a limit to the quantity of such substance which may be manufactured by the manufacturer in the State.

Sub-rule (3) provides that the specific quantity which may be manufactured by a specific licensee in a year shall be intimated by the Licensing Authority to the licensee at the time of issuing the licence. Then, there are two provisos to Rule 65 sub-rule (3) which were inserted vide notification dated 25th June, 1997 w.e.f 27.06.1997.

Through the first proviso, an exception has been carved out under the Rule by stating that nothing contained in this rule shall apply in case the "psychotropic substances specified in Schedule I" are manufactured, possessed, transported, imported inter-State, exported inter-State, sold, purchased, consumed or used subject to other provisions of this Chapter which apply to psychotropic substances which are not included in Schedule I and for the purposes mentioned in Chapter VIIA. The second proviso contemplates that the authority in charge of drugs control in a State shall consult the Narcotics Commissioner before issuing a licence under Rule 65 in respect of psychotropic substances included in "Schedule I appended to the Rules" and Schedule III appended to the Rules as well.

65. What can be discerned from the Rules 64 and 65 respectively, elaborated hereinabove is that: First, the manufacture of all psychotropic substances (as listed in the Schedule to the Act) must be in accordance with the conditions prescribed in the licence granted under the D&C Rules and the permissible quantity to be manufactured would be intimated to the licensee at the time the licence is issued. Notwithstanding the prohibition to deal in psychotropic substances contained in Section 8(c) of the NDPS Act, the manufacture thereof is permitted subject to compliance with the D&C Act and its Rules. Secondly, there is a general rule absolutely prohibiting the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of any of the psychotropic substances which find mention in Schedule I appended to the Rules.

However, the above activities can be done vis-à-vis the substances mentioned in Schedule I appended to the Rules if their manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use is in accordance with other provisions of the Chapter which generally apply to all psychotropic substances (as listed in the Schedule to the Act) and for the limited purposes mentioned under Chapter VIIA. In other words, Schedule I substances can also be dealt in, in due compliance with the rules applicable generally to all the psychotropic substances but specifically only for the purposes mentioned under Chapter VIIA. However, while issuing a licence of manufacture with respect to the Schedule I substances, the Licensing Authority shall consult the Narcotics Commissioner.

Therefore, Rules 64 and 65 respectively, permit the manufacture of psychotropic substances mentioned under Schedule I of the Rules however subject to certain provisions and purposes. This can be culled out from a holistic reading of Rules 64 and 65 respectively, and the two provisos which follow Rule 65(3). Thirdly, the manufacture of all psychotropic substances (as listed in the Schedule to the Act), and those mentioned under Schedule I of the Rules specifically for the purposes elaborated under Chapter VIIA, in violation of the conditions of licence of manufacture issued under the D&C Act would amount to a contravention of Rule 65 of the NDPS Rules and thereby Section 8 of the NDPS Act itself.

Therefore, when such a contravention of the conditions of licence occurs, it cannot be said that an offence under the NDPS Act would not be made out and that the contravention would be solely covered by the D&C regime. Due to the operation of Rule 65, violation of any of the conditions of licence under the D&C Act read with its Rules would ipso facto tantamount to a violation of the NDPS Act read with its Rules as well.

66. Rule 66 on 'Possession etc. of psychotropic substances' states that no person shall possess any psychotropic substance (as listed in the Schedule to the Act) for

any of the purposes covered by the D&C Rules, unless he is lawfully authorised to possess such substance for any of the said purposes under these rules. Therefore, what is being conveyed herein is that as far as substances mentioned under Schedule I are concerned, they can be possessed only for the purposes mentioned under Chapter VIIA, and as far as the other substances not being Schedule I substances but which are listed in the Schedule to the Act are concerned, they can be possessed for the purposes mentioned under Chapter VIIA and also for other purposes which necessarily fall under the broader considerations of medical or scientific purposes as mentioned under Section 8 of the NDPS Act.

This compliance is in addition to the accused persons possessing the said substances in accordance with the purposes elaborated under the D&C Rules and the requirements thereunder. Sub-rule (2), however, allows any research institution or a hospital or a dispensary maintained or supported by the Government or local body or by charity or voluntary subscription, which is not normally authorised to possess the psychotropic substances under the D&C Rules, or any person who is not so authorised under the D&C Rules, to possess a reasonable quantity of such substance as may be necessary for their genuine scientific or medical requirements or both, for such period as is deemed necessary by the said research institution or hospital or dispensary or person, as the case may be.

In case, of an individual person, possessing the substance for his personal medical use, the quantity shall not exceed one 100 dosage units at a time. The research institution, hospital and dispensary referred to herein shall maintain proper accounts and records in relation to the purchase and consumption of the psychotropic substance in their possession.

67. Rule 67 on 'Transport of psychotropic substance' provides that, subject to the provisions of Rule 64, no consignment of psychotropic substance shall be transported, imported inter-State or exported inter-State unless such a consignment is accompanied by a consignment note appended to the Rules and in the manner provided under the Rules. The consignor and consignee must keep the consignment note for a period of two years and the said note may be inspected at any time by an officer authorised in this behalf by the Central Government. This Rule would again apply to all psychotropic substances (as mentioned under the Schedule to the Act).

68. At this stage, it may be observed that it was vide a notification dated 25th June, 1997 that Chapter VIIA containing Rule 67A came to be inserted in the NDPS Rules. Chapter VIIA states that, notwithstanding anything contained in the foregoing provisions of these Rules, a narcotic drug or psychotropic substance may be used for - (i) scientific requirements including analytical requirements of

any Government laboratory or any research institution in India or abroad; or (ii) very limited medical requirements of a foreigner by a duly authorised person of a hospital or any other establishment of the Government especially approved by that foreign Government; or (iii) the purpose of de-addiction of drug addicts by the Government or local body or by an approved charity or voluntary organisation or by such other institution as may be approved by the Central Government.

The persons performing medical or scientific functions as mentioned hereinabove shall maintain records concerning the acquisition of the substance and the details of their use in Form 7 of these rules and such records are to be preserved for at least two years. Furthermore, a narcotic drug or psychotropic substance may be supplied or dispensed for use to a foreigner pursuant to a medical prescription only from authorised licensed pharmacists or other authorised retail distributors designated by authorities responsible for public health.

69. Upon a meticulous analysis of the NDPS rules relating to psychotropic substances and analysing the purposes for which they are to be dealt in, along with the requirements and procedures to be complied with for each kind of dealing in the psychotropic substances, an underlying idea resonates throughout these rules i.e., that any dealing in the psychotropic substances mentioned under Schedule I of the Rules must strictly be in accordance with the NDPS Rules AND ONLY for the purposes enumerated under Chapter VIIA of the NDPS Rules. The substances not finding a mention under Schedule I of the Rules but listed in the Schedule to the Act must also meet with the requirements cast upon by the NDPS Rules.

The difference as regards these substances however is that while they may be dealt with for the purposes enumerated under Chapter VIIA of the NDPS Rules, they can also be dealt with for other purposes, provided that those purposes strictly fall under the larger umbrella of "medical or scientific purposes" as provided for in Section 8 of the NDPS Act. Whether the accused has dealt with it within the confines of the expression "medical or scientific purposes" must obviously be determined on the facts and circumstances of each case. It can therefore be said that the substances under Schedule I to the Rules are more strictly restricted compared to the remaining psychotropic substances under the Schedule to the Act which are restricted more moderately in comparison.

On this aspect, our scheme is more or less similar to the scheme of the Convention on Psychotropic substances, 1971. The different levels in restriction could be seen as the primary reason behind providing two different schedules, i.e., one under the Act and another under the Rules. Moreover, the Schedule to the Act can be considered as a superset of all psychotropic substances wherein

those substances mentioned under Schedule I of the Rules form a small, more restricted subset of the larger superset.

c. Analysing the treatment of substances mentioned in the Schedule to the Act and not in Schedule I of the Rules by previous decisions of this Court.

70. It is evident from the decision of this Court in *Hussain v. State of Kerala* reported in (2000) 8 SCC 139 that "Buprenorphine" being listed under the Schedule to the NDPS Act and not under Schedule I of the NDPS Rules, would be a psychotropic substance under the NDPS regime, to which Section 8 of the NDPS Act would apply. The appellant therein was found in possession of 6 ampoules of "Buprenorphine tidigesic" each containing 2ml. The defence that he put forth to justify his possession was that he was regularly using it under medical advice with a valid prescription.

Despite such defence put forward by the appellant, the Trial Court convicted him under Section 21 of the NDPS Act which relates to the contravention of the law in respect of "manufactured drugs and preparations" since the District Medical Officer had opined that "Buprenorphine tidigesic" is a manufactured drug. He was sentenced to undergo rigorous imprisonment for a period of 10 years along with payment of fine. On appeal, the High Court affirmed the conviction and sentence. However, this Court opined that the prosecution had, first, failed to prove that the substance in question was a 'manufactured drug' falling within the definition given under Section 2(xi) of the NDPS Act.

Instead, it was observed that "Buprenorphine" is a substance listed under Item 92 of the Schedule to the Act and is therefore, a psychotropic substance. Secondly, this Court proceeded to examine whether the possession of the said substance would constitute an offence under Section 8 of the NDPS Act. Upon examining Rule 66 of the NDPS Rules, it was held that a person is permitted to keep in his possession, for his personal medical use, a psychotropic substance up to 100 dosage units at a time and the 6 ampoules possessed by the appellant therein could not be said to exceed the said limit of 100 dosage units. It was declared that, in such circumstances, the conviction and sentence imposed on the appellant was without the sanction of law and as a consequence, the judgment of the High Court as well as the Sessions Court was set aside. The relevant observations made by this Court are reproduced hereinbelow:

"7. It is unnecessary for us to consider whether the said substance is a narcotic drug as defined in the Act, for, it is easily discernible from Item 92 of the Schedule to the Act (which is a list of psychotropic substances) that "Buprenorphine" is a psychotropic substance. We may point out that the aforesaid Item 92 had been added to the list of psychotropic substances by the notification dated 26-10-1992. The offence in this case is alleged to have been

committed on 25-6-1994. We have therefore, no doubt that the substance recovered from the appellant is a psychotropic substance.

8. If it was "psychotropic substance" possession of the same would amount to an offence only if it was in contravention of Section 8 of the Act. That section shows that no person shall possess any psychotropic substance except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the Rules or orders made thereunder.

9. Section 9 of the Act empowers the Central Government to permit, control and regulate the cultivation, production, possession etc. of psychotropic substances. Rules have been formulated by the Central Government under that power. Rule 66 falling under Chapter VII of the Rules is important and hence the same is extracted below:

"66. Possession, etc., of psychotropic substances.-

(1) No person shall possess any psychotropic substance for any of the purposes covered by the 1945 Rules, unless he is lawfully authorised to possess such substance for any of the said purposes under these Rules.

(2) Notwithstanding anything contained in sub-rule (1), any research institution, or a hospital or dispensary maintained or supported by Government or local body or by charity or voluntary subscription, which is not authorised to possess any psychotropic substance under the 1945 Rules, or any person who is not so authorised under the 1945 Rules, may possess a reasonable quantity of such substance as may be necessary for their genuine scientific requirements or genuine medical requirements, or both for such period as is deemed necessary by the said research institution or, as the case may be, the said hospital or dispensary or person:

Provided that where such psychotropic substance is in possession of an individual for his personal medical use the quantity thereof shall not exceed one hundred dosage units at a time.

(3) The research institution, hospital and dispensary referred to in sub-rule (2) shall maintain proper accounts and records in relation to the purchase and consumption of the psychotropic substance in their possession."

10. The proviso to sub-rule (2) is very evident that a person is permitted to keep in his possession for his personal medical use the psychotropic substance up to one hundred dosage at a time.

11. We are not disposed to think that 6 ampoules would cross the above limit and there is no attempt made either through DW 1 (Doctor) or through Court Witness 1 (DMO) that 100 dosage would be below the 6 ampoules recovered from him.

12. It is unfortunate that the aforesaid points have not been put forward before the trial court or the High Court. We feel that the conviction and sentence imposed on this appellant were without the sanction of law. The appellant is unlawfully deprived of his personal liberty for such a long period of 5 years on account of overlooking the aforesaid facts and the legal position.

13. We, therefore, allow this appeal and quash the judgment of the High Court as well as the Sessions Court. We acquit the appellant and direct him to be set at liberty forthwith. In this case, we are not considering the question of awarding compensation to the appellant but he is free to resort to his remedies under law for that purpose."

(Emphasis supplied)

71. Therefore, the dictum as laid in Hussain (supra) is that "Buprenorphine tidigesic" is a psychotropic substance to which the rigours of Section 8 of the NDPS Act and Rule 66 of the NDPS Rules would apply, however, as the accused was found to be in possession of less than 100 dosage units of the substance, with a valid medical prescription, for his personal medical use, he was held to have not committed an offence under Section 8 of the NDPS Act as there was no violation of Rule 66.

72. In yet another decision of this Court in Ouseph alias Thankachan v. State of Kerala reported in (2004) 4 SCC 446, it was declared that "Buprenorphine" is a psychotropic substance and if an accused is found in possession of the same, his case would have to be examined through the rigours of Sections 8 and 22 of the NDPS Act read with Rule 66 of the NDPS Rules respectively. The appellant therein was found to be in possession of 110 ampoules of Buprenorphine.

He stood convicted under Section 22 of the NDPS Act and was sentenced to ten years of rigorous imprisonment along with fine. The High Court dismissed the appeal challenging the order of conviction and sentence. This Court considered the alternate argument canvassed under Section 27 of the NDPS Act which provides that whoever, in contravention of any provision of this Act, possesses any psychotropic substance, "which is proved to have been intended for his personal consumption and not for sale or distribution" shall be punishable for a term which may extend to 6 months or fine or both.

To consider the applicability of the aforesaid provision, it had to be determined whether the substance was in a "small quantity" and if so, whether it was intended for personal consumption. Answering both the questions in the

affirmative, it was held that the offence proved to have been committed by the appellant would fall under Section 27 of the Act and accordingly, the conviction of the appellant therein was altered. The relevant observations made by this Court are reproduced as thus:

"5. Though the investigating agency thought that the article recovered from the appellant was a narcotic substance, it is in fact a psychotropic substance. This is clearly discernible from Item 92 of the Schedule of the NDPS Act. If it is a psychotropic substance, possession of it would become an offence only if it was in contravention of the Rules prescribed. Under Rule 66 of the Narcotic Drugs and Psychotropic Substances Rules, 1985 any person may possess a reasonable quantity of psychotropic substance "as may be necessary for their genuine scientific requirements or genuine medical requirements". This is subject to the limitation contained in the proviso that he is in possession of the said substance for his personal medical use, the quantity thereof shall not exceed one hundred dosage units at a time.

6. Some arguments have been advanced before us to show that in the absence of any quantification of a dosage 110 ampoules recovered from the appellant cannot be held to be in excess of the aforesaid limit indicated in Rule 66. We would have certainly considered the said arguments seriously if the appellant had thought it fit to adopt such a line of defence in the trial court or before the High Court. Unfortunately, it has not been done.

7. In any case we are inclined to consider another argument advanced before us by the learned counsel for the appellant based on Section 27 of the NDPS Act. It says that whoever, in contravention of any provision of this Act, possesses any psychotropic substance, "which is proved to have been intended for his personal consumption and not for sale or distribution" shall be punishable for a term which may extend to six months or with fine or with both [unless the substance is not one falling under clause (a) of Section 27].

8. The question to be considered by us is whether the psychotropic substance was in a small quantity and if so, whether it was intended for personal consumption. The words "small quantity" have been specified by the Central Government by the notification dated 23-7-1996. Learned counsel for the State has brought to our notice that as per the said notification small quantity has been specified as 1 gram. If so, the quantity recovered from the appellant is far below the limit of small quantity specified in the notification issued by the Central Government. It is admitted that each ampoule contained only 2 ml and each ml contains only .3 mg. This means the total quantity found in the possession of the appellant was only 66 mg. This is less than 1/10th of the limit of small quantity specified under the notification.

9. Then the next question is whether this substance was possessed by him for personal consumption. As the accused had adopted a defence of repudiating the allegation against him, it may look that he cannot rely upon the alternative contention that it was possessed by him for personal consumption. It is too harsh to deny the accused-appellant a right to resort to the alternative contention. Merely because on legal advice, he has chosen one line of defence he cannot be precluded from reaching other defence available to him, particularly since the consequences visiting him are very serious. If the fact situation is sufficient for the court to satisfy that the small quantity in his possession was for personal consumption, he should not be denied the benefit of Section 27 of the NDPS Act.

10. In the aforesaid context we notice a significant factual aspect that along with the small quantity of psychotropic substance recovered, two syringes were also recovered from him by the police. That aspect reflects that he only wanted to use buprenorphine (Tidigesic) for his personal consumption and not for trading purposes. The burden on the accused in this respect need not be discharged in the (sic this) manner and the prosecution is to prove the case beyond a reasonable doubt. It is enough that he satisfies the judicial mind by a preponderance of probability.

11. On account of the aforesaid fact situation, we are inclined to believe that the small quantity of buprenorphine (Tidigesic) was in the possession of the appellant for his personal consumption and, therefore, the offence committed by him would fall under Section 27 of the NDPS Act.

12. We, therefore, alter the conviction of the appellant to Section 27 of the Act. We sentence him to the maximum provided under Section 27(b) of the NDPS Act, which is imprisonment for six months. He is already in jail for nearly six years by now. It is not necessary for us to say that he has been in jail far beyond the sentence imposed by us. We, therefore, direct the jail authorities to release him from jail forthwith unless required in any other case. The appeal is disposed of in the abovesaid terms."

(Emphasis supplied)

73. In *Ravindran alias John and Anr. v. Superintendent of Customs* reported in (2007) 6 SCC 410 the two appellants along with one another accused named Hiralal were convicted for the offence under Section 8(c) read with Sections 22 and 29 of the NDPS Act respectively and were sentenced to undergo rigorous imprisonment for 10 years along with fine, in relation to the possession, transport and sale of diazepam (which is also a substance listed under the Schedule to the Act and not in Schedule I of the Rules) weighing 1.53 kgs.

On appeal, the High Court affirmed the conviction of the appellants but acquitted Hiralal against whom it found no satisfactory evidence to prove the charges. While dismissing the appeal so far as one of the accused was concerned and allowing the appeal against conviction of the other, this Court observed that Section 8 along with Section 22(c) of the NDPS Act would be attracted even while the substance in question was Diazepam which is listed as Sl. No. 43 under the Schedule to the NDPS Act and absent in Schedule I of the NDPS Rules. The relevant observations are as thus:

"15. It was lastly urged that though the Chemical Analyst had reported the presence of diazepam, he had not given particulars as to the proportion in which its components were found. Counsel for the appellant placing reliance on the judgment of this Court reported in *Amarsingh Ramjibhai Barot v. State of Gujarat* [(2005) 7 SCC 550 : 2005 SCC (Cri) 1704] submitted that this may have a bearing on the question of sentence. In the instant case, we are concerned with diazepam. According to the notification 20 grams of diazepam is considered to be small quantity. Any quantity in excess of 500 grams is commercial quantity. In the instant case 1.528 kilograms of diazepam was found. In these facts the case is clearly covered by Section 22(c) of the Act. We, therefore, find no merit in any of the submissions urged on behalf of the appellant Ravindran. His appeal fails and is, therefore, dismissed."

(Emphasis supplied)

74. In *Rajesh Kumar Gupta* (supra) this Court considered the plea of the State to cancel the bail granted to the accused therein. In the said case, the premises of the two clinics run by the respondent claiming to be a Ayurvedacharya was raided. In the search, 70kg of pure Phenobarbitone was recovered and seized. It was further found out that huge quantities of Phenobarbitone was being sold to the patients in both his clinics over a period of several years.

Therefore, the respondent was charged under Section 8 read with Section 22 of the NDPS Act. While the Special Judge had refused to grant bail, the High Court allowed the bail application and released the accused on bail. Agreeing with the High Court, this Court held that prima facie the provisions of the Act were not found to be applicable in a case wherein the psychotropic substance in question was only mentioned under the Schedule to the NDPS Act and not under Schedule I of the NDPS Rules.

75. While declining to interfere with the grant of bail, this Court in *Rajesh Kumar Gupta* (supra) expounded the law on several aspects:

i. First, that the use of the psychotropic substance or contraband for medical or scientific purposes is excluded from the purview of operation of Section 8 of the

NDPS Act. However, that such dealing in the substance for medical or scientific purposes must also be in the manner and to the extent provided by the provisions of the NDPS Act or rules or orders made thereunder. The exception contained in Section 8 of the NDPS Act must be judged on the touchstone of whether the drugs are used for medicinal or scientific purposes and whether they come within the purview of the regulatory provisions contained in Chapters VI and VII of the NDPS Rules.

Therefore, in the facts and circumstances of the case, once the drugs are said to be used for medicinal purposes and found to be beyond the pale of the rules contained in Chapters VI and VII of the NDPS Rules (owing to the substance in question not figuring in Schedule I of the Rules), the exception contained under Section 8 would kick in and no offence could be said to have been made out. The relevant observations are reproduced hereinbelow:

"18. Chapter III of the 1985 Act, however, provides for prohibition, control and regulation. Section 8 provides for prohibition of certain operations in terms whereof no person shall make any cultivation of the plants mentioned in clauses (a) and (b) thereof or, inter alia, produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance.

The said provision contains an exception which takes within its fold all the classes of cases preceding thereto. Use of the contraband for medical or scientific purposes is, therefore, excluded from the purview of the operation thereof. However, such exception carved out under the 1985 Act specifically refers to the manner and to the extent provided by the provisions of the 1985 Act or the rules or orders made thereunder.

19. It has not been brought to our notice that the 1985 Act provides for the manner and extent of possession of the contraband. The rules framed under Section 9 of the 1985 Act read with Section 76 thereof, however, provide for both the manner and the extent, inter alia, of production, manufacture, possession, sale, purchase, transport, etc. of the contraband."

21. The respondent admittedly possesses an Ayurveda Shastri degree. It is stated that by reason of a notification issued by the State of Uttar Pradesh dated 24-2-2003, the practitioners of ayurvedic system of medicines are authorised to prescribe allopathic medicines also. The respondent runs a clinic commonly known as "Neeraj Clinic". He is said to be assisted by eight other medical practitioners being allopathic and ayurvedic doctors. It is also not in dispute that only seven medicines were seized and they are mentioned in Schedules G and H of the Drugs and Cosmetics Rules.

23. In view of the fact that all the drugs, Items 1, 2, 3, 4, 6 and 7 being allopathic drugs mentioned in Schedules G and H of the Drugs and Cosmetics Rules indisputably are used for medicinal purposes. Once the drugs are said to be used for medicinal purposes, it cannot be denied that they are acknowledged to be the drugs which would come within the purview of description of the expression "medicinal purposes".

24. The exceptions contained in Section 8 of the 1985 Act must be judged on the touchstone of:

(i) whether drugs are used for medicinal purposes;

(ii) whether they come within the purview of the regulatory provisions contained in Chapters VI and VII of the 1985 Rules.

(Emphasis supplied)

ii. Secondly, it was held that Rules 53 and 64 of the NDPS Rules respectively, contain a genus and the other provisions following the same under the said Chapter are species thereof. Both the rules were said to contain a general prohibition as regard the narcotic drugs and psychotropic substances specified in Schedule I of the NDPS Rules. Therefore, the reference to "psychotropic substances" in the other rules following in Chapters VI and VII of the NDPS Rules respectively were also said to be construed as a reference to the Schedule I psychotropic substances under the NDPS Rules and not the larger list of substances mentioned in the Schedule to the Act itself. Hence, if the said psychotropic substances do not find a place in Schedule I appended to the NDPS Rules, the provisions of Section 8 of the NDPS Act would have no application whatsoever. The relevant observations are reproduced hereinbelow:

19. Chapter VI of the 1985 Rules provides for import, export and trans-shipment of narcotic drugs and psychotropic substances. Rule 53 contains general prohibition in terms whereof the import and export out of India of the narcotic drugs and psychotropic substances specified in Schedule I appended thereto is prohibited. Such prohibition, however, is subject to the other provisions of the said Chapter. Rule 63 to which our attention has been drawn specifically prohibits import and export of consignments through a post office box but keeping in view the general prohibition contained in Rule 53 the same must be held to apply only to those drugs and psychotropic substances which are mentioned in Schedule I of the Rules and not under the 1985 Act.

Similarly, Chapter VII provides for psychotropic substances. Rule 64 provides for general prohibition. Rules 53 and 64, thus, contain a genus and other provisions following the same under the said Chapter are species thereof. This we say in view of the fact that whereas Rule 64 provides for general prohibition in

respect of sale, purchase, consumption or use of the psychotropic substances specified in Schedule I, Rule 65 prohibits manufacture of psychotropic substances, whereas Rule 66 prohibits possession, etc. of psychotropic substances and Rule 67 prohibits transport thereof. Rule 67-A provides for special provisions for medical and scientific purposes.

20. The general prohibitions contained in both Rules 53 and 64, therefore, refer only to the drugs and psychotropic substances specified in Schedule I. It is neither in doubt nor in dispute that whereas the Schedule appended to the 1985 Act contains the names of a large number of psychotropic substances, Schedule I of the Rules prescribes only 35 drugs and psychotropic substances.

22. It is not in dispute that the medicines seized from the said clinic come within the purview of Schedules G and H of the Drugs and Cosmetics Rules. It is furthermore not in dispute that the medicines Epilan C. Phenobarbitone and Chlordiazepoxide are mentioned in Entries 69 and 36 of the 1985 Act respectively, whereas none of them finds place in Schedule I appended to the 1985 Rules. If the said drugs do not find place in Schedule I appended to the Rules, the provisions of Section 8 of the 1985 Act would have no application whatsoever. Section 8 of the 1985 Act contains a prohibitory clause, violation whereof leads to penal offences thereunder.

(Emphasis supplied)

76. In *Sanjay Kumar Kedia v. Narcotics Control Bureau and Another* reported in (2008) 2 SCC 294, this Court was faced with deciding, yet again, whether bail should be granted to the appellant wherein he was arrested in connection with the commission of offence under Sections 24 and 29 of the NDPS Act respectively, for the illegal sale of drugs, more particularly "Phentermine" and "Butalbital", through the internet. These two substances feature at Sl. Nos. 70 and 93 of the Schedule to the NDPS Act respectively and are not found in Schedule I of the NDPS Rules.

While agreeing with the High Court that bail should not be granted and also providing a disclaimer that the observations made by this Court must not influence the decision on trial, this Court said that the benefit under Section 79 of the Information Technology Act, 2002 given to the intermediaries could not be extended to the appellant. In declaring so, it was held that the two drugs finding a place in the Schedule to the Act made it clear that they are psychotropic substances falling within the prohibition contained in Section 8 thereof and stated thus:

"9. It is clear from the Schedule to the Act that the two drugs Phentermine and Butalbital are psychotropic substances and therefore fall within the prohibition

contained in Section 8 thereof. The appellant has been charged for offences punishable under Sections 24 and 29 of the Act.

10. A perusal of Section 24 would show that it deals with the engagement or control of a trade in narcotic drugs and psychotropic substances controlled and supplied outside India and Section 29 provides for the penalty arising out of an abetment or criminal conspiracy to commit an offence under Chapter IV which includes Section 24."

(Emphasis supplied)

77. Again in *D. Ramakrishnan v. Intelligence Officer, Narcotic Control Bureau* reported in (2009) 14 SCC 603, the appellant and a co-accused were engaged in the internet pharmacy business and were alleged to have exported drugs abroad including "Alprazolam", "Lorazepam" and "Nitrazepam" which find place at S. Nos. 30, 56 and 64 of the Schedule to the NDPS Act respectively. Since the activities were carried on without a valid export authorisation as required under the NDPS regime, the appellant and his co-accused were prosecuted under Section 8(c) read with Sections 22, 23, 25, 27-A, 53, 53-A and 58 of the NDPS Act.

Taking recourse to *Rajesh Kumar Gupta (supra)*, it was argued that the drugs being Schedule G and H drugs under the D&C Rules and not mentioned in Schedule I to the NDPS Rules, its export thereof would not attract the provisions of Rule 58 of the NDPS Rules which requires an export authorisation. This is because Rules 53 and 64 respectively being the genus and dealing with substances under Schedule I of the NDPS Rules would mean that Rule 58 is also applicable only to such Schedule I substances. Furthermore, it was contended that since the drugs were used for medicinal purposes, the same is acknowledged in terms of the proviso under Section 8(c) of the NDPS Act.

However, this Court took the view that the fact that the appellant and his co-accused had obtained licences under the D&C Act with a general permission for import and export did not enure any particular benefit to them since the D&C Act does not deal with exports. The appellant and his co-accused being licensees were thus required to comply with the specific requirements of the NDPS Act and its Rules. Hence, an offence under Section 8(c) was said to have been made out in the absence of an export authorisation and it was held that the application for bail was rightly rejected by the Special Judge as also the High Court. The relevant observations are as thus:

"13. The appellant and his co-accused are said to have got licences under the Drugs and Cosmetics Act, 1940. They had got general permission for import and export.

14. Section 80 of the Act provides that the provisions of the Act or the Rules made thereunder are in addition to, and not in derogation of the Drugs and Cosmetics Act, 1940 or the Rules made thereunder. The Drugs and Cosmetics Act, 1940 does not deal with exports. The provisions of the Customs Act do. The licensees, therefore, were, thus, required to comply with the specific requirements of the Act and the Rules. It is not denied or disputed that the appellant neither applied for nor granted any authority to export by the Narcotic Commissioner or any other officer who is authorised in this behalf.

15. We, therefore, are of the opinion that the High Court is right in opining that the decision of this Court in *Rajesh Kumar Gupta* [(2007) 1 SCC 355 : (2007) 1 SCC (Cri) 356] is not applicable to the facts of this case."

(Emphasis supplied)

78. A three-Judge Bench decision of this Court in *Union of India and Another v. Sanjeev V. Deshpande* reported in (2014) 13 SCC 1 related to a batch of matters, all pertaining to prosecutions under the provisions of the NDPS Act wherein each one of the accused was alleged to have been in possession of a psychotropic substance only mentioned under the Schedule to the Act. In some of the cases bail was granted by the concerned High Court and in few others, bail was denied. This Court examined the legality of the conclusion that the absence of mention of a particular psychotropic substance in Schedule I to the Rules excludes the application of Section 8, notwithstanding the fact that such a drug is included in the Schedule to the Act.

i. First, this Court in its decision analysed the true scope and ambit of Section 8(c) of the NDPS Act and stated that Section 8(c) in no uncertain terms prohibits the dealing in any manner in any narcotic drug or psychotropic substance. However, an exception to such prohibition is also contained in the said section and that is, that the dealing in any narcotic drug or psychotropic substance would be permitted "in the manner and to the extent provided by the provisions of this Act or the Rules or Orders made thereunder". Therefore, it was declared that a twin condition must be fulfilled i.e., the dealing must be for medical or scientific purposes AND in the manner and to the extent provided by the provisions of the Act, Rules, or Orders made thereunder and the Court stated as thus:

"24. Before we examine the correctness of various submissions, we deem it appropriate to analyse and find out the true scope and ambit of Section 8(c). Section 8(c) in no uncertain terms prohibits the dealing in any manner in any narcotic drug or psychotropic substance. However, an exception to such prohibition is also contained in the said section.

"8. Prohibition of certain operations.-

No person shall -

except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the Rules or Orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation:"

The exception being that dealing in any narcotic drug or psychotropic substance is permitted "in the manner and to the extent provided by the provisions of this Act or the Rules or Orders made thereunder".

25. In other words, dealing in narcotic drugs and psychotropic substances is permissible only when such dealing is for medical purposes or scientific purposes. Further, the mere fact that the dealing in narcotic drugs and psychotropic substances is for a medical or scientific purpose does not by itself lift the embargo created under Section 8(c). Such a dealing must be in the manner and extent provided by the provisions of the Act, Rules or Orders made thereunder."

(Emphasis supplied)

ii. Secondly, it was opined that Sections 9 and 10 of the NDPS Act respectively, enable the Central and State Governments respectively, to frame rules to "permit and regulate" various aspects contemplated under Section 8(c) of dealing in narcotic drugs and psychotropic substances. It was clarified that the Act does not contemplate the framing of rules for "prohibiting" various activities of dealing in the same since such a prohibition is already present under Section 8(c). Therefore, it cannot be said that the prohibition contained under Section 8 would not be attracted in respect of all those psychotropic substances which find a mention only in the Schedule to the Act but not in Schedule I to the Rules framed under the Act. The relevant observations are as thus:

"25. Sections 9 ["9.Power of Central Government to permit, control and regulate.-(1) Subject to the provisions of Section 8, the Central Government may, by rules-(a) permit and regulate-(i)-(v) *** (vi) the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances;"] and 10 ["10.Power of State Government to permit, control and regulate.-(1) Subject to the provisions of Section 8, the State Government may, by rules-(a) permit and regulate-***"] enable the Central and the State Governments respectively to make rules permitting and regulating various aspects (contemplated under Section 8(c), of dealing in narcotic drugs and psychotropic substances.

26. The Act does not contemplate framing of rules for prohibiting the various activities of dealing in narcotic drugs and psychotropic substances. Such prohibition is already contained in Section 8(c). It only contemplates of the framing of Rules for permitting and regulating any activity of dealing in narcotic drugs or psychotropic substances.

27. Therefore, we are of the opinion that the conclusion reached by the various High Courts that prohibition contained under Section 8 is not attracted in respect to all those psychotropic substances which find a mention in the Schedule to the Act but not in Schedule I to the Rules framed under the Act is untenable."

(Emphasis supplied)

iii. Thirdly, while overruling the decision made in *Rajesh Kumar Gupta* (supra), it was stated that the rules framed under the Act cannot be understood to create rights and obligations contrary to those contained in the parent Act. Therefore, neither Rule 53 nor Rule 64 is a source of authority for prohibiting the dealing in narcotic drugs and psychotropic substances, instead the source is Section 8 of the NDPS Act itself. The provisions of Chapter VI of the NDPS Rules, contain rules permitting and regulating the import and export of narcotic drugs and psychotropic substances other than those specified in Schedule I to the NDPS Rules subject to various conditions and procedures stipulated in Chapter VI.

Whereas, Chapter VII deals exclusively with various other aspects of dealing in psychotropic substances and the conditions subject to which such dealing is permitted. In that sense, both Rules 53 and 64 are really in the nature of an exception to the general scheme of Chapter VI and VII respectively, wherein those two rules pertain to a list of narcotic drugs and psychotropic substances which cannot be dealt with in any manner notwithstanding the other provisions of these two chapters. The relevant observations are reproduced hereinbelow:

29. We are unable to agree with the conclusion (reached in *Rajesh Kumar Gupta* case [*State of Uttaranchal v. Rajesh Kumar Gupta*, (2007) 1 SCC 355 : (2007) 1 SCC (Cri) 356]) that the prohibition contained in Rule 63["63. Prohibition of import and export of consignments through a post office box, etc.- The import or export of consignments of any narcotic drug or psychotropic substance through a post office box or through a bank is prohibited."] of the 1985 Rules is applicable only to those narcotic drugs and psychotropic substances which are mentioned in Schedule I to the Rules and not to the psychotropic substances enumerated in the Schedule to the Act.

Such a conclusion was reached in *Rajesh Kumar Gupta* case [*State of Uttaranchal v. Rajesh Kumar Gupta*, (2007) 1 SCC 355 : (2007) 1 SCC (Cri) 356] on the understanding that Rule 53 (prohibiting the import into and export out of India of

the narcotic drugs and psychotropic substances specified in Schedule I to the Rules) is the source of the authority for such prohibition. Such a conclusion was drawn from the fact that the other Rules contained in the Chapter permit import into and export out of India of certain narcotic drugs and psychotropic substances other than those specified in Schedule I to the Rules. Unfortunately, the learned Judges in reaching such a conclusion ignored the mandate of Section 8(c) which inter alia prohibits in absolute terms import into and export out of India of any narcotic drug and psychotropic substance. Rules framed under the Act cannot be understood to create rights and obligations contrary to those contained in the parent Act.

30. On examination of the scheme of Rules 53 to 63 which appear in Chapter VI, we are of the opinion that Rule 53 ["53.General prohibition.-Subject to the other provisions of this Chapter, the import into and export out of India of the narcotic drugs and psychotropic substances specified in Schedule I is prohibited: Provided that nothing in this rule shall apply in case the drug substance is imported into or exported out of India subject to an import certificate or export authorisation issued under the provision of this Chapter and for the purposes mentioned in Chapter VII-A."] reiterates an aspect of the larger prohibition contained in Section 8(c) i.e. the prohibition of import into and export out of India of the narcotic drugs and psychotropic substances specified in Schedule I to the Rules.

The proviso thereto however enables the import into and export out of India on the basis of an import certificate or export authorisation issued under the provisions of Chapter VI. The subsequent rules stipulate the conditions subject to which and the procedure to be followed by which some of the narcotic drugs and psychotropic substances could be imported into India or exported out of India. For example, opium is a narcotic drug by definition under Section 2(xiv) of the Act whose export and import is prohibited under Section 8(c).

But Rule 54 ["54.Import of opium, etc.-The import of-(i) opium, concentrate of poppy straw, and(ii) morphine, codeine, thebaine, and their salts is prohibited save by the Government Opium Factory; Provided that nothing in this rule shall apply to import of morphine, codeine, thebaine and their salts by manufacturers notified by the Government, for use in manufacture of products to be exported or to imports of small quantities of morphine, codeine and thebaine and their salts not exceeding a total of 1 kilogram during a calendar year for analytical purposes by an importer, after following the procedure under Rule 55 and subject to such conditions as may be specified in the import certificate issued in Form 4-A."(emphasis supplied)] authorises the import of opium by the Government opium factory.

The construction such as the one placed on Rule 53 in Rajesh Kumar Gupta case [State of Uttaranchal v. Rajesh Kumar Gupta, (2007) 1 SCC 355 : (2007) 1 SCC

(Cri) 356] would in our opinion be wholly against the settled canons of statutory interpretation that the subordinate legislation cannot make stipulation contrary to the parent Act.

31. Chapter VII deals with psychotropic substances. No doubt Rule 64 ["64.General prohibition.-No person shall manufacture, possess, transport, import inter-State, export inter-State, sell, purchase, consume or use any of the psychotropic substances specified in Schedule I."] once again purports to prohibit various operations other than import into or export out of India in psychotropic substances specified in Schedule I for the obvious reason that import and export operations are already covered by Rule 53. Rule 65 authorises the manufacture of psychotropic substances other than those specified in Schedule I to the Rules subject to and in accordance with the conditions of a licence granted under the 1945 Rules. The rule also provides for various other incidental matters. Rule 65-A prohibits the sale, purchase, consumption or use of any psychotropic substances except in accordance with the 1945 Rules.

32. Rule 66 prohibits any person from having in possession any psychotropic substance even for any of the purposes authorised under the 1945 Rules unless the person in possession of such a psychotropic substance is lawfully authorised to possess such substance for any of the purposes mentioned under the 1985 Rules. Persons who are authorised under the 1985 Rules, and the quantities of the material such persons are authorised to possess, are specified under Rule 66(2). They are: (1) any research institution or a hospital or dispensary maintained or supported by the Government, etc.- Rule 66(2). (2) individuals where such possession is needed for personal medical use subject of course to the limits and conditions specified - the two provisos to Rule 66(2).

33. Rule 66 reads as follows:

"66.Possession, etc., of psychotropic substances.-

(1) No person shall possess any psychotropic substance for any of the purposes covered by the 1945 Rules, unless he is lawfully authorised to possess such substance for any of the said purposes under these Rules.

(2) Notwithstanding anything contained in sub-rule (1), any research institution, or a hospital or dispensary maintained or supported by the Government or local body or by charity or voluntary subscription, which is not authorised to possess any psychotropic substance under the 1945 Rules, or any person who is not so authorised under the 1945 Rules, may possess a reasonable quantity of such substance as may be necessary for their genuine scientific requirements, or both for such period as is deemed necessary by the said research institution or, as the case may be, the said hospital or dispensary or person:

Provided that where such psychotropic substance is in possession of an individual for his personal medical use the quantity thereof shall not exceed one hundred dosage units at a time: Provided further that an individual may possess the quantity of exceeding one hundred dosage units at a time but not exceeding three hundred dosage units at a time for his personal long term medical use if specifically prescribed by a Registered Medical Practitioner.

(3) The research institution, hospital and dispensary referred to in sub-rule (2) shall maintain proper accounts and records in relation to the purchase and consumption of the psychotropic substance in their possession."

34. On the above analysis of the provisions of Chapters VI and VII of the 1985 Rules, we are of the opinion, both these chapters contain rules permitting and regulating the import and export of narcotic drugs and psychotropic substances other than those specified in Schedule I to the 1985 Rules subject to various conditions and procedure stipulated in Chapter VI. Whereas Chapter VII deals exclusively with various other aspects of dealing in psychotropic substances and the conditions subject to which such dealing in is permitted.

We are of the opinion that both Rules 53 and 64 are really in the nature of exception to the general scheme of Chapters VI and VII respectively containing a list of narcotic drugs and psychotropic substances which cannot be dealt in any manner notwithstanding the other provisions of these two chapters. We are of the clear opinion that neither Rule 53 nor Rule 64 is a source of authority for prohibiting the dealing in narcotic drugs and psychotropic substances, the source is Section 8. *Rajesh Kumar Gupta case* [State of Uttaranchal v. Rajesh Kumar Gupta, (2007) 1 SCC 355 : (2007) 1 SCC (Cri) 356] in our view is wrongly decided."

(Emphasis supplied)

79. What is discernible from the aforementioned decisions is that, there is no shadow of doubt on the proposition that dealing in psychotropic substances not finding a mention in Schedule I of the NDPS Rules but finding place in the Schedule to the Act, would also constitute an offence under Section 8 of the NDPS Act. Such was the position even before the decision of this Court in *Sanjeev V. Deshpande* (supra).

The only decision of this Court that laid down an alternate position of law was *Rajesh Kumar Gupta* (supra) which now stands overruled. It would be preposterous to say that no offence could be said to be made out when an accused deals with substances which are only mentioned under the Schedule to the Act. For then, the entire presence of the Schedule to the Act would have to be

considered unnecessary to the scheme of the NDPS Regime. To render an entire Schedule nugatory could not have been the intention of the legislature.

80. What we understand to be the clarification of the position of law in Rajesh Kumar Gupta (supra) and Sanjeev V. Deshpande (supra) is thus:

i. In Rajesh Kumar Gupta (supra), Chapters VI and VII of the NDPS Rules respectively, were interpreted in such a manner where Rules 53 and 64 of the NDPS Rules respectively, were considered to set the tone for the other rules following in their respective Chapters i.e., that Rules 53 and 64 respectively, were the genus and the other rules were considered to be species thereof. In other words, since Rules 53 and 64 respectively, only pertain to substances under Schedule I of the Rules, the other rules must also pertain to Schedule I substances only. Therefore, it was declared that it is only the psychotropic substances appended to Schedule I of the Rules which are regulated by the NDPS Rules, and dealing in substances, not finding a mention in Schedule I, would be unregulated and thus, not amount to an offence under Section 8(c).

ii. Sanjeev V. Deshpande (supra) while overruling Rajesh Kumar Gupta (supra) dispelled the idea that Rules 53 and 64 respectively, constituted a genus but instead stated that Rules 53 and 64 respectively, are in the nature of an exception to the general scheme of their respective Chapters. To put it more clearly, that Rules 53 and 64 respectively stated that substances under Schedule I of the Rules cannot be dealt with in any manner whatsoever and the other Rules in the Chapter proceeded to lay down the procedure and conditions under which substances other than those mentioned in Schedule I of the Rules but contained in the Schedule to the Act, could be dealt with. Therefore, if an accused is charged with an offence for dealing with a substance mentioned under the Schedule to the Act and not in Schedule I of the Rules, he would be guilty of an offence under Section 8(c) if the conditions and procedure laid down under the Rules, other than Rules 53 and 64, are not complied with.

81. However, a detailed and comprehensive analysis of Chapters VI and VII of the NDPS Rules, inter alia, makes it clear that the substances mentioned under Schedule I of the Rules are not absolutely prohibited to be dealt in, as stated in Sanjeev V. Deshpande (supra). They are indeed allowed to be dealt with for the limited purposes as detailed in Chapter VIIA of the NDPS Rules. It goes without saying that in such dealing for the purposes mentioned under Chapter VIIA, persons would have to comply with the set of procedures and conditions to which the other substances are subjected to and strict compliance of all those rules are mandatory considering the high degree of havoc and menace that the substances mentioned in Schedule I to the NDPS Rules can create on public health and societal well-being.

(1) No person shall possess any psychotropic substance for any of the purposes covered under 1945 rules, unless he is lawfully authorized to possess such substance for any of the said purposes under these rules:

Provided that possession of a psychotropic substance specified in Schedule I shall be only for the purposes mentioned in chapter VIIA."

(Emphasis supplied)

85. In our opinion the pith and substance of the rules essentially remained the same over the years, more particularly pre and post 25.03.2015. It is only the language that has been streamlined in a much more organised manner. Of course, the interpretation of the three-Judge Bench in *Sanjeev V Deshpande* (supra) of the scheme of Chapters VI and VII of the NDPS Rules respectively would hold the field in so far as the version of the NDPS Rules pre-25.03.2015 is concerned. Judicial propriety demands that we refrain from substituting our own conclusions to the said decision. However, since the rephrasing of the language and re-shuffling of the sub-rules vide G.S.R. 224(E) dated 25.03.2015 has clarified the true purport and intention behind the framing of the NDPS Rules, there remains no doubt in our mind that the law post - 25.03.2015 is crystal clear in itself.

d. The provisions of the NDPS Act and its Rules are "in addition to" the D&C Act and the Rules made thereunder.

86. Section 80 of the NDPS Act states that the application of the D&C Act would not be barred and reads as follows:

"80. Application of the Drugs and Cosmetics Act, 1940 not barred.- The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made thereunder."

87. In *P. Ramanatha Aiyar's Advanced Law Lexicon*, the word derogation is defined as "the partial repeal or abrogation of a law by a later act that limits its scope or impairs its utility and force". It is also stated that the word "derogate" is a term of legislation. "Derogation" is partial and indirect abrogation i.e., when a subsequent law reduces the force and application of an older law, the character of the subsequent law is technically said to be derogatory. Therefore, the express language employed herein which states that the NDPS Act is not in derogation of the D&C Act leads to the inference that the enactment of the NDPS Act must not in any way be understood to take away the scope of an offence being also made out under the D&C Act.

Furthermore, it is also stated that the provisions of the NDPS Act and its Rules "shall be in addition to" the D&C Act or the Rules made thereunder. Therefore,

in the reverse scenario, i.e., when an offence under the D&C Act is made out or can potentially be made out, the accused can also be charged or prosecuted for an offence under the NDPS Act. Any argument to the contrary would be untenable. This is so because the NDPS Act applies in addition to the provisions of the D&C Act.

Inevitably, there may arise situations wherein the substance in question in a particular case falls under the ambit of both the NDPS Act and D&C Act. However, the overlap would not necessarily imply that the application of the provisions of the NDPS Act would be at the cost of exclusion of the provisions of D&C Act, or vice versa. Section 80 of the NDPS Act must be understood in the context and object behind the coming into force of these two legislations i.e., the NDPS Act and D&C Act respectively, and the distinct purposes that they seek to achieve.

88. In *Sanjeev V. Deshpande* (supra), while it was deemed unnecessary to undertake a complete analysis of the implications of Section 80 of the NDPS Act in view of the conclusion arrived at therein, yet it was observed that the provisions of the NDPS Act apply in addition to the provisions of the D&C Act. Furthermore, it was stated that while the D&C Act deals with various operations of manufacture, sale, purchase etc. of drugs generally, the NDPS Act deals with a more specific class of drugs and is therefore, a special law on the subject. The relevant observations are reproduced hereinbelow:

"35. In view of our conclusion, the complete analysis of the implications of Section 80 ["80. Application of the Drugs and Cosmetics Act, 1940 not barred.- The provisions of this Act or the Rules made thereunder shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940) or the Rules made thereunder."] of the Act is not really called for in the instant case. It is only required to be stated that essentially the Drugs and Cosmetics Act, 1940 deals with various operations of manufacture, sale, purchase, etc. of drugs generally whereas the Narcotic Drugs and Psychotropic Substances Act, 1985 deals with a more specific class of drugs and, therefore, a special law on the subject. Further the provisions of the Act operate in addition to the provisions of the 1940 Act."

(Emphasis supplied)

89. The object of the NDPS Act and D&C Act, respectively was reiterated in *State of Punjab v. Rakesh Kumar* reported in (2019) 2 SCC 466. Herein, several respondent-accused were convicted for the offence committed either under Section 21 or Section 22 of the NDPS Act for the bulk possession of "manufactured drugs" without any valid authorisation. The High Court allowed the applications seeking suspension of sentence, preferred by the

respondent accused and directed that they be released on bail pending the final disposal of the appeals before it.

In doing so, it was observed by the High Court that in cases of manufactured drugs, be it containing narcotic drugs or psychotropic substances, if manufactured by a manufacturer, the same must be tried if a violation has been committed, under the D&C Act and not under the NDPS Act, except in cases where the substance is in a loose form i.e., powder, liquid etc. This Court disagreed with the High Court that the respondent-accused could only be prosecuted for an offence under the D&C Act despite there being a prima facie violation of Section 8 of the NDPS Act.

In opining so, the decision elaborated on the following aspects: i. First, that the objectives behind the NDPS Act and D&C Act are different. It was opined that the former is a special law enacted with an object to control and regulate the operations relating to narcotic drugs and psychotropic substances. Whereas, the latter was enacted specifically to prevent substandard drugs and to maintain high standards of medical treatment.

It intended to curtail the menace of adulteration of drugs and also of the production, manufacture, distribution and sale of spurious and substandard drugs. In short, while the D&C Act brings within its scope drugs which are intended to be used for therapeutic or medicinal usage, the NDPS Act intends to curb and penalise the usage of drugs that are utilized for intoxication or for the purpose of inducing a stimulant effect. The relevant observations are as thus:

"7. At the outset it is essential to note the objectives of the two legislations before us i.e. the Drugs and Cosmetics Act, 1940 and the NDPS Act. The Drugs and Cosmetics Act, 1940 was enacted to specifically prevent substandard drugs and to maintain high standards of medical treatment (Chimanlal Jagjivan Das Sheth v. State of Maharashtra [Chimanlal Jagjivan Das Sheth v. State of Maharashtra, AIR 1963 SC 665 : (1963) 1 Cri LJ 621]). The Drugs and Cosmetics Act, 1940 was mainly intended to curtail the menace of adulteration of drugs and also of production, manufacture, distribution and sale of spurious and substandard drugs.

On the other hand, the NDPS Act is a special law enacted by Parliament with an object to control and regulate the operations relating to narcotic drugs and psychotropic substances. After analysing the objectives of both the Acts, we can safely conclude that while the Drugs and Cosmetics Act deals with drugs which are intended to be used for therapeutic or medicinal usage, on the other hand, the NDPS Act intends to curb and penalise the usage of drugs which are used for intoxication or for getting a stimulant effect."

(Emphasis supplied)

ii. Secondly, by relying on the decision in Sanjeev V. Deshpande (supra), it was reiterated that Section 80 of the NDPS Act does not bar the application of the D&C Act and instead states that the provisions of the NDPS Act can be made applicable in addition to that of the provisions of the D&C Act. The NDPS Act should not be read in exclusion of the D&C Act. This Court took the view that since it is the prerogative of the State to prosecute the offender in accordance with law, the respondent-accused could be charged under Sections 21 or 22 of the NDPS Act respectively, considering that their actions amounted to a prima facie violation of Section 8 of the NDPS Act. The relevant observations are as follows:

"13. However, we are unable to agree on the conclusion reached by the High Court for reasons stated further. First, we note that Section 80 of the NDPS Act, clearly lays down that application of the Drugs and Cosmetics Act is not barred, and provisions of the NDPS Act can be applicable in addition to that of the provisions of the Drugs and Cosmetics Act. The statute further clarifies that the provisions of the NDPS Act are not in derogation of the Drugs and Cosmetics Act, 1940. This Court in Union of India v. Sanjeev V. Deshpande [Union of India v. Sanjeev V. Deshpande, (2014) 13 SCC 1 : (2014) 5 SCC (Cri) 496] , has held that : (SCC p. 16, para 35)

"35. essentially the Drugs and Cosmetics Act, 1940 deals with various operations of manufacture, sale, purchase, etc. of drugs generally whereas Narcotic Drugs and Psychotropic Substances Act, 1985 deals with a more specific class of drugs and, therefore, a special law on the subject. Further, the provisions of the Act operate in addition to the provisions of the 1940 Act."

(emphasis supplied)

14. The aforesaid decision in Sanjeev V. Deshpande case [Union of India v. Sanjeev V. Deshpande, (2014) 13 SCC 1 : (2014) 5 SCC (Cri) 496] further clarifies that, the NDPS Act, should not be read in exclusion to the Drugs and Cosmetics Act, 1940. Additionally, it is the prerogative of the State to prosecute the offender in accordance with law. In the present case, since the action of the respondent-accused amounted to a prima facie violation of Section 8 of the NDPS Act, they were charged under Section 22 of the NDPS Act.

15. In light of the above observations, we find that the decision rendered by the High Court holding that the respondent-accused must be tried under the Drugs and Cosmetics Act, 1940 instead of the NDPS Act, as they were found in possession of the "manufactured drugs", does not hold good in law."

(Emphasis supplied)

90. On a conspectus of the foregoing discussion on the scheme of the NDPS Act and its rules along with the D&C Act and the rules made thereunder, the position of law can be succinctly stated as follows:

i. A bare reading of Section 2(xxiii) of the NDPS Act defining a "psychotropic substance" would indicate that all the items listed in the Schedule to the Act along with its salts and preparations fall within the purview of "psychotropic substance". The term "psychotropic substance" mentioned in Section 8 must be seen & understood in light of Section 2(xxiii) which refers to the Schedule to the Act and all the psychotropic substances mentioned therein.

ii. Section 8(c) while prohibiting the "dealing in" of all psychotropic substances mentioned under the Schedule to the Act, carves out an exception i.e., provides for a situation wherein the dealing in of psychotropic substances would not amount to an offence. However, those conditions forming part of the exception carved out under Section 8 must be read conjointly and not individually. In other words, for the accused to take the plea that his dealing in the narcotic drug or psychotropic substance does not constitute an offence under Section 8, it must be proved that the drug or substance was being dealt with (a) for medical or scientific purposes AND; (b) in the manner and to the extent provided by the provisions of the NDPS Act or the NDPS Rules or the orders made thereunder AND; (c) in accordance with the terms and conditions of the licence, permit or authorisation, if any, required under the provisions of the NDPS Act or the NDPS Rules or the orders made thereunder.

iii. The NDPS Rules, 1985 have been brought into being by the Central Government in exercise of the powers under Sections 9 and 76 of the NDPS Act, respectively. The underlying object of the NDPS rules is to "permit and regulate" certain activities for carrying out the purposes of the NDPS Act and not to "prohibit" those activities. The NDPS rules must not be understood as laying down standards different from or inconsistent with the substantive provisions of the NDPS Act, especially Section 8 and the Schedule to the NDPS Act.

iv. Chapter VI of the NDPS Rules, inter alia, states that the import into and export out of India of all psychotropic substances, including those only mentioned under the Schedule to the Act, must be accompanied by a valid import certificate and export authorisation. However, the import and export of substances enumerated in Schedule I of the Rules is restricted to a pre-determined set of purposes as explained under Chapter VIIA, irrespective of having obtained an import certificate or export authorisation under the other rules of this Chapter.

v. Chapter VII indicates that the manufacture of all psychotropic substances, including those mentioned only under the Schedule to the Act must be in accordance with the conditions of licence issued under the D&C Rules. Despite

there being a general rule absolutely prohibiting the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of any of the psychotropic substances which find mention in Schedule I appended to the Rules, still the above activities can be done vis-à-vis the substances mentioned in Schedule I appended to the Rules, provided such activities are in accordance with other provisions of the Chapter which generally apply to all psychotropic substances, and for the limited purposes mentioned under Chapter VIIA.

vi. The manufacture of all psychotropic substances mentioned under the Schedule to the Act, and those mentioned under Schedule I of the Rules (provided they are manufactured only for the purposes elaborated under Chapter VIIA), in violation of the conditions of licence of manufacture issued under the D&C Act and its rules would amount to a contravention of Rule 65 of the NDPS Rules and thereby Section 8 of the NDPS Act itself. In other words, due to the operation of Rule 65, a violation of the condition of licence under the D&C Act read with its Rules would ipso facto tantamount to a violation of the NDPS Act read with its Rules.

vii. Furthermore, no person shall possess any psychotropic substance, including those mentioned only under the Schedule to the Act for any of the purposes covered by the D&C Rules, unless he is lawfully authorised to possess such substance for any of the said purposes under the NDPS rules. Therefore, Schedule I substances can be possessed only for the purposes mentioned under Chapter VIIA. All other substances mentioned only under the Schedule to the Act can be possessed for the purposes mentioned under Chapter VIIA and also for the purposes falling under the broad umbrella of "medical or scientific purposes" as mentioned under Section 8 of the NDPS Act. The above is in addition to the fulfilment of the requirements under the D&C Rules.

viii. The underlying idea that resonates throughout the NDPS rules is that dealing in any of the psychotropic substances mentioned under Schedule I of the NDPS Rules must strictly be in accordance with the NDPS Rules AND ONLY for the purposes enumerated under Chapter VIIA of the NDPS Rules. The substances not figuring under Schedule I of the Rules but listed in the Schedule to the Act must also abide by the requirements cast upon by the NDPS Rules. The difference as regards these substances, however, is that while they may be dealt with for the purposes enumerated under Chapter VIIA of the NDPS Rules, they can also be dealt with for other "medical and scientific purposes". Whether the accused has dealt with it within the confines of the expression "medical or scientific purposes" would be determined on the facts and circumstances of each case.

ix. Therefore, the substances under Schedule I to the Rules are more strictly restricted and the remaining psychotropic substances under the Schedule to the Act are more leniently restricted. The different levels in restriction could be seen

as the primary reason behind providing two different schedules, i.e., one under the Act and another under the Rules.

x. Several decisions of this Court including Hussain (supra), Ouseph alias Thankachan (supra), Ravindran alias John (supra), Sanjay Kumar Kedia (supra), D. Ramakrishnan (supra) and Sanjeev V. Deshpande (supra) have held that an offence under Section 8 of the NDPS Act can be made out even in respect of substances only mentioned under the Schedule to the NDPS Act and absent under Schedule I of the NDPS Rules. The outlier amongst these decisions was Rajesh Kumar Gupta (supra) which was subsequently overruled in Sanjeev V. Deshpande (supra).

xi. To say that no offence would be made out in a case where an accused deals with a substance mentioned only under the Schedule to the Act, would have the consequence of rendering the entire Schedule to the Act useless, unnecessary and nugatory.

xii. Rajesh Kumar Gupta (supra) assumed that the prohibitory power could only be traced to Rules 53 and 64 of the NDPS Rules respectively, and stated that Rules 53 and 64 of the NDPS Rules respectively, were a genus and the other rules following in their respective Chapters were species thereof. Therefore, since Rules 53 and 64 respectively, only related to the substances listed under Schedule I of the Rules, it was held that the dealing in of substances not finding a mention in Schedule I of the Rules and only listed under the Schedule to the Act, would be unregulated by the Rules and thus, would not amount to an offence under Section 8(c).

xiii. On the other hand, Sanjeev V. Deshpande (supra) overruled Rajesh Kumar Gupta (supra) by explaining that it is Section 8(c) of the NDPS Act which prohibits various activities with respect to psychotropic substances and the source of this prohibitory power cannot be attributed to Rules 53 and 64 respectively. Rules 53 and 64 are in the nature of an exception to the general scheme of the NDPS Rules. While Rules 53 and 64 state that the substances under Schedule I of the Rules cannot be dealt with in any manner, the other substances i.e., those mentioned under the Schedule to the Act, are also regulated under the other rules in the respective Chapters of the NDPS Rules.

xiv. However, what we understand as also being the essence of the scheme of the NDPS Rules is that, it does not absolutely prohibit the dealing in of the substances mentioned under Schedule I of the Rules as held in Sanjeev V. Deshpande (supra). These substances figuring in Schedule I of the Rules can also be dealt with but only for the limited purposes mentioned under Chapter VIIA of the NDPS Rules. This is evident from the re-phrasing of the NDPS Rules which

was effected on 25.03.2015, which according to us, has not changed the meaning of the Rules but only altered its language.

xv. Section 80 states that the provisions of the NDPS Act or the Rules made thereunder shall be in addition to, and not in derogation of the D&C Act and the Rules made thereunder. Therefore, when an offence under the D&C Act is made out or can potentially be made out, the accused can also be charged or prosecuted for an offence under the NDPS Act or vice-versa. The object sought to be achieved under both the legislations is also distinct i.e. the NDPS Act is a special law enacted to regulate the operations relating to narcotic drugs and psychotropic substances with a view to curb and penalise the usage of drugs by persons for intoxication etc., whereas the D&C Act was enacted to prevent substandard, adulterated and spurious drugs from entering the medical market and to maintain high standards in medical treatment. Hence, offences under both the enactments can also be said to have been constituted simultaneously, where the circumstances so require.

ii. Whether the decision in Sanjeev V. Deshpande (supra) should operate with prospective effect?

a. An overruling decision generally operates retrospectively.

91. The declaration of a statute dealing with substantive rights, by the legislature, is considered to be prospective unless it is expressly or by necessary implication made to have retrospective operation. The legal maxim "Nova Constitutio Futuris Forman Imponere Debet, Non Praeteritis" indicating that a new law ought to regulate what is to follow and not the past, carries with it a presumption of prospectivity and this presumption is generally said to operate unless the contrary is shown by an express provision in the statute or if the retrospectivity is otherwise discernible through necessary implication.

This is because such statutes would have the consequence of affecting vested rights, impose new burdens or impair existing obligations. However, when a decision rendering an opinion as regards the interpretation of a penal provision is subsequently overruled by the decision of a larger bench, the consequence of the overruling is starkly different and by default, retrospective. This is because it is settled law that the law declared by this Court is retrospective and is normally assumed to be the law from the inception.

92. The operation of a newly enacted statute or rule must not be confused with the effect of a judgment. A judgement or decision which interprets a statute or provision thereof declares the meaning of the statute as it should be construed from the date of its enactment. In other words, the judgment declares what the legislature had said at the time when the law was promulgated and therefore, it

has retrospective effect. On the contrary, it is the statute or the rule which is presumed to be prospective unless expressly made retrospective.

What follows from the same, is that a decision or judgment enunciating a principle of law is applicable to all cases irrespective of the stage of pendency before different forums since what has been enunciated is the meaning of the law which existed from the inception of the concerned statute or provision. What has been declared to be the law of the land must be held to have always been the law of the land. This conclusion also stems from the rationale that the duty of the court is not to "pronounce a new law but to maintain and expound the old one". The judge rather than being the creator of the law, is only its discoverer.

93. This Court in *Sarwan Kumar and Another v. Madan Lal Aggarwal* reported in (2003) 4 SCC 147, opined that when this Court interprets an existing law while overruling the interpretation assigned to it earlier, it cannot be said that a new law is laid down. The declaration of law relates back to the law itself. In other words, it would be deemed that the law was never otherwise. Herein, a 5-judge bench of this Court in *Gian Devi Anand v. Jeevan Kumar and Others* reported in (1985) 2 SCC 683 had held that the rule of heritability extends to the statutory tenancy of a commercial premises as much as to a residential premises under the Delhi Rent Control Act, 1958.

In light of the same, the question for determination in *Sarwan Kumar* (supra) was whether a decree for ejectment which was passed by a civil court qua a commercial tenancy on the basis that the tenancy was not heritable, before the declaration of law in *Gian Devi Anand* (supra), was executable or not? By stating that the jurisdiction of the civil court to pass the decree for ejectment was barred and that the decree obtained by the decree-holder cannot be executed owing to it being a nullity and non-est, this Court observed as follows:

15. The doctrine of "prospective overruling" was initially made applicable to the matters arising under the Constitution but we understand the same has since been made applicable to the matters arising under the statutes as well. Under the doctrine of "prospective overruling" the law declared by the Court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship on those who had trusted to its existence. Invocation of the doctrine of "prospective overruling" is left to the discretion of the Court to mould with the justice of the cause or the matter before the Court.

This Court while deciding *Gian Devi Anand* case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] did not hold that the law declared by it would be prospective in operation. It was not for the High Court to say that the law laid down by this Court in *Gian Devi Anand* case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1]

would be prospective in operation. If this is to be accepted then conflicting rules can supposedly be laid down by different High Courts regarding the applicability of the law laid down by this Court in Gian Devi Anand case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] or any other case.

Such a situation cannot be permitted to arise. In the absence of any direction by this Court that the rule laid down by this Court would be prospective in operation, the finding recorded by the High Court that the rule laid down in Gian Devi Anand case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] by this Court would be applicable to the cases arising from the date of the judgment of this Court cannot be accepted being erroneous.

20. This Court in Gian Devi Anand case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] did not lay down any new law but only interpreted the existing law which was in force. As was observed by this Court in Lily Thomas case [(2000) 6 SCC 224 : 2000 SCC (Cri) 1056] the interpretation of a provision relates back to the date of the law itself and cannot be prospective of the judgment. When the court decides that the interpretation given to a particular provision earlier was not legal, it declares the law as it stood right from the beginning as per its decision. In Gian Devi case [(1980) 17 DLT 197] the interpretation given by the Delhi High Court that commercial tenancies were not heritable was overruled being erroneous. Interpretation given by the Delhi High Court was not legal.

The interpretation given by this Court declaring that the commercial tenancies heritable would be the law as it stood from the beginning as per the interpretation put by this Court. It would be deemed that the law was never otherwise. Jurisdiction of the civil court has not been taken away by the interpretation given by this Court. This Court declared that the civil court had no jurisdiction to pass such a decree. It was not a question of taking away the jurisdiction; it was the declaration of law by this Court to that effect. The civil court assumed the jurisdiction on the basis of the interpretation given by the High Court in Gian Devi case [(1980) 17 DLT 197] which was set aside by this Court.

(Emphasis supplied)

94. While addressing the issue of the temporal and retrospective effect of a judicial decision and declaring that a tribunal or court is bound by a higher court's decision on the point in issue, irrespective of whether it is declared either prior to or subsequent to the order which is sought to be called into question by a party, this Court in Assistant Commissioner, Income Tax, Rajkot v. Saurashtra Kutch Stick Exchange Limited reported in (2008) 14 SCC 171 stated that a judicial decision acts retrospectively by placing reliance on the Blackstonian theory.

According to this theory, it is not the function of the court to pronounce a "new rule" but to maintain and expound the "old one". Therefore, if the subsequent decision alters or overrules the earlier one, it cannot be said to have made a new law. The correct principle of law is just discovered and applied retrospectively. In other words, if in a given situation an earlier decision of the court operated for quite some time and it is overruled by a subsequent decision, the decision rendered subsequently would have retrospective effect and would serve to clarify the legal position which was not clearly understood earlier.

Any transaction would then be covered by the law declared by the overruling decision. The overruling is generally retrospective with the only caveat being that matters that are *res judicatae* or accounts that have been settled in the meantime would not be disturbed. The relevant observations made by this Court are reproduced hereinbelow:

"35. In our judgment, it is also well settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the court to pronounce a "new rule" but to maintain and expound the "old one". In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.

36. Salmond in his well-known work states:

"[T]he theory of case law is that a judge does not make law; he merely declares it; and the overruling of a previous decision is a declaration that the supposed rule never was law. Hence any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision. The overruling is retrospective, except as regards matters that are *res judicatae* or accounts that have been settled in the meantime."

(Emphasis supplied)

b. The intention to make the decision prospectively applicable or the application of the doctrine of "prospective overruling" must be express and clear.

95. Resorting to the doctrine of "prospective overruling" is therefore, an exception to the normal rule that a judgement or decision applies retrospectively and to the general rule of doctrine of precedent. The application of the doctrine is based on the philosophy that "The past cannot always be erased by a new judicial

declaration". That the Court can contemplate giving prospective application to a law declared by it, stems from the premise that the Court is neither required to apply a decision retrospectively nor is it prohibited from applying it retrospectively.

The merits and demerits of retrospective or prospective application is examined and the doctrine is applied wherever appropriate and necessary. This is precisely why the express declaration by a court that its decision is prospectively applicable is a requisite condition. Prospectivity as a concept cannot be considered to be inhered in all situations since the intention to attribute prospectivity to a decision must be limpid and clear. The same has been reiterated in a catena of decisions by this Court.

96. That there is no prospective overruling unless it is so indicated expressly and in the clearest possible terms was laid down by this Court in *P.V. George and Others v. State of Kerala and Others* reported in (2007) 3 SCC 557.

"19. It may be true that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of the citizens. The doctrine of prospective overruling although is applied to overcome such a situation, but then it must be stated expressly. The power must be exercised in the clearest possible term. The decisions of this Court are clear pointer thereto.

25. In service matters, this Court on a number of occasions have passed orders on equitable consideration. But the same would not mean that whenever a law is declared, it will have an effect only because it has taken a different view from the earlier one. In those cases it is categorically stated that it would have prospective operation.

29. Moreover, the judgment of the Full Bench has attained finality. The special leave petition has been dismissed. The subsequent Division Bench, therefore, could not have said as to whether the law declared by the Full Bench would have a prospective operation or not. The law declared by a court will have a retrospective effect if not otherwise stated to be so specifically. The Full Bench having not said so, the subsequent Division Bench did not have the jurisdiction in that behalf."

(Emphasis supplied)

97. In another decision of this Court in *B.A. Linga Reddy and Others v. Karnataka State Transport Authority and Others* reported in (2015) 4 SCC 515, it was reiterated that in the absence of a declaration that the decision would operate prospectively, it must be given retrospective effect. The relevant observations are as thus:

"34. The view of the High Court in Ashrafulla [Karnataka SRTC v. Ashrafulla, Writ Appeal No. 403 of 1988, order dated 21- 7-1988 (KAR). For order, see Karnataka SRTC v. Ashrafulla Khan, (2002) 2 SCC 560 at pp. 565-66, para 3] has been reversed by this Court. The decision is of retrospective operation, as it has not been laid down that it would operate prospectively; more so, in the case of reversal of the judgment. This Court in P.V. George v. State of Kerala [(2007) 3 SCC 557 : (2007) 1 SCC (L&S) 823] held that the law declared by a court will have a retrospective effect if not declared so specifically.

35. In Ravi S. Naik v. Union of India [1994 Supp (2) SCC 641] , it has been laid down that there is retrospective operation of the decision of this Court. The interpretation of the provision becomes effective from the date of enactment of the provision. In M.A. Murthy v. State of Karnataka [(2003) 7 SCC 517 : 2003 SCC (L&S) 1076] , it was held that the law declared by the Supreme Court is normally assumed to be the law from inception. Prospective operation is only exception to this normal rule."

(Emphasis supplied)

98. In yet another decision of this Court in Manoj Parihar and Others v. State of Jammu and Kashmir and Others reported in (2022) 14 SCC 72, where the bench comprised of one of us (J.B. Pardiwala, J.), it was opined that the doctrine of prospective overruling must be exercised in explicit terms and therefore, the law declared by this Court would have a retrospective effect unless stated otherwise. The observations are reproduced as thus:

"26. What was done in Bimlesh Tanwar [Bimlesh Tanwar v. State of Haryana, (2003) 5 SCC 604 : 2003 SCC (L&S) 737] was actually a declaration of law. Therefore, the same will have retrospective effect. In P.V. George v. State of Kerala [P.V. George v. State of Kerala, (2007) 3 SCC 557 : (2007) 1 SCC (L&S) 823] , this Court held that "the law declared by a court will have retrospective effect, if not otherwise stated to be so specifically".

27. This Court was conscious of the fact, as could be seen from para 19 of the Report in P.V. George [P.V. George v. State of Kerala, (2007) 3 SCC 557 : (2007) 1 SCC (L&S) 823] , that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of the citizens. But still this Court held that the power to apply the doctrine of prospective overruling (so as to remove the adverse effect) must be exercised in the clearest possible term.

28. Therefore, it is clear that anything done as a consequence of the decision of this Court in P.S. Ghalaut [P.S. Ghalaut v. State of Haryana, (1995) 5 SCC 625 : 1995 SCC (L&S) 1270] , cannot stand since this Court did not apply the doctrine

of prospective overruling in Bimlesh Tanwar [Bimlesh Tanwar v. State of Haryana, (2003) 5 SCC 604 : 2003 SCC (L&S) 737] in express terms."

(Emphasis supplied)

c. The doctrine of "Prospective Overruling" and factors which may lead to the application thereof.

99. Prospective Overruling which was initially a doctrine familiar to American Jurisprudence was applied by this Court for the first time in C. Golak Nath and Others v. State of Punjab and Another reported in AIR 1967 SC 1643. By setting out certain limits for the application of this doctrine, it was laid down that the doctrine of prospective overruling can be invoked only in matters arising under the Constitution; that it could be applied only by this Court since it has the constitutional jurisdiction to declare the law binding on all courts in the country; and that the scope of the retroactive operation of the law which has been declared in supersession of its earlier decision(s) would be left to the Court's discretion to be moulded in accordance with the justice of the cause or matter before it.

Over the period of time, this doctrine has been extended to the interpretation of ordinary statutes as well. Furthermore, the doctrine has also been applied in situations wherein the Court has dealt with the issue or the question of law for the first time. Therefore, it can be said that case-law trajectory has seen both the prospective declaration and the prospective overruling of law.

100. This Court in Baburam v. C.C.Jacob and Others reported in (1999) 3 SCC 362 elaborated on the reasons which necessitate the prospective declaration of law by this Court, by stating that the object would be to avoid the reopening of settled issues, to prevent the multiplicity of proceedings, to curb uncertainty in law and thwart avoidable litigation. It was stated that, on the application of this doctrine, it is deemed that all actions taken contrary to the declaration of law but prior to the date of the declaration, are validated. The subordinate forums which are legally bound to apply the declaration of law made by this Court are also required to apply such a dictum to cases which would arise in future only. The pertinent observations made in the decision are reproduced hereinbelow:

"4. We are unable to agree with this view of the Tribunal. It is to be noted that the prospectivity given to Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] was obviously on the ground that there was a doubt in regard to the position of law until the same was clarified by this Court in Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481]. The decision of the DPC was taken in June 1993; much prior to the judgment in Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481].

It is only pursuant to the decision of the DPC, the appellant came to be promoted on 27-6-1994 which is also a date prior to the delivery of the judgment in Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] . In our opinion, the prospectivity was given to Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] only to see that the status prevailing prior to the judgment in Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] should not be disturbed.

5. The prospective declaration of law is a devise innovated by the Apex Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a devise adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by this Court are also dutybound to apply such dictum to cases which would arise in future only.

In matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law. In the instant case, both decisions of the DPC as well as the appointing authority being prior to the judgment in Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] we are of the opinion that the Tribunal was in error in applying this decision. For this reason, these appeals succeed and are hereby allowed; setting aside the orders and directions made by the Tribunal in OAs Nos. 186 of 1994 and 961 of 1995."

(Emphasis supplied)

101. However, partly differing from the interpretation given in Baburam (supra), the Constitutional Bench of this Court in Somaiya Organics (India) Ltd. and Another v. State of U.P. and Another reported in (2001) 5 SCC 519 had clarified that the application of the doctrine of prospective overruling would not have the effect of validating an invalid law. Therein, initially, a seven-judge bench of this Court in Synthetics and Chemicals Ltd. and Others v. State of U.P. and Others reported in (1990) 1 SCC 109, held that the provisions of State enactments permitting the levy of excise duty in the form of vend fee must be struck down prospectively from the date of its judgment i.e., from 25.10.1989.

There was, however, some confusion on whether the State was entitled to collect the taxes in respect of the period prior to 25.10.1989 or not. As per the majority, prospective overruling, despite the terminology is only a recognition of the principle that the court moulds the relief claimed in order to meet the justice of the case, more particularly justice not in its logical but in its equitable sense. Prospective overruling could be seen as a method which was evolved by the

courts to adjust the competing rights of the parties so as to save transactions, whether statutory or otherwise, that were effected by the earlier law.

Therefore, it was held that it would not be right to say that upon applying the doctrine of prospective overruling, an invalid law has been held to be valid during the past period. All that is done is that the declaration of invalidity of the legislation is directed to take effect from a future date. In the facts of the case, it was elaborated that what was intended was that the status quo as on 25.10.1989 be maintained as regards the actual payment or levy concerned. Hence, what had gone into the coffers of the Government with or without any strings attached, was to remain with it and what was not received was also not to be later realised by the Government. The relevant observations are reproduced hereinbelow:

"27. In the ultimate analysis, prospective overruling, despite the terminology, is only a recognition of the principle that the court moulds the reliefs claimed to meet the justice of the case - justice not in its logical but in its equitable sense. As far as this country is concerned, the power has been expressly conferred by Article 142 of the Constitution which allows this Court to "pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it". In exercise of this power, this Court has often denied the relief claimed despite holding in the claimants' favour in order to do "complete justice".

28. Given this constitutional discretion, it was perhaps unnecessary to resort to any principle of prospective overruling, a view which was expressed in *Narayanibai v. State of Maharashtra* [(1969) 3 SCC 468] at p. 470 and in *Ashok Kumar Gupta v. State of U.P.* [(1997) 5 SCC 201 : 1997 SCC (L&S) 1299] In the latter case, while dealing with the "doctrine of prospective overruling", this Court said that it was a method evolved by the courts to adjust competing rights of parties so as to save transactions "whether statutory or otherwise, that were effected by the earlier law".

According to this Court, it was a rule "of judicial craftsmanship with pragmatism and judicial statesmanship as a useful outline to bring about smooth transition of the operation of law without unduly affecting the rights of the people who acted upon the law operated prior to the date of the judgment overruling the previous law". Ultimately, it is a question of this Court's discretion and is, for this reason, relatable directly to the words of the Court granting the relief.

33. These observations are in consonance with the directions given in para 89 of the judgment in second *Synthetics* case [(1990) 1 SCC 109] and applying the said principles to the present appeals the only conclusion which can be arrived at is that this Court intended the status quo as on 25-10-1989 to be maintained as regards actual payment or levy was concerned. What had gone to the coffers of

the Government with or without any strings attached, was to remain with it and what was not received could not be realised by the Government.

36. It is true that the effect of a legislation without legislative competence is that it is non est. (See *Behram Khurshid Pesikaka v. State of Bombay* [(1954) 1 SCC 240 : AIR 1955 SC 123 : (1955) 1 SCR 613] at SCR pp. 652, 653, *R.M.D. Chamarbaugwalla v. Union of India* [AIR 1957 SC 628 : 1957 SCR 930] at p. 940, *M.P.V. Sundararamier & Co. v. State of A.P.* [AIR 1958 SC 468 : 1958 SCR 1422] at SCR p. 1468 and *Mahendra Lal Jaini v. State of U.P.* [AIR 1963 SC 1019 : 1963 Supp (1) SCR 912] at SCR pp. 937-41.)

37. Nevertheless a law enacted without legislative competence remains on the statute-book till a court of competent jurisdiction adjudicates thereon and declares it to be void. When the court declares it to be void it is only then that it can be said that it is non est for all purposes. In *Synthetics and Chemicals case* [(1990) 1 SCC 109] the invalidity of the provisions was a declaration under Article 141 of the Constitution. It was for doing complete justice that the court in exercise of its jurisdiction under Article 142 moulded the relief in such a way as to give effect to its declaration prospectively. It is not possible to accept that such an order of prospective overruling is contrary to law. An invalid law has not been held to be valid. All that has happened is that the declaration of invalidity of the legislation was directed to take effect from a future date."

(Emphasis supplied)

102. In a concurring opinion, Ruma Pal, J., while responding to the argument that the court cannot breathe life into a dead or invalid statute up to the date of its judgment by subscribing to prospectivity, stated that such a contention proceeds on a misunderstanding of the effect of prospective overruling. It was opined that when the doctrine is applied, the Court must not be seen to be authorising or validating something that had been declared to be illegal or void, nor must the decision be construed as imbuing the legislature with competence to impose the levy up until the law was declared to be invalid. The relevant observations are as follows:

"45. One of the arguments of the appellant as noted by my learned brother was that the Court in *Synthetics case* [(1990) 1 SCC 109] by resorting to prospective overruling had in fact sought to uphold a law up to the period of the judgment which law had held to have been passed without competence. It is submitted that the finding that the States were not competent to levy tax on industrial alcohol meant that the State Acts were non est and that the Court could not by giving prospective effect to its judgment breathe life into a dead statute up to the date of the judgment.

It was also contended by the appellant that even under Article 142, the Court could not whittle down or act in derogation of any constitutional provision. By declaring that the statute was valid up to the date of the judgment, according to the appellant, the specific constitutional provisions, namely, Article 246 and Article 245 were infringed. Reliance has been placed on the decision of this Court in *Prem Chand Garg v. Excise Commr., U.P.* [AIR 1963 SC 996 : 1963 Supp (1) SCR 885] and *Supreme Court Bar Assn. v. Union of India* [(1998) 4 SCC 409].

46. The argument of the appellant proceeds on a misunderstanding of the effect of prospective overruling. As has been elaborately stated in my learned brother's judgment, by prospective overruling the court does not grant the relief claimed even after holding in the claimant's favour. In this case, the Court held that the statutory provision imposing vend fee was invalid. Strictly speaking, this would have entitled the appellant to a refund from the respondents of all amounts collected by way of vend fee.

But because, as stated in *Synthetics* [(1990) 1 SCC 109] decision itself, over a period of time imposts and levies had been imposed by virtue of the earlier decision and that the States as well as the petitioners and manufacturers had adjusted their rights and their positions on that basis, this relief was denied. The Court did not, by denying the relief, authorise or validate what had been declared to be illegal or void nor did it imbue the legislature with competence up to the date of the judgment."

(Emphasis supplied)

103. Therefore, the court does not make legal, something that is illegal, for the past period by invoking the doctrine of prospective overruling. On the contrary, upon giving due consideration to what has been expounded in *Somaiya Organics* (supra), it is clear that the idea behind the invocation of the doctrine is to meet the justice of each case in the most practical and equitable sense. In addition to this, the doctrine also seeks to adjust and balance the competing rights of all the parties involved i.e., parties who on one hand, had acted solely on the basis of an invalid law or an overruled decision and altered their respective rights and positions, and on the other, the parties who had brought a successful case in establishing that the law or decision which existed in operation was invalid.

To prevent the chaotic unscrambling of actions done in the past, a middle-ground is reached by postponing the decision declaring the invalidity to a particular date while keeping in mind the larger interest of doing complete justice. That ensuring "complete justice" in the most equitable way is the true essence of the doctrine is also evident from the fact that this Court also has, on several occasions, prescribed the limits of retroactivity of the law declared by it.

104. Such a demarcation of the limits of retroactivity was done in *Kailash Chand Sharma v. State of Rajasthan and Others* reported in (2002) 6 SCC 562, wherein the issue was as regards the grant of bonus marks in the recruitment process for Primary School Teachers in Zila Parishads solely to applicants belonging to the district and rural areas of certain specified districts and, whether the same would be violative of Articles 14 and 16 of the Constitution respectively.

By relying on the Full Bench decision of the High Court dated 21.10.1999 rendered in *Deepak Kumar Suthar v. State of Rajasthan* reported in (1999) 2 Raj LR 692 (FB), the impugned Full Bench decision dated 18.11.1999 and another impugned Division Bench decision of the High Court reiterated that, providing any form of advantage or weightage in public employment in any State service, would not be permissible on the ground of place of birth or residence or, on the ground of being a resident of an urban area or rural area. This Court while agreeing with the impugned decisions had observed that the legality of the selection process which included the addition of bonus marks could not have been seriously doubted either by the appointing authorities or by the candidates, in view of the judicial precedents which operated at the relevant time.

A cloud of doubt was cast on the said practice only at a time when the selection process was completed and the results were declared or about to be declared. Therefore, under such circumstances, it was considered proper to apply the impugned judgment dated 18.11.1999 rendered by the Full Bench of the High Court prospectively. Such a recourse was also considered appropriate considering that none of the appointed or selected candidates were made parties to the respective writ petitions before the High Court. Therefore, this Court thought fit to not implement the Full Bench decision of the High Court, which treaded a new path, to the detriment of the candidates who were already appointed.

With a view to balance the competing claims, the relief was confined only to the petitioners who were affected by the grant of bonus marks and who had moved the High Court on or before 17.11.1999. Therefore, the appointments made on or after 18.11.1999 was subject to the claims of the writ petitioners i.e., if upon a fresh consideration of the candidature of the writ petitioners as against those candidates who were appointed on or after 18.11.1999, the writ petitioners were found to have had superior merit, they would be offered appointments even by displacing the candidates appointed on or after 18.11.1999, if necessary.

In other words, only for the petitioners who had moved the High Court prior to 18.11.1999, retrospective benefit of the Full Bench decision was given. Otherwise, the appointments made up to 17.11.1999 were not to be reopened or reconsidered. However, the aforesaid relief was tailored with a clear disclaimer that it was moulded in view of the special facts and circumstances of the case and

while acting within the jurisdiction conferred upon this Court under Article 142 of the Constitution. The relevant observations are reproduced hereinbelow:

"42. In the present case, the legality of the selection process with the addition of bonus marks could not have been seriously doubted either by the appointing authorities or by the candidates in view of the judicial precedents. A cloud was cast on the said decisions only after the selection process was completed and the results were declared or about to be declared. It is, therefore, a fit case to apply the judgment of the Full Bench rendered subsequent to the selection prospectively.

One more aspect which is to be taken into account is that in almost all the writ petitions the candidates appointed, not to speak of the candidates selected, were not made parties before the High Court. Maybe, the laborious and long-drawn exercise of serving notices on each and every party likely to be affected need not have been gone through. At least, a general notice by newspaper publication could have been sought for or in the alternative, at least a few of the last candidates selected/appointed could have been put on notice; but, that was not done in almost all the cases.

That is the added reason why the judgment treading a new path should not as far as possible result in detriment to the candidates already appointed. We are not so much on the question whether the writ petitioners were legally bound to implead all the candidates selected/appointed during the pendency of the petitions having regard to the fact that they were challenging the notification or the policy decision of general application; but, we are taking this fact into consideration to lean towards the view of the High Court that its judgment ought to be applied prospectively, even if the non-impleadment is not a fatal flaw.

43. Prospectivity to what extent is the next question.

46. Having due regard to the rival contentions adverted to above and keeping in view the factual scenario and the need to balance the competing claims in the light of acceptance of prospective overruling in principle, we consider it just and proper to confine the relief only to the petitioners who moved the High Court and to make appointments made on or after 18-11-1999 in any of the districts subject to the claims of the petitioners. Accordingly, we direct:

1. The claims of the writ petitioners should be considered afresh in the light of this judgment vis-à-vis the candidates appointed on or after 18-11-1999 or those in the select list who are yet to be appointed. On such consideration, if those writ petitioners are found to have superior merit in case the bonus marks of 10% and/or 5% are excluded, they should be offered appointments, if necessary, by displacing the candidates appointed on or after 18-11-1999.

2. The appointments made up to 17-11-1999 need not be reopened and reconsidered in the light of the law laid down in this judgment.

47. Before parting, we must say that we have moulded the relief as above on a consideration of special facts and circumstances of this case acting within the framework of powers vested in this Court under Article 142 of the Constitution. Insofar as the relief has been granted or modified in the manner aforesaid, this judgment may not be treated as a binding precedent in any case that may arise in future."

(Emphasis supplied)

105. Therefore, the birth of the doctrine of prospective overruling, although not indigenous to India, yet has been well entrenched in Indian jurisprudence. As a default rule, any judgment deciding a question of law would be retrospective and would apply to the factual situation in the background of which such a decision is rendered. However, it is only when the hardship is too great that such a retrospective operation is withheld.

Broadly, the doctrine has been applied in order to not unsettle everything that was undertaken in the past either on account of an existing law/rule or a decision of the court. The object is to ensure a smooth transition of the law and not disturb matters that have attained finality. Time and again, it has been reiterated that prospective overruling is an accepted doctrine as an extended facet of stare decisis. The doctrine has been invoked under several different subject-matters, for several reasons, each unique to the facts and circumstances of particular case.

106. In *Managing Director, ECIL, Hyderabad and Others v. B. Karunakar and Others* reported in (1993) 4 SCC 727, a constitutional Bench of this Court was concerned with whether a delinquent employee is entitled to a copy of the enquiry report of the enquiry officer, before the disciplinary authority takes a decision on the guilt of the delinquent, especially when the enquiry officer is someone other than the disciplinary authority.

By declaring that such a right is available to the delinquent employee and the same being denied would amount to depriving him of reasonable opportunity and violate his rights under Articles 14 and 21 of the Constitution respectively, along with the principles of natural justice, this Court affirmed the decision of this Court in *Union of India and Others v. Mohd. Ramzan Khan* reported in (1991) 1 SCC 588. *Mohd. Ramzan Khan (supra)* contained a declaration that its decision would apply prospectively i.e., to orders of punishment passed after the date of its decision on 20.11.1990.

In other words, the law laid down in *Mohd. Ramzan Khan (supra)* was not applicable to the orders of punishment passed before the aforesaid date

notwithstanding the fact that the proceedings arising out of the same were pending in courts even after that date. Such pending proceedings were to be decided in accordance with the law prevalent prior to the said date.

107. While holding so, it was stated that courts can make the law laid down by them prospective in operation to prevent the unsettlement of settled positions, to prevent administrative chaos and to meet the ends of justice. The law on the subject being in a state of flux was also a factor that was emphasized to a large extent. In *B. Karunakar (supra)*, the authorities all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the enquiry officer to the delinquent employee and innumerable employees were also punished as a result of those proceedings.

There were some cases wherein the orders of punishment had become final and in some others, the matters were pending in courts at different stages. Reopening all those disciplinary proceedings would have resulted in grave prejudice to the administration which was considered as far outweighing the benefit which would potentially accrue to the employees concerned if the disciplinary proceedings were allowed to be disturbed. Therefore, on a holistic perspective and giving due regard to both administrative reality and public interest, it was considered necessary that the prospectivity given to the decision in *Mohd. Ramzan Khan (supra)* not be disturbed. The relevant observations of the majority opinion are reproduced hereinbelow:

"34. It is now well settled that the courts can make the law laid down by them prospective in operation to prevent unsettlement of the settled positions, to prevent administrative chaos and to meet the ends of justice. In this connection, we may refer to some well-known decisions on the point.

43. It has, therefore, to be accepted that at least till this Court took the view in question in *Mohd. Ramzan Khan* case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] the law on the subject was in a flux. Indeed, it is contended on behalf of the appellants/petitioners before us that the law on the subject is not settled even till this day in view of the apparent conflict in decisions of this Court. The learned Judges who referred the matter to this Bench had also taken the same view. We have pointed out that there was no contradiction between the view taken in *Mohd. Ramzan Khan* case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] and the view taken by this Court in the earlier cases and the reliance placed on *K.C. Asthana* case [(1988) 3 SCC 600 : 1988 SCC (L&S) 869] to contend that a contrary view was taken there was not well-merited.

It will, therefore, have to be held that notwithstanding the decision of the Gujarat High Court in *N.N. Prajapati* case [(1985) 2 GLR 1406] and of the Central Administrative Tribunal in *Premnath K. Sharma* case [(1988) 6 ATC 904 : (1988)

3 SLJ (CAT) 449] and of the other courts and tribunals, the law was in an unsettled condition till at least November 20, 1990 on which day the Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] was decided.

Since the said decision made the law expressly prospective in operation the law laid down there will apply only to those orders of punishment which are passed by the disciplinary authority after November 20, 1990. This is so, notwithstanding the ultimate relief which was granted there which, as pointed out earlier, was per incuriam. No order of punishment passed before that date would be challengeable on the ground that there was a failure to furnish the enquiry report to the delinquent employee.

The proceedings pending in courts/tribunals in respect of orders of punishment passed prior to November 20, 1990 will have to be decided according to the law that prevailed prior to the said date and not according to the law laid down in Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505]. This is so notwithstanding the view taken by the different benches of the Central Administrative Tribunal or by the High Courts or by this Court in R.K. Vashisht case [1993 Supp (1) SCC 431 : 1993 SCC (L&S) 153 : (1993) 23 ATC 444 (II)].

44. The need to make the law laid down in Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] prospective in operation requires no emphasis. As pointed out above, in view of the unsettled position of the law on the subject, the authorities/managements all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the enquiry officer to the delinquent employee and innumerable employees have been punished without giving them the copies of the reports. In some of the cases, the orders of punishment have long since become final while other cases are pending in courts at different stages.

In many of the cases, the misconduct has been grave and in others the denial on the part of the management to furnish the report would ultimately prove to be no more than a technical mistake. To reopen all the disciplinary proceedings now would result in grave prejudice to administration which will far outweigh the benefit to the employees concerned. Both administrative reality and public interests do not, therefore, require that the orders of punishment passed prior to the decision in Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] without furnishing the report of the enquiry officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account. Hence we hold as above."

(Emphasis supplied)

108. The minority opinion rendered by K. Ramaswamy, J., also illustrated the circumstances and the potential reasons due to which the doctrine of prospective overruling may be resorted to. It was opined that under constitutional law, retrospective operation of an overruling judgment is neither required nor prohibited. The decision as regards retrospectivity or prospectivity must depend on the facts and circumstances of each case, as also the nature and purpose which the overruling decision seeks to serve.

Other relevant factors which must be taken account of include the justifiable reliance which has been placed by the administration on the overruled decision, the ability to effectuate the new rule adopted in the overruling case without doing injustice and whether the likelihood of its retrospective operation substantially burdens the administration of justice. Prior history of the rule in question, its purpose and effect and whether the retroactive operation will accelerate or retard its operation are also significant considerations. The relevant observations are reproduced as thus:

"66. When judicial discretion has been exercised to establish a new norm, the question emerges whether it would be applied retrospectively to the past transactions or prospectively to the transactions in future only.

73. It would, thus, be clear that the Supreme Court of the United States of America has consistently, while overruling previous law or laying a new principle, made its operation prospective and given the relief to the party succeeding and in some cases given retrospectively and denied the relief in other cases. As a matter of constitutional law retrospective operation of an overruling decision is neither required nor prohibited by the Constitution but is one of judicial attitude depending on the facts and circumstances in each case, the nature and purpose the particular overruling decision seeks to serve.

The court would look into the justifiable reliance on the overruled case by the administration; ability to effectuate the new rule adopted in the overruling case without doing injustice; the likelihood of its operation whether substantially burdens the administration of justice or retards the purpose. All these factors are to be taken into account while overruling the earlier decision or laying down a new principle. The benefit of the decision must be given to the parties before the Court even though applied to future cases from that date prospectively would not be extended to the parties whose adjudication either had become final or matters are pending trial or in appeal.

This Court would adopt retroactive or nonretroactive effect of a decision not as a matter of constitutional compulsion but a matter of judicial policy determined in each case after evaluating the merits and demerits of the particular case by looking to the prior history of the rule in question, its purpose and effect and

whether retroactive operation will accelerate or retard its operation. The reliance on the old rule and the cost of the burden of the administration are equally germane and be taken into account in deciding to give effect to prospective or retrospective operation."

(Emphasis supplied)

109. Following the spirit of the discussion in B. Karunakar (supra), this Court has invoked the doctrine of prospective overruling only when it has been appropriate and absolutely necessary to do so. In K. Madhava Reddy and Others v. State of Andhra Pradesh and Others reported in (2014) 6 SCC 537, it was observed that the doctrine of prospective overruling was a rule of judicial craftsmanship laced with pragmatism and judicial statesmanship which intends to serve as an useful tool, ensuring the smooth transition of the operation of law, without unduly affecting the rights of the people who acted upon the law which existed or operated previously. In the facts of the case, it was observed that the reversion of the petitioner to their parent cadre was bound to have a cascading effect which would prejudice several persons who are not even parties before the Court. The relevant observations are as follows:

"16. The "doctrine of prospective overruling" was, observed by this Court as a rule of judicial craftsmanship laced with pragmatism and judicial statesmanship as a useful tool to bring about smooth transition of the operation of law without unduly affecting the rights of the people who acted upon the law that operated prior to the date of the judgment overruling the previous law.

22. Such being the position reverting these officers at this distant point of time, to the posts of Senior Stenographers in their parent cadre does not appear to us to be either just, fair or equitable especially when upon reversion the State does not propose to promote them to the higher positions within their zone/cadre because such higher posts are occupied by other officers, most if not all of whom are junior to the petitioners and who may have to be reverted to make room for the petitioners to hold those higher posts. Reversion of the petitioners to their parent cadre is therefore bound to have a cascading effect, prejudicing even those who are not parties before us.

24. In the result, we allow these appeals, set aside the orders passed by the High Court and hold that while GOMs Nos. 14 and 22 have been rightly declared to be ultra vires of the Presidential Order by the State Administrative Tribunal, the said declaration shall not affect the promotions and appointments made on the basis of the said GOMs prior to 7-11-2001, the date when Jagannadha Rao [V. Jagannadha Rao v. State of A.P., (2001) 10 SCC 401 : 2002 SCC (L&S) 872] was decided by this Court. The parties are left to bear their own costs."

(Emphasis supplied)

110. On the other hand, in Justice Chandrashekaraiah (Retired) v. Janekere C. Krishna and Others reported in (2013) 3 SCC 117 while holding that the appointment of the Upa-Lokayukta made in the absence of any consultation with the Chief Justice was void ab-initio, the Court refused to apply the principle of prospective overruling to save the appointment in question. It was stated that there was no overwhelming reason to save the appointment from attack and the defence that such were the appointments made in the past would be of no avail since merely because a wrong had been committed several times in the past, would not mean that it must be allowed to persist, otherwise the wrong would never be corrected. The relevant observations of this Court are reproduced hereinbelow:

"156. It was submitted that the practice followed for the appointment of the Upa-Lokayukta in the present case is the same or similar to the practice followed in the past and, therefore, this Court should not interfere with the appointment already made. If at all interference is called for, the doctrine of "prospective overruling" should be applied.

157. I am not inclined to accept either contention. Merely because a wrong has been committed several times in the past does not mean that it should be allowed to persist, otherwise it will never be corrected. The doctrine of "prospective overruling" has no application since there is no overwhelming reason to save the appointment of the Upa-Lokayukta from attack. As already held, in the absence of any consultation with the Chief Justice, the appointment of Justice Chandrashekaraiah as an Upa-Lokayukta is void ab initio. However, this will not affect any other appointment already made since no such appointment is under challenge before us."

(Emphasis supplied)

111. Yet another decision of this Court in Union of India v. I.P. Awasthi and Others reported in (2015) 17 SCC 340 took the view that it would not be appropriate to apply the doctrine of prospective overruling when a large number of parties are not affected. The doctrine was stated to have been evolved to avoid confusion in matters where a large number of parties have settled their affairs on account of the overruled law. Since larger public interest was not involved in the facts of the case, this Court refrained from applying the said doctrine and struck down the amended rule retrospectively. The relevant observations are reproduced as thus:

"3. There is no doubt that this Court has evolved the doctrine of prospective overruling in order to avoid confusion in matters where large number of parties

have settled their affairs by the law which stood before the overruling was done by this Court. We are, however, unable to accede to the request made by the learned counsel for the appellants for two reasons. First, we are informed at the Bar that the amendment to the Rules was made in the year 1992 and CAT set aside the amendment in the year 2000. During this period, there were only 12 promotions that were granted under the amended Rules.

As a consequence of the order of CAT being upheld by the judgment [Union of India v. I.P. Awasthi, WP (C) No. 5460 of 2001, order dated 5-2-2002 (Del)] of the High Court under challenge, it is only 12 cases which have to be reopened. We are not, therefore, satisfied that large public interest is likely to be affected by permitting the amended Rule being struck down retrospectively from the date on which it was amended. Second, the doctrine of prospective overruling pertains only to the powers of this Court. As far as CAT is concerned, we doubt that there is any such doctrine available for exercise of its powers. For both reasons, we decline the suggestion made."

(Emphasis supplied)

112. In Union of India and Another v. Ganpati Dealcom Private Limited reported in (2023) 1 SCC 315, it was succinctly explained that the application of the doctrine is only a limited exception and must be resorted to when substantial actions have been undertaken under the invalid laws such that going back to the original position would be next to impossible and observed as thus:

"66. At this stage, we may only note that when a court declares a law as unconstitutional, the effect of the same is that such a declaration would render the law not to exist in the law books since its inception. It is only a limited exception under constitutional law, or when substantial actions have been undertaken under such unconstitutional laws that going back to the original position would be next to impossible. In those cases alone, would this Court take recourse to the concept of "prospective overruling"."

(Emphasis supplied)

113. Therefore, it is clear as a noon day that the invocation of the doctrine of prospective overruling or the attribution of prospectivity to a decision must not be resorted to in a routine manner without the Court satisfying itself that the circumstances demand such a solution, both to do complete justice to the matter at hand and also to reorient the law in the right direction without creating widespread chaos and disruption.

By employing the doctrine of prospective overruling, the matter pending before different forums would still be governed under the old law or the overruled decision. In simpler words, the pending cases would not be affected by the new

declaration of law. In the absence of this the Court applying this doctrine, all pending matters and future cases would automatically and inescapably be governed by the law declared in the overruling decision.

In certain situations, it might be preferable on a holistic consideration of several competing interests and factors to invoke the doctrine of prospective overruling and therefore, it could be said that the ambit of the doctrine is co-extensive with the equity of a situation to prevent the intrusion into matters which have already been settled or have attained finality. The principle involves giving effect to the new law laid down from a prospective date, ordinarily from the date of the judgement of the overruling decision.

d. It would be open for another bench to subsequently decide on the application of the doctrine of prospective overruling to a past decision.

114. Another pertinent question for the purpose of our discussion would be, whether the prospective operation of a particular decision delivered in the past can be decided subsequently by a different bench, which is concerned with the same question of law, especially when the previous decision is silent on the question of prospectivity or retrospectivity. There has been some debate as to whether this would amount to a review of the said decision under a non-review jurisdiction.

115. In *Saurabh Chaudri (Dr.) and Others v. Union of India and Others* reported (2004) 5 SCC 618, a constitutional Bench of this Court decided on the issue of the temporal operation of a judgment already declared. Here, several applications were filed seeking clarifications and directions for implementing the judgment of a Coordinate Bench of this Court in *Saurabh Chaudri v. Union of India* reported in (2003) 11 SCC 146 which concluded that for post-graduate (PG) admission to medical colleges, the all-India quota must be increased from 25% to 50%.

The aforesaid decision was rendered on 04.11.2003 but was silent both on whether it would be applicable to the process of admissions which had already commenced or if it would have prospective application. In a majority opinion, it was declared that the judgement of the Coordinate Bench in *Saurabh Chaudri* (supra) delivered on 04.11.2003 would be implemented prospectively from the academic year 2005-06 since the entire admission procedure for the academic year 2004-05 was already planned on the basis of the 25% all-India quota.

However, S.B. Sinha, J in his minority opinion was of the view that the decision must be implemented from the academic year 2004-05 itself since the examinations were conducted much after the rendition of the judgment on 04.11.2003 and any action taken contrary to the decision thereto must be

considered to be taken by the appropriate authorities at their own peril. The relevant observations made by this Court, in its majority opinion, is as follows:

"5. In our opinion, it would be appropriate to hold and direct the decision in Saurabh Chaudri case [(2003) 11 SCC 146] being made applicable only prospectively and thus exclude from the operation thereof the process of admission which had already commenced and was nearing finalisation when the judgment came to be pronounced.

6. Accordingly, it is directed that the allotment of seats under the all-India quota, the process as to which had commenced pursuant to the advertisement dated 16-9-2003 shall remain confined to 25% only.

(Emphasis supplied)

116. S.B. Sinha, J., in his minority opinion had agreed with the general proposition that the declaration of law by reason of a judgment may affect the rights of parties retrospectively. Having said so, he expressed serious doubt as to whether a Constitution Bench can modify the judgment of another Constitution Bench for the purpose of declaring the former to have prospective effect, even under the exercise of Article 142 of the Constitution. Such an exercise of the jurisdiction under Article 142, in his opinion, would only be appropriate during the rendition of the judgment and not thereafter.

If a different view than the one arrived at in the initial judgement is sought to be taken, then it is the review jurisdiction which must be invoked. S.B. Sinha, J., went on to observe that if the decision of the initial judgment can be given effect to, then a direction which would run contrary to that ratio must not be issued subsequently. It was in this context that he opined that, a prayer seeking the prospective declaration of a decision which has already been made would amount to asking for a review and that would not be permissible. Therefore, according to him, the decision delivered on 04.11.2003 could not have been given effect to, prospectively, from the academic year 2005. The relevant observations are as follows:

"20. By reason of a judgment, as is well known, a law is declared. Declaration of such law may affect the rights of the parties retrospectively. Prospective application of a judgment by the court must, therefore, be expressly stated.

32. A statute is applied prospectively only when thereby a vested or accrued right is taken away and not otherwise. (See S.S. Bola v. B.D. Sardana [(1997) 8 SCC 522].) A judgment rendered by a superior court declaring the law may even affect the right of the parties retrospectively.

34. Furthermore, it is extremely doubtful whether a Constitution Bench can modify a judgment rendered by a different Constitution Bench even in exercise of its jurisdiction under Article 142 of the Constitution of India. The jurisdiction of this Court under Article 142 of the Constitution of India must be applied at the time of rendition of the judgment and not thereafter. After a judgment is rendered the Court can only exercise its power of review, if it intends to take a different view from the one rendered in the main judgment. Review of the judgment cannot be granted in the garb of a clarification. (See *Delhi Admn. v. Gurdip Singh Uban* [(2000) 7 SCC 296].)

35. Furthermore, an order of review or modification of a judgment should not also ordinarily be passed at the behest of the applicants who are not parties to the writ petition.

36. We must notice that it is not a case of the Union of India that the judgment in *Saurabh Chaudri* [(2003) 11 SCC 146] cannot be given effect to even at this stage. If it can be given effect to the Court should not issue a direction which would run contrary to the ratio laid down by this Court in the main judgment, particularly when the examinations had been held much after the rendition of the judgment. Asking the Court to apply the judgment of this Court with prospective effect would amount to asking for a review and, thus, the same cannot be permitted to be achieved by filing an application for clarification.

37. Application for clarification/modification filed by the Union of India is based on wholly wrong premise. A judgment, as is well known, must be read as a whole. So read it is evident that declaration of law has clearly been made therein. There does not exist any ambiguity requiring clarification.

38. Therefore, I respectfully dissent with the opinion of Brother Lahoti, J. I am of the view that no case has been made out for applying the judgment in *Saurabh Chaudri* [(2003) 11 SCC 146] from the academic year 2005."

(Emphasis supplied)

117. It must be noted that the majority opinion in *Saurabh Chaudri* (supra) which was inclined towards declaring the previous judgment prospectively applicable, was given when several IAs were filed seeking clarifications in or modification of the judgment which was already rendered in the same matter on 04.11.2023. It was not an occasion where an altogether different bench was tasked with deciding on the prospective applicability of a previous decision rendered by a completely different bench. This question was, however, directly in issue before a three-judge bench of this Court in *Jarnail Singh and Others v. Lachhmi Narain Gupta and Others* reported in (2022) 10 SCC 595.

Herein, one of the issues was whether the judgment in *M. Nagaraj v. Union of India* reported in (2006) 8 SCC 212 could be said to operate prospectively. *M. Nagaraj* (supra) upheld the constitutional validity of Article 16(4-A) subject to the State collecting quantifiable data showing inadequate representation. The law laid down therein applied from 17.06.1995 i.e., the date on which Article 16(4-A) came into force. While agreeing with the contention that the decision in *M. Nagaraj* (supra) must be given prospective effect from the date of its decision on 19.10.2006, the Court referred to the US Supreme Court decision in *Victor Linkletter v. Victor G. Walker* reported in 1965 SCC OnLine US SC 126 where an earlier judgement of the US Supreme Court in *Mapp v. Ohio* reported in 367 U.S. 643 was declared to be prospective in operation after considering the consequences that will ensue with its retrospective operation.

With a view to avoid any confusion, and also to prevent the debilitating effect that it would have had on a very large number of employees, the Court declared that a prior judgment of this Court can be made prospectively applicable by a different or even a smaller bench of this Court subsequently, in exercise of the power to do complete justice under Article 142. Furthermore, it was held that it would not be an absolute rule that prospective overruling or the prospective operation of a decision must be declared only by the bench which has rendered the decision in question.

The contrary view taken by this Court in *M.A. Murthy v. State of Karnataka* reported in (2003) 7 SCC 517 that there shall be no prospective overruling unless indicated in the "particular decision" was declared to be obiter and not binding. Therefore, the three-judge bench in *Jarnail Singh* (supra) declared the decision of the five-judge Constitution Bench in *M. Nagaraj* (supra) to have prospective operation. The relevant observations are as thus:

"62. This Court in *Golak Nath* [*Golak Nath v. State of Punjab*, (1967) 2 SCR 762 : AIR 1967 SC 1643] and *Ashok Kumar Gupta* [*Ashok Kumar Gupta v. State of U.P.*, (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] , referred to above, has laid down that Article 142 empowers this Court to mould the relief to do complete justice. To conclude this point, the purpose of holding that *M. Nagaraj* [*M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] would have prospective effect is only to avoid chaos and confusion that would ensue from its retrospective operation, as it would have a debilitating effect on a very large number of employees, who may have availed of reservation in promotions without there being strict compliance of the conditions prescribed in *M. Nagaraj* [*M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013].

Most of them would have already retired from service on attaining the age of superannuation. The judgment of *M. Nagaraj* [*M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] was delivered in 2006,

interpreting Article 16(4-A) of the Constitution which came into force in 1995. As making the principles laid down in M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] effective from the year 1995 would be detrimental to the interests of a number of civil servants and would have an effect of unsettling the seniority of individuals over a long period of time, it is necessary that the judgment of M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] should be declared to have prospective effect."

(Emphasis supplied)

e. Applicability or non-applicability of doctrine of prospective overruling in criminal matters, so far.

118. As repeatedly discussed in the aforesaid parts of this judgment, the doctrine of prospective overruling was designed to prevent the unravelling of past transactions and the re-opening of matters which have already attained finality. In so far as the applicability of the doctrine or a rationale similar to it, to matters pertaining to criminal law are concerned, this Court has in the past held that acquittals granted on the basis of the earlier position/interpretation of law must not be interfered with.

119. In State of Kerala and Others v. Alassery Mohammed and Others reported in (1978) 2 SCC 386, the issue pertained to whether non-compliance with the requirement of Rule 22 of the Prevention of Food Adulteration Rules, 1955 would vitiate the entire trial and the conviction recorded therein. While this Court's decision in Rajal Das Guru Namal Pamanani v. State of Maharashtra reported in (1975) 3 SCC 375 held that the quantities mentioned under the said rule are required for a correct analysis and any shortage in the said quantity is not permitted by the Statute, however, Alassery (supra) held that if the quantity sent to the Public Analyst, even though less than prescribed, is sufficient and enables the Public Analyst to make a correct analysis, then merely because the quantity sent was not in strict compliance with the Rule will not result in the nullification of the report and obliterate its evidentiary value.

This was held by keeping in mind that it would endanger public health to acquit offenders on technical grounds which have no substance. However since Pamanani (supra) had held the field for a significant time and several prosecutions had resulted in acquittals in the meantime, the Court found it fit to dispose of the appeals by only laying down the correct proposition of law. Neither were the acquittals of any of the respondents set aside nor were their cases sent back to the Courts below. The relevant observations are reproduced hereinbelow:

17. But taking the totality of the facts and circumstances of each case, and specially the fact that Pamanani case has held the field for about three years by now, we did not feel that justice required that we should interfere with the orders of acquittal in these cases and send some cases back to the High Court while deciding other ourselves by recording orders of conviction. Rule 22-B clarifying the law has also been introduced as late as December, 1977 although Pamanani case was decided in December, 1974.

We were informed at the Bar, and so far we are aware, rightly too, that for non-compliance with the requirements of Rule 22, many cases in different States had ended in acquittal. Decision in many of them became final and only a few could be brought to this Court. Each one of the Food Inspectors concerned had failed in discharging his duty strictly in accordance with the requirements of the law, and, in such a situation, after great harassment, long delay, and expenses which the respondents had to incur, they should not be punished by this Court.

18. In the three Kerala cases Mr S.V. Gupte appearing with Mr K.R. Nambiar and Mr Sudhakaran stated before us that the State was interested more in the correct enunciation of the law than in seeing that the respondents in these appeals are convicted. They were not anxious to prosecute these matters to obtain ultimate conviction of the respondents. A large number of the other appeals are by the Municipal Corporation of Delhi for whom the Attorney General appeared assisted by Mr B.P. Maheshwari.

Although a categorical stand was not taken on behalf of the appellants in these appeals as the one taken in the Kerala cases, eventually, the learned Attorney General did not seriously object to the course indicated by us. In the few Bombay appeals M/s V.S. Desai and M.N. Shroff showed their anxiety for obtaining ultimate convictions of the offenders, but we do not find sufficient reason for passing a different kind of order in the Bombay appeals.

In similar situations in the case of State of Bihar v. Hiralal Kejriwal [AIR 1960 SC 47 : (1960) 1 SCR 726 : 1960 Cri LJ 150] this Court refused to exercise its discretionary jurisdiction under Article 136 of the Constitution and did not order the continuance of the criminal proceeding any further. In Food Inspector, Calicut Corporation v. Cherukattil Gopalan [(1971) 2 SCC 322 : 1971 SCC (Cri) 522 : 1971 Supp SCR 721] this Court said at p. 730 :

"But in view of the fact that the appellant has argued the appeal only as a test case and does not challenge the acquittal of the respondents, we merely set aside the order and judgment of the High Court. But we may make it clear that apart from holding the respondents technically guilty, we are not setting aside the order of acquittal passed in their favour."

19. For the reasons stated above, we dispose of these appeals by merely laying down the correct proposition of law but do not make any consequential orders setting aside the acquittal of any of the respondents or sending back the cases to the courts below or convicting any of them by an order of this Court."

(Emphasis supplied)

120. In *Alassery (supra)*, there was no mention of the doctrine of prospective overruling being applied to the facts of the case. What was done was that the Court refrained from setting aside the acquittals of any of the respondents therein or sending their cases back for re-trial to the appropriate court or convicting any of the respondents therein by an order of the Court itself. However, there was no mention as regards matters which may have been pending before a trial court and which required a consideration of this issue.

This may have been so because Rule 22-B which was introduced three years after the decision in *Pamanani (supra)* clarified the position of law laid down in *Pamanani (supra)* by stating that "Notwithstanding anything contained in Rule 22, the quantity of sample sent for analysis shall be considered as sufficient unless the public analyst or the Director reports to the contrary". Therefore, it was more likely that all the pending matters came to be instituted only after Rule 22-B was introduced and there remained no doubt on the position of law since.

Therefore, this Court confined itself to making an observation relating to the acquittals alone i.e., that the acquittals would not be interfered with. However, if in case, there existed a matter, instituted before the trial court, before Rule 22-B came into being and was concerned with the same question, the decision in *Alassery (supra)* could be said to have been applicable to it retrospectively.

121. The applicability or discussion relating to the doctrine of prospective overruling can be noticed in a few other matters under the criminal arena, though prominently on matters pertaining to procedural law. In *Ramesh Kumar Soni v. State of Madhya Pradesh* reported in (2013) 14 SCC 696, the Court was concerned with an amendment changing the triability of certain offences i.e., from the Judicial Magistrate First Class to the Court of Session and its effect on the cases pending trial or pending investigation.

This Court had held that any amendment shifting the forum of the trial had to be, on principle, retrospective in nature in the absence of any indication to the contrary in the Amendment Act. This retrospective operation of amendments relating to procedure would be subject to the exception that the earlier procedure which was correctly adopted and which led to the proceedings being concluded under the old law cannot be reopened for the purpose of applying the new

procedure. Furthermore, it was also reiterated that an accused does not possess a "vested right of forum" for his trial.

However, the decision of a Full Bench of the Madhya Pradesh High Court in Amendment of First Schedule of Criminal Procedure Code by Criminal Procedure Code (M.P. Amendment) Act, 2007, In re, reported in (2008) SCC OnLine MP 185 had opined that all the cases which were pending before the Judicial Magistrate as on 22.02.2008 i.e., the date of the amendment, would remain unaffected by the Amendment. Therefore, the Full Bench of the High Court directed that all the cases which were pending before the Judicial Magistrate and had already been committed to the Court of Session due to the coming into force of the amendment, to be sent back to the Judicial Magistrate.

This Court in Ramesh Kumar Soni (supra) disagreed and overruled the decision of the Full Bench but only prospectively. This was done because the trial of the cases that were sent back from the Sessions Court to the Judicial Magistrate under the orders of the Full Bench may have also been concluded or may be at an advanced stage. Therefore, any change of forum at that stage would have caused unnecessary and avoidable hardship to the accused if they were transferred again to the Court of Sessions in light of the conclusion that an amendment to procedural law would operate retrospectively. The relevant observations are reproduced hereinbelow:

"21. The upshot of the above discussion is that the view taken by the Full Bench [Amendment of First Schedule of Criminal Procedure Code by Criminal Procedure Code (M.P. Amendment) Act, 2007, In re, (2008) 3 MPLJ 311] holding the amended provision to be inapplicable to pending cases is not correct on principle. The decision rendered by the Full Bench [Amendment of First Schedule of Criminal Procedure Code by Criminal Procedure Code (M.P. Amendment) Act, 2007, In re, (2008) 3 MPLJ 311] would, therefore, stand overruled but only prospectively.

We say so because the trial of the cases that were sent back from the Sessions Court to the Court of the Magistrate, First Class under the orders of the Full Bench [Amendment of First Schedule of Criminal Procedure Code by Criminal Procedure Code (M.P. Amendment) Act, 2007, In re, (2008) 3 MPLJ 311] may also have been concluded or may be at an advanced stage. Any change of forum at this stage in such cases would cause unnecessary and avoidable hardship to the accused in those cases if they were to be committed to the Sessions for trial in the light of the amendment and the view expressed by us.

27. The present case, in our opinion, is one in which we need to make it clear that the overruling of the Full Bench decision of the Madhya Pradesh High Court will

not affect cases that have already been tried or are at an advanced stage before the Magistrates in terms of the said decision."

(Emphasis supplied)

122. On a conspectus of the aforesaid discussion on the doctrine of prospective overruling, the following can be summarised:

i. The default rule is that the overruling of a decision generally operates retrospectively. This is because a judgement which interprets a statute or provision declares the meaning of the statute as it should have been construed from the date of its enactment and what has been declared to be the law of the land must be held to have always been the law of the land. This rationale also stems from the Blackstonian rule that the duty of the court is not to "pronounce a new law but to maintain and expound the old one". The judge rather than being the creator of the law, is only its discoverer. Therefore, if a subsequent decision alters or overrules the earlier one, it cannot be said to have made a new law. The correct principle of law is just discovered and applied retrospectively.

ii. Since resorting to the doctrine of "prospective overruling" is an exception to the normal rule that a judgement or decision applies retrospectively and to the general rule of doctrine of precedent, an express declaration by the court that its decision is prospectively applicable is absolutely necessary. Prospectivity as a concept cannot be considered to be inhered in situations since the intention to attribute prospectivity to a decision must be limpid and clear.

iii. In *Jarnail Singh* (supra) this Court took the view that even if the overruling decision does not indicate that its decision is to apply with prospective effect, a different or even a smaller bench of this Court, subsequently, can declare that the doctrine of prospective overruling must be applied to the prior judgment of this Court, in exercise of the power under Article 142 to do complete justice to the matter at hand.

iv. In *Baburam* (supra), this Court was of the view that, on the application of the doctrine of prospective overruling, it is deemed that all actions taken contrary to the declaration of law but prior to the date of the declaration, are validated. However, *Somaiya Organics* (supra) clarified that the application of the doctrine of prospective overruling would not have the effect of validating an invalid law.

All that is done is that the declaration of invalidity of the legislation is directed to take effect from a future date. To prevent the chaotic unscrambling of actions done in the past, a middle-ground is reached by postponing the decision declaring invalidity to a particular date, in the interest of doing complete justice. Thus, ensuring that "complete justice" is done in the most equitable way is the true essence of the doctrine and this is also evident from the fact that this Court has,

on several occasions, prescribed the limits to the retroactivity of the law declared by it.

v. The evolution of the doctrine of prospective overruling, although not indigenous to India, yet has been well entrenched in Indian jurisprudence. As a default rule, any judgment deciding a question of law would be retrospective and would also apply to the factual situation in the background of which such a decision is rendered. However, it is only when the hardship is too great that such a retrospective operation is withheld. Broadly, the doctrine is being applied with a view to not unsettle everything that was undertaken in the past either on account of an existing law/rule or due to the decision of a court.

The object is to ensure a smooth transition of the law and not disturb matters that have attained finality. Time and again, it has been reiterated that prospective overruling is an accepted doctrine as an extended facet of stare decisis. The doctrine involves giving effect to the new law laid down from a prospective date, ordinarily from the date of the judgement of the overruling decision. Sometimes, while declaring that a decision would be prospectively applicable, courts have granted limited relief to the parties or petitioners in question retrospectively.

vi. There are several factors or considerations which may weigh with the court before the doctrine of prospective overruling is applied. Some broad considerations include - to meet the ends of justice, prevent the unsettlement of settled positions, mitigate any administrative chaos keeping in mind the pragmatic realities, curb any uncertainty in law, thwart avoidable litigation, safeguard public interest and preserve the avowed object and purpose that is embodied in the overruling decision. The possibility of impact on a large number of parties or individuals, the impossibility of restoring the original and correct position of law, the existence of an overwhelming reason favouring prospectivity or where the law on the subject been in a state of flux for a significant period of time are also relevant.

Therefore, the legitimate or justifiable reliance by a party or administration in good faith on the overruled decision, the ability to effectuate the new rule adopted in the overruling case without doing injustice, the likelihood of implementing its retrospective operation without substantially burdening the administration of justice, the prior history of the rule in question, its purpose and effect and whether the retroactive operation will accelerate or retard its operation, etc., are all significant considerations which are to be kept in mind before the doctrine of prospective overruling may be resorted to. Obviously, if one or more of the factors illustrated above are competing with each other i.e., one favours retrospectivity and the other favours prospectivity, the competing considerations must be sought to be balanced to arrive at a reasonable conclusion.

vii. Therefore, the invocation of the doctrine of prospective overruling or the attribution of prospectivity to a decision must not be resorted to in a routine manner without the court satisfying itself that the circumstances demand such a solution, both to do complete justice to the matter at hand and also to reorient the law in the right direction without creating widespread chaos and disruption.

In certain situations, it might be preferable on a holistic consideration of several competing interests and factors to invoke the doctrine of prospective overruling and therefore, it could be said that the ambit of the doctrine is co-extensive with the equity of a situation. If the doctrine of prospective overruling is applied, pending cases would not be affected by the new declaration of law. In the absence of the court applying this doctrine, however, all pending matters and future cases would automatically and inescapably be governed by the law declared in the overruling decision.

viii. In the realm of criminal law, the question of prospective or retrospective declaration of a law/decision has been comparatively rare. In *Alassery Mohammed* (supra), this Court held that since *Pamanani* (supra) had held the field for a significant time and several prosecutions had resulted in acquittals in the meantime, the appeals would be disposed of by only laying down the correct proposition of law. Neither were any acquittals disturbed nor were any of the matters remanded to the Courts below. The decision did not expressly apply the doctrine of prospective overruling. Therefore, it could reasonably be stated that the decision was retrospectively applicable to pending matters (if any) which had not yet resulted in an acquittal and which was instituted when *Pamanani* (supra) held the field or in other words, was instituted before Rule 22-B clarified the position of law.

ix. One another decision on the doctrine of prospective overruling which pertains to criminal law was rendered in *Ramesh Kumar Soni* (supra). Herein, this Court overruled the decision of the Full Bench of the High Court prospectively, by stating that any change of forum at this stage would cause unnecessary and avoidable hardship to the accused if they were transferred again in light of the conclusion arrived at in *Ramesh Kumar Soni* (supra).

123. In light of the elaborate discussion hereinabove, we do not find it necessary, in the facts and circumstances of the matter at hand, to exercise the powers available to us and declare the decision given in *Sanjeev V. Deshpande* (supra) to be prospectively applicable. We have decided so because there exists no overwhelming reason for us to apply the doctrine of prospective overruling. On the other hand, in order to meet the ends of justice and with a view to ensure that public interest is safeguarded and to give effect to the salutary object behind the enactment of the NDPS Act, the decision must necessarily be retrospectively applicable. This Court in *Sanjeev V. Deshpande* (supra), perhaps, did not think fit

to confine or restrict its interpretation of Section 8 of the NDPS Act to future cases only.

This is evinced from the fact that whilst overruling Rajesh Kumar Gupta (supra), it deliberately chose not to discuss the doctrine of prospective overruling let alone resort to it. This conspicuous silence in Sanjeev Deshpande (supra) as regards the prospective or retrospective effect of overruling Rajesh Kumar Gupta (supra) has to be borne in mind and given due deference. As a natural corollary to the aforesaid, we see no reason why we should deviate from the default rule of retrospectivity and instead, resort to the doctrine of prospective overruling. Therefore, pending cases, if any, which were instituted before the decision of this Court in Sanjeev V. Deshpande (supra) would also be governed by the law as clarified by it.

f. Article 20(1) considerations on the retrospective applicability of the decision in Sanjeev V. Deshpande (supra).

124. Article 20(1) of the Constitution of India reads that - "No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.". It is therefore, set in stone under the constitutional principles of our legal system that it would be absolutely impermissible for an accused to be convicted of an offence under any Act, if his act was not an offence at the time during which it was committed. Herein, the import of the words "law in force at the time of the commission" is especially important.

It has been detailed by us, with sufficient clarity, in the preceding paragraphs, that judges do not make law but only find the right law. This is precisely the reason behind retrospectively applying any overruling decision as a default rule. However, can the overruling judgment and its declaration of law be considered to be the "law in force at the time of the commission"? Such a question is required to be considered by us more particularly as regards matters which pertain to substantive law, like the present one. Herein, the controversy is whether the dealing in of psychotropic substances which are mentioned under the Schedule to the NDPS Act and not under Schedule I of the NDPS Rules would constitute an offence or not.

While the decision in Rajesh Kumar Gupta (supra) answered in the negative, the subsequent decision in Sanjeev V. Deshpande (supra) answered affirmatively and overruled the decision in Rajesh Kumar Gupta (supra). Following the general rule, the exposition of law in Sanjeev V. Deshpande (supra) is required to be considered as the right position of law from its inception. However, we have to examine whether holding so would result in any implications on the fundamental

rights of the accused, in the specific facts and attendant circumstances that accompany the present appeals.

125. Salmond, in his acclaimed work on jurisprudence, is of the opinion that a judge does not make law and merely declares it. According to him, when a particular decision is overruled, it is declared that the supposed rule laid down in such an overruled decision was never the right law. Since, its authoritative value is erased completely, any intermediate transaction, despite being made on the strength of that supposed rule, would be governed by the principles established in the overruling decision.

126. A reflection of this proposition laid down by Salmond was evident in the decision of the Indiana Supreme Court, way back in the year 1898, in *Center School Township v. State* reported in 150 Ind. 168., which discussed the effect of the overruling of a decision. It was held that a decision of a court of last resort, is only an exposition of what the court "construes the law to be", therefore, while overruling a former decision, the court does not declare the overruled decision to be bad in law, but that it was "never the law".

The overruling would be indicative of the fact that the court was simply mistaken in regard to the law in its former decision and it would have the effect of obliterating the former decision altogether. However, it was cautioned that courts will not apply a change made by the overruling decision to the construction of the law given in the overruled decision, so as to invade the vested rights of any person. The relevant observations are reproduced hereinbelow:

"Passing, however, to the consideration of what is regarded by the parties as the real question in issue -that is to say: Shall we confine the change made in the interpretation of the law by the Taggart case so as to operate prospectively only, and thereby not affect appellant in its claim to the entire surplus dog fund distributed to and received by it prior to March 21, 1895; or shall the new construction of the statute be held to be binding on it as to the money in dispute?

The decisions of a court of last resort, the authorities assert, are not the law, but are only the evidence or exposition of what the court construes the law to be, and in overruling a former decision by a subsequent one the court does not declare the one overruled to be bad law, but that it never was the law, and the court was therefore simply mistaken in regard to the law in its former decision. The first decision, upon the point on which it is overruled, is wholly obliterated, and the law as therein construed or declared must be considered as though it never existed, and that the law always has been as expounded by the last decision. *Haskett v. Maxey*, 134 Ind. 182, 33 N.E. 358; *Ram's Legal Judgments*, 47.

This rule, however, is subject to the well settled doctrine that courts will not so apply a change made in the construction of the law as it was held to be in the overruled case, as to invade what is considered vested rights, or, in other words, while as a general rule, the law as expounded by the last decision operates both prospectively and retrospectively, still, courts are required to and do confine it in its operation so as not to impair vested rights, such as property rights or those resting on contracts express or implied. *Haskett v. Maxey*, supra; *Stephenson v. Boody*, 139 Ind.

60. Appellant, therefore, having received the money through a judicial misinterpretation of the law, cannot be successfully heard to deny appellee's right thereto which existed in the first instance, under the proper construction of the statute whereby the legislature had declared its will in respect to the disposition of the surplus dog fund."

(Emphasis supplied)

127. The aforementioned decision reiterates that any decision of a court would only be an evidence or an exposition of what the court construes the law to be and this is precisely why the overruling decision would remove any authoritative value that the overruled decision might have had, even during the intervening period. *Center School Township* (supra) also clarified that the vested right, if any, which is sought to be protected as an exception to the retrospective application of the overruling decision, must be real.

They must be rights of property or those founded on contracts, express or implied. For example, say a right has arisen on a contract or a transaction in the nature of a contract which is authorised by a statute and the statute concerned, is repealed. In such a scenario, a vested right would exist independently of the repealed statute. It was also held that the vested right must be something more than a mere expectation based upon an anticipated continuance of the existing law.

128. It is obvious that, in the factual circumstances before us, especially in matters of a criminal nature, the essence of the decision laid down in *Rajesh Kumar Gupta* (supra) could not be considered to have been separately embraced in any contract, both express or implied. On the contrary, it is the legislative authority of the NDPS Act, more particularly Section 8 of the NDPS Act, which would have the final say on whether an offence is made out or not or govern the facts which the accused persons have subjected themselves to.

When the very legal interpretation given to Section 8 of the NDPS Act could be said to have been wrong and misplaced in the overruled decision, it naturally follows that no vested right, whatsoever, could have accrued or be said to have

existed independently of the statute, to such persons accused of a committing an offence under Section 8. More so, when the decision in Rajesh Kumar Gupta (supra) was an outlier on the issue when compared to several decisions that came prior to it.

129. A constitutional Bench of this Court in Rao Shiv Bahadur Singh and Another v. State of Vindhya Pradesh reported in (1953) 2 SCC 111 was concerned with the invocation of Article 20(1) with respect to a pre-Constitution ex-post facto law and held that Article 20(1) prohibits all convictions or subjections to penalty, after the Constitution, in respect of ex-post facto laws, irrespective of whether the same was a post-Constitution or a pre-Constitution law.

Herein, the Vindhya Pradesh Ordinance 48 of 1949, though enacted on 11.09.1949, i.e., after the alleged offences in the case therein were committed, was made retrospective and deemed to have been in force from 09.08.1948. It was therefore, urged that the Ordinance was a "law in force" during the time the offences were committed and would not be hit by Article 20. However, this Court disagreed with such a contention and said that to accept such an argument would be to give a hyper-technical meaning to the words "law in force".

If it were accepted then the very purpose of Article 20 would be defeated since any ex-post facto law could be given retrospective effect by the legislature to overcome the rigours of Article 20. It was this Court's opinion that "law in force" must be understood as being the law in fact in existence and in operation at the time of commission of the offence as distinct from the law "deemed" to have become operative by virtue of the power of the legislature to pass retrospective laws. The relevant observations are reproduced hereinbelow:

"15. The next and the only serious question that arises in this case is with reference to the objections raised in reliance on Article 20 of the Constitution. This question arises from the fact that the charges as against the two appellants, in terms, refer to the offences committed as having been under the various sections of the Penal Code as adapted in the United States of Vindhya Pradesh by Ordinance 48 of 1949. This Ordinance was passed on 11-9-1949, while the offences themselves are said to have been committed in the months of February, March and April 1949 i.e. months prior to the Ordinance.

It is urged, therefore, that the convictions in this case which were after the Constitution came into force are in respect of an ex post facto law creating offences after the commission of the acts charged as such offences and hence unconstitutional. This contention raises two important questions viz. (1) the proper construction of Article 20 of the Constitution, and (2) whether the various acts in respect of which the appellants were convicted constituted offences in this

area only from the date when Ordinance 48 of 1949 was passed or were already so prior thereto.

22. In this connection our attention has been drawn to the fact that the Vindhya Pradesh Ordinance 48 of 1949, though enacted on 11-9-1949 i.e. after the alleged offences were committed, was in terms made retrospective by Section 2 of the said Ordinance which says that the Act "shall be deemed to have been in force in Vindhya Pradesh from 9-8-1948", a date long prior to the date of the commission of the offences.

It was accordingly suggested that since such a law at the time when it was passed was a valid law and since this law had the effect of bringing this Ordinance into force from 9-8-1949, it cannot be said that the convictions are not in respect of "a law in force" at the time when the offences were committed. This, however, would be to import a somewhat technical meaning into the phrase "law in force" as used in Article 20. "Law in force" referred to therein must be taken to relate not to a law "deemed" to be in force and thus brought into force but the law factually in operation at the time or what may be called the then existing law.

Otherwise, it is clear that the whole purpose of Article 20 would be completely defeated in its application even to ex post facto laws passed after the Constitution. Every such ex post facto law can be made retrospective, as it must be, if it is to regulate acts committed before the actual passing of the Act, and it can well be urged that by such retrospective operation it becomes the law in force at the time of the commencement of the Act. It is obvious that such a construction which nullifies Article 20 cannot possibly be adopted.

23. It cannot therefore be doubted that the phrase "law in force" as used in Article 20 must be understood in its natural sense as being the law in fact in existence and in operation at the time of the commission of the offence as distinct from the law "deemed" to have become operative by virtue of the power of legislature to pass retrospective laws. It follows that if the appellants are able to substantiate their contention that the acts charged as offences in this case have become such only by virtue of Ordinance 48 of 1949 which has admittedly been passed subsequent to the commission thereof, then they would be entitled to the benefit of Article 20 of the Constitution and to have their convictions set aside."

(Emphasis supplied)

130. On the other hand, the issue in question before this Court in *Soni Devrajibhai Babubhai v. State of Gujarat* reported in (1991) 4 SCC 298 related to the insertion of Section 304-B to the IPC, 1860 w.e.f. 19.11.1986 which created a new substantive offence more stringent than Section 498-A IPC. The incident in question in the case occurred prior to 19.11.1986 and therefore, the accused were

tried under Section 498-A instead of Section 304-B since their trial under the latter provision would be hit by Article 20(1). While affirming the view taken by the High Court, it was elaborated that, it was Section 498-A which was in the statute book when the incident occurred.

The offence punishable under Section 304-B, known as dowry death, was inserted into the statute books only after the offence had been committed. Another indication that a new offence was "created" was that Section 304-B IPC is punishable with a minimum sentence of seven years which may extend to life imprisonment and was triable by a Court of Session whereas Section 498-A IPC is triable by a Magistrate of the First Class and is punishable for a term which may extend to three years in addition to a fine. The relevant observations are reproduced below:

"9. It is clear from the above historical background that the offence of dowry death punishable under Section 304-B of the Indian Penal Code is a new offence inserted in the Penal Code, 1860 with effect from November 19, 1986 when Act 43 of 1986 came into force. The offence under Section 304-B is punishable with a minimum sentence of seven years which may extend to life imprisonment and is triable by Court of Session. The corresponding amendments made in the Code of Criminal Procedure and the Indian Evidence Act relate to the trial and proof of the offence. Section 498-A inserted in the Penal Code, 1860 by the Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983) is an offence triable by a Magistrate of the First Class and is punishable with imprisonment for a term which may extend to three years in addition to fine.

It is for the offence punishable under Section 498-A which was in the statute book on the date of death of Chhaya that the respondents are being tried in the Court of Magistrate of the First Class. The offence punishable under Section 304-B, known as dowry death, was a new offence created with effect from November 19, 1986 by insertion of the provision in the Penal Code, 1860 providing for a more stringent offence than Section 498-A. Section 304-B is a substantive provision creating a new offence and not merely a provision effecting a change in procedure for trial of a pre-existing substantive offence.

Acceptance of the appellant's contention would amount to holding that the respondents can be tried and punished for the offence of dowry death provided in Section 304-B of the Penal Code, 1860 with the minimum sentence of seven years' imprisonment for an act done by them prior to creation of the new offence of dowry death. In our opinion, this would clearly deny to them the protection afforded by clause (1) of Article 20 of the Constitution which reads as under:

"20. Protection in respect of conviction for offences.- (1) No person shall be convicted of any offence except for violation of the law in force at the time of the

commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

10. In our opinion, the protection given by Article 20(1) is a complete answer to the appellant's contention. The contention of learned counsel for the appellant that Section 304-B inserted in the Penal Code, 1860 does not create a new offence and contains merely a rule of evidence is untenable. The rule of evidence to prove the offence of dowry death is contained in Section 113-B of the Indian Evidence Act providing for presumption as to dowry death which was a simultaneous amendment made in the Indian Evidence Act for proving the offence of dowry death. The fact that the Indian Evidence Act was so amended simultaneously with the insertion of Section 304-B in the Penal Code, 1860 by the same Amendment Act is another pointer in this direction. This contention is, therefore, rejected."

(Emphasis supplied)

131. Another Constitutional Bench of this Court in *Central Bureau of Investigation v. R.R. Kishore* reported in (2023) 15 SCC 339 was faced with the issue whether the declaration of Section 6-A of the DSPE Act, 1946 as unconstitutional by the judgment rendered in *Subramanian Swamy v. Director, Central Bureau of Investigation* and Another reported in (2014) 8 SCC 682 led to the creation of a new offence, which had the effect of causing implications on the fundamental right guaranteed under Article 20(1) of the Constitution, and also whether the declaration of unconstitutionality must be given prospective effect.

This Court held that the declaration of Section 6-A as unconstitutional would not have any implications as far as fundamental rights are concerned since the provision purely related to a procedural aspect. Furthermore, since the declaration of a provision as unconstitutional goes to the root of it and makes it void ab initio and non-est, its effect would be retrospective in nature. In declaring so, the Bench elaborated on the following aspects:

i. First, that under the first part of Article 20(1), it is only the conviction or sentence for any offence under an ex-post facto law that is prohibited. It would be highly unjust, unfair and in violation of human rights to punish a person under an ex-post facto law for acts or omissions that were not an offence when committed. The Bench agreed with the position taken in *Rao Shiv Bahadur Singh (supra)* that the term "law in force" under Article 20 must be taken to be the law factually in force or the existing law at the relevant time and not a law made applicable to the past period by virtue of a deeming fiction by the legislature.

ii. Secondly, Section 6 of the General Clauses Act, 1897 provides that when an enactment is repealed, unless a different intention appears, the repeal shall not affect the previous operation of the repealed enactment or; affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment. Section 6 was held to be inapplicable to the scenario at hand since it was not a case where an enactment was repealed or revived but the situation pertained to the declaration of a statutory provision as unconstitutional. Therefore, it cannot be said that any right or privilege was acquired on the basis of the provision which came to be declared as unconstitutional and that the concerned individuals or accused could press such an unconstitutional provision in their favour. The relevant observations are reproduced hereinbelow:

37. Clause (1) of Article 20 of the Constitution consists of two parts. The first part prohibits any law that prescribes judicial punishment for violation of law with retrospective effect. Clause (1) of Article 20 of the Constitution does not apply to civil liability, as distinguished from punishment for a criminal offence. Further, what is prohibited is conviction or sentence for any offence under an ex post facto law, albeit the trial itself is not prohibited.

38. The right under first part of clause (1) of Article 20 of the Constitution is a very valuable right, which must be safeguarded and protected by the courts as it is a constitutional mandate. The Constitution Bench of this Court in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh* [*Rao Shiv Bahadur Singh v. State of Vindhya Pradesh*, (1953) 2 SCC 111 : 1953 SCR 1188], highlighted the principle underlying the prohibition by relying upon judgment of Willes, J. in *Phillips v. Eyre* [*Phillips v. Eyre*, (1870) LR 6 QB 1 at pp. 23 and 25] and of the United States Supreme Court in *Calder v. Bull* [*Calder v. Bull*, 1 L Ed 648 at p. 649 : 3 Dall 386 : 3 US 386 (1798)], to hold that it would be highly unjust, unfair and in violation of human rights to punish a person under the ex post facto law for acts or omissions that were not an offence when committed.

39. *Rao Shiv Bahadur Singh* [*Rao Shiv Bahadur Singh v. State of Vindhya Pradesh*, (1953) 2 SCC 111 : 1953 SCR 1188] observes that the language of clause (1) of Article 20 of the Constitution is much wider in terms as the prohibition under the article is not confined to the passing of validity of the law, and that fullest effect must be given to the actual words used and what they convey. Accordingly, the decision had struck down *Vidhya Pradesh Ordinance 48 of 1949*, which though enacted on 11-9-1949, had postulated that the provisions would deemed to have come into force in *Vidhya Pradesh* on 9-4-1948, a date prior to the date of commission of offences.

Interpreting the term "law in force", it was held that the Ordinance giving retrospective effect would not fall within the meaning of the phrase "law in force" as used in clause (1) of Article 20 of the Constitution. The "law in force" must be

taken to relate not to a law deemed to be in force, but factually in force, and then only it will fall within the meaning of "existing law". Artifice or fiction will fall foul, when they are with the intent to defeat the salutary object and purpose behind clause (1) of Article 20 of the Constitution. [In the present case, we need not examine when an offence is a continuous offence, an aspect and matter of considerable debate.]

42. The learned counsel for the parties have also briefly referred to Section 6 of the General Clauses Act, 1897. It would be appropriate to reproduce the said provision hereunder:

"6. Effect of repeal.-

Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

A plain reading of the above provision indicates that the repeal of an enactment shall not affect previous operation, unless a different intention appears. It may be appropriately noted here that the present case does not involve repeal or revival of any enactment but is a case where a Constitution Bench of this Court has declared a statutory provision as invalid and unconstitutional being hit by Article 14 of the Constitution. As such Section 6 of the 1897 Act will have no application."

(Emphasis supplied)

132. The background and context under which we are examining the applicability of Article 20(1) to the facts of our case are quite different and distinguishable. We are not concerned with a situation where the legislature or another competent authority had once enacted a provision/rule wherein the dealing of substances only mentioned in Schedule I of the NDPS Rules, would constitute an offence and the same later came to be substituted with a provision/rule which stated that the dealing in of all substances mentioned under the Schedule to the Act would also constitute an offence under Section 8.

It is just that the position of law was assumed to be so in Rajesh Kumar Gupta (supra), however, that conclusion was expressly declared as wrong in Sanjeev V Deshpande (supra). The three-judge Bench in Sanjeev V Deshpande (supra) while overruling Rajesh Kumar Gupta (supra) went to the extent of saying that Rajesh Kumar Gupta (supra) ignored the mandate of Section 8(c) of the NDPS Act and that it was wrongly decided.

Therefore, the intention of the legislature along with the true import and meaning of Section 8(c) read with the relevant rules was always that the dealing in of any psychotropic substance mentioned under the Schedule to the Act in contravention of the provisions of the Act and Rules framed thereunder, must necessarily be punished. The consistent line of decisions of this Court, as elaborated by us in the preceding parts of this judgment, which pre-existed the decision in Rajesh Kumar Gupta (supra) and which also support the conclusion reached by Sanjeev V Deshpande (supra) and by us, serve as a testament to the undoubted position of law contained in the NDPS Act and its Rules, in this regard.

133. Furthermore, we are also not concerned with a scenario wherein the language of Section 8 of the NDPS Act is visibly narrow and through the act of judicial interpretation, an unreasonably wide or expansive interpretation has been accorded to it by the decision in Sanjeev V Deshpande (supra) and also by us. On the contrary, it is our opinion that the construction to Section 8 of the NDPS Act was inordinately restricted in Rajesh Kumar Gupta (supra) when the scope and ambit of the provision was clear in itself.

Hence, the decision in Sanjeev V Deshpande (supra) taken along with the elaborate discussion which we have engaged in on the position of law, has only served to clarify the true meaning as exactly reflected in the statute, without any undue narrowing or expansion. Therefore, there is no doubt in our mind while clarifying that the decision in Sanjeev V Deshpande (supra) overruling the decision in Rajesh Kumar Gupta (supra) would have retrospective effect, that there would arise no adverse implications as regards the Article 20(1) rights which the accused persons are otherwise entitled to.

134. The Blackstonian theory also lends great support to our conclusion since it underscores the principle that it is not the function of the court to pronounce a "new rule" but to maintain and expound the "old one". Therefore, the overruling of a decision cannot be equated to the creation of a new law. The correct principle of law is merely clarified and applied retrospectively. Therefore, in the circumstances of the instant case, it cannot be said that a new offence was "created" subsequently.

It is to be considered as always have existed. The offence under Section 8 as expounded in Sanjeev V Deshpande (supra) was not introduced out of thin air and it cannot be said that its existence as construed in the aforesaid decision was undeniably absent from the scheme of the provisions under the NDPS Act. We have elaborated with sufficient detail, by even exhaustively and conscientiously discussing the Articles of the Convention of Psychotropic Substances, 1971 which motivated the enactment of the NDPS Act along with the object of the NDPS Act and concluding that it would be a grave error to assume that the law was ever otherwise.

135. Moreover, consider a situation wherein a certain statute or provision is declared to be unconstitutional by this Court for being violative of Article 14 of the Constitution but with prospective effect. Can it be argued that the actions undertaken on the basis of that unconstitutional provision or legislation, until the date of the judgment, would be open to being challenged for also being violative of Article 14? This would necessarily be answered in the negative because the Court consciously declares prospectivity after weighing and balancing all interests and practical realities.

No individual can claim the benefit of the decision declaring a provision as unconstitutional for transactions or events which occurred prior to that decision if the intention to give prospective effect to the decision is plain and direct. No doubt, the actions wrongly taken in the past would not be automatically validated but on a balance of equities, a challenge to those actions are also disallowed. Similarly, while a decision is being overruled and the default rule of retrospectivity in matters of overruling is applied, it would not be permissible for anyone to contend that any right accrued to them on the basis of the judgement which declared the wrong proposition of law.

Therefore, the retrospective overruling of the decision in Rajesh Kumar Gupta (supra) cannot be faulted with for being possibly hit by Article 20(1) of the Constitution. It would not be open for an accused to contend that any right accrued to them on the basis of the judgement in Rajesh Kumar Gupta (supra). However, with a view to do complete justice to the issue at hand, we declare that matters in which the trial has already concluded on the basis of the incorrect exposition of law and have attained finality, would not be disturbed. It would be

tedious endeavour for all those acquittals to be re-opened and re-tried again. Having said so, any and all pending matters would be adjudged on the basis of the correct interpretation of law as declared in Sanjeev V Deshpande (supra).

136. The decisions of this Court in Rao Shiv Bahadur Singh (supra), Soni Devrajbhai Babubhai (supra) and R.R. Kishore (supra) would not in any manner be an impediment to the above conclusion since - First, in Rao Shiv Bahadur Singh (supra), it was opined that the expression "law in force" must be understood as being the law in fact in existence and in operation at the time of commission of the offence as distinct from the law "deemed" to have become operative by virtue of the power of the legislature to pass retrospective laws. The same is inapplicable herein since; (a) we are not dealing with a situation where the legislature has introduced a new offence which is sought to be retrospectively enforced and (b) the overruling of a decision and the declaration of the right meaning of law is not attributed to the provision by the overruling court through a "deeming fiction".

The overruling decision only mirrors what the lawmakers wanted the law to be and what it always was. Therefore, it cannot be disputed that the interpretation given in the overruling decision was infallibly the "law in force" at all times. Secondly, in Soni Devrajbhai Babubhai (supra), it was apparent that the offences were traceable to two different provisions, the latter of which created a distinct offence and entered into the statute books much later in time. Therefore, it could be said without any doubt that a new offence was "created". Thirdly, in R.R. Kishore (supra), it was reiterated that it was only the conviction or sentence for any offence under an ex-post facto law that is prohibited under Article 20(1).

The overruling of a decision cannot be equated to the enactment of an ex-post facto law, especially when the interpretation given to the statute/provision in the overruling decision is not a novel and unreasonably expansive interpretation of the provision in question such that it was completely unforeseeable. An ex-post facto law lays down a new or completely alternate legal position from what existed before. The same is not the effect of an overruling decision which only interprets the intention which always remained with the legislature while enacting the concerned provision. The indiscriminate dealing in of substances which are only mentioned under the Schedule to the Act cannot be said to have been indubitably legal and allowed by the legislation prior to the decision in Sanjeev V Deshpande (supra).

137. We find it necessary to reiterate that acquittals which have already been recorded and have attained finality would not be unsettled in light of the overruling decision or the observations made by us. If it were a reverse scenario i.e., if the decision in Rajesh Kumar Gupta (supra) led to the conviction of several accused and then subsequently, the effect of the ratio in Sanjeev V.

Deshpande (supra) was such that those accused were to be acquitted because an offence was not made, we would have, without an iota of doubt leaned in favour of those matters being reconsidered and the convictions also being reexamined in light of the clarification given in the subsequent decision. However, presently, the situation not being such, we do not wish to subject any accused who has been acquitted, to trial again.

138. In Somaiya (supra), this Court had emphasized that it cannot be said that the past actions would be validated when the doctrine of prospective overruling is resorted to. Therefore, the idea is not to declare all the actions that were taken contrary to law or in pursuance of an unconstitutional provision as valid, but to save those transactions on a balance of considerations. Similarly, if the accused before us had been acquitted directly as a consequence of the decision in Rajesh Kumar Gupta (supra), the same cannot be said to have been made in accordance with law.

Although, we have expressed our intention to not disturb any acquittal made in the past, which have attained finality, if the accused persons before us were acquitted by the respective Trial Courts due to the interpretation given in Rajesh Kumar Gupta (supra) and after an examination of materials placed on record, we were satisfied that the accused before us were indeed guilty of the offence with which they were charged, we could have held them "technically guilty" of the offence under Section 8 of the NDPS Act.

139. This concept of "technical guilt" found mention in the decision of this Court in Food Inspector, Calicut Corporation v. Cherukattil Gopalan and Another reported in (1971) 2 SCC 322. Here, the issue was whether the respondent running a tea-stall could be said to have "sold" the sugar to the Food Inspector under Section 2(xiii) of the Prevention of Food Adulteration Act, 1954 and hence fall under the ambit of Sections 7 and 16(1)(a)(i) of the Act which prohibits and punishes the manufacture, sale etc. of adulterated articles of food.

The counsel for the appellant had, during the course of the arguments, made it clear that the appellant did not want the respondents to be convicted in case his contentions were accepted and that the Corporation only wished to clarify the legal position on the aforesaid issue. In conclusion, while this Court agreed with the contentions of the appellant, the respondents were only held to be "technically guilty" of the offence with which they were charged and this Court opined that they had been wrongly acquitted by the High Court and the Trial Court respectively. The relevant observations are reproduced below:

"26. Coming to the case on hand, on the findings of the two courts the sugar in question has been found to be adulterated. The purchase by the Food Inspector from the accused of sugar for purposes of analysis is a sale under Section 2(1) of

the Act. Section 7 prohibits a person from selling adulterated article of food. Similarly, under Section 16(1)(a)(i) any person who sells adulterated food commits an offence and is punishable therein. The sugar which is the commodity before us is food under Section 2(3) of the Act. We have already pointed out that sugar by itself is an article used as food or at any rate it is an article which ordinarily enters into or is used in the composition or preparation of human food.

In this case the sale was for analysis and the article was an article of food and in view of the concurrent findings of both the courts that it was adulterated, the respondents have contravened Sections 16(1)(a)(i) of the Act. Hence it must be held that the respondents are technically guilty of the offence with which they were charged and they have been wrongly acquitted by the High Court and the District Magistrate. But in view of the fact that the appellant has argued the appeal only as a test case and does not challenge the acquittal of the respondents, we merely set aside the order and judgment of the High Court. But we may make it clear that apart from holding the respondents technically guilty, we are not setting aside the order of acquittal passed in their favour."

(Emphasis supplied)

140. In *Cherukattil Gopalan* (supra), this Court did not set aside the order of acquittal which was passed in favour of the accused but at the same time, streamlined the position of law in that regard and only set aside the order and judgment of the High Court. Along similar lines, while we are refraining from directing that the orders of acquittal (if any) passed due to the decision in *Rajesh Kumar Gupta* (supra) be disturbed, in so far as the accused person before us are concerned, it would have been appropriate to declare them to be technically guilty of the offence under Section 8 of the NDPS Act, had they been acquitted.

However, what has been brought out from the facts of the appeals before us, is that the accused persons were not acquitted but discharged due to the decision in *Rajesh Kumar Gupta* (supra). Therefore, there arises no occasion for us to hold them technically guilty of the offences under the provisions of the NDPS Act that they were charged with. At this juncture, the obvious next step would be for the trial qua all the accused before us to be commenced in accordance with law.

141. One another question of law which has sprung up in the facts of our case is whether, after the charges are framed by the Trial Court, an accused could be discharged or his charges could be deleted through an application made under Section 216 of the CrPC.

iii. The scope of Section 216 of the CrPC

142. Section 216 of the CrPC reads as thus:

"216. Court may alter charge.-

(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded."

(Emphasis supplied)

143. Under this provision, any Court is empowered to "alter" or "add" to any charge framed against the accused, at any time before the judgment is pronounced. Therefore, an outer time limit is set i.e. the power conferred upon the Courts cannot be exercised after a decision is pronounced in the matter. Although the provision does not expressly provide for the stage of the trial after which the power under Section 216 CrPC can be exercised, yet logic and rationale obviously requires it to be exercised after a charge has been framed by the Trial Court under Section 228 CrPC. For if no charge has been framed, there arises no occasion to add or alter it. As a natural corollary, if an accused has already been discharged under Section 227 CrPC, no application or action under Section 216 CrPC would be maintainable.

144. The Court may alter or add to any charge either upon its own motion or on an application by the parties concerned. Therefore, such a power can be invoked by the Court suo moto as well. This power under Section 216 CrPC is exclusive to the concerned Court and no party can seek such an addition or alteration of charge as a matter of right by filing an application.

It would be the Trial Court which must decide whether a proper charge has been framed or not, at the appropriate stage of the trial. On a consideration of the broad probabilities of the case, the total effect of the evidence and documents adduced, the Trial Court must satisfy itself that the exercise of power under Section 216 is necessary. The provision has been enacted with the salutary object to ensure a fair and full trial to the accused person(s) in each case.

145. This Court in *Anant Prakash Sinha v. State of Haryana and Another* reported in (2016) 6 SCC 105 summarised the principles as regards Section 216 CrPC. Herein, charges were framed against the appellant-husband for the commission of offences punishable under Sections 498-A and 323 IPC. During the pendency of the matter, the informant wife had filed an application under Section 216 CrPC for framing an additional charge under Section 406 IPC against both the husband and the mother-in-law on the ground that there was an express complaint with regard to the misappropriation of her entire Stridhan and other articles.

Hence, it was contended that the accused persons had committed criminal breach of trust, however, a charge sheet was not filed in respect of the said offence. The application was allowed by the Trial Court and subsequently, the Revisional Court upheld the framing of charge under Section 406 IPC only against the appellant-husband. This Court while agreeing with the High Court summarised the principles underlying Section 216 CrPC as follows:

i. First, the test for exercise of power under Section 216 CrPC is that it must be founded on the material available on record and therefore, it can be on the basis of the complaint or the FIR, or other accompanying documents or materials brought on record during the course of the trial. The charge which has been framed by the Trial Court must therefore be in accord with the materials available before him.

ii. Secondly, the power must not be construed in a restricted manner to mean that unless evidence has been let in, the charges that have already been framed cannot be altered. The Court is empowered to change or alter the charge framed, if it finds that there is a defect or that something has been left out in the order framing charge.

iii. Thirdly, it is obligatory for the Court to ensure that no prejudice is caused to the accused due to the addition or alteration of charge. The accused must be informed and made aware of the new charge as also the case against him so that he can understand the defence that can be led on his behalf. The relevant observations are reproduced hereinbelow:

"18. From the aforesaid, it is graphic that the court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on the

material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance.

Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of Section 216 CrPC.

19. In addition to what we have stated hereinabove, another aspect also has to be kept in mind. It is obligatory on the part of the court to see that no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in Section 216 CrPC. It is the duty of the trial court to bear in mind that no prejudice is caused to the accused as that has the potentiality to affect a fair trial.

It has been held in *Amar Singh v. State of Haryana* [*Amar Singh v. State of Haryana*, (1974) 3 SCC 81 : 1973 SCC (Cri) 789] that the accused must always be made aware of the case against him so as to enable him to understand the defence that he can lead. An accused can be convicted for an offence which is minor than the one he has been charged with, unless the accused satisfies the court that there has been a failure of justice by the non-framing of a charge under a particular penal provision, and some prejudice has been caused to the accused."

(Emphasis supplied)

146. In another decision of this Court in *Nallapareddy Sridhar Reddy v. State of A.P.* reported in (2020) 12 SCC 467, the scope of powers under Section 216 was elaborated. It was stated that the power under this provision to alter a charge is an exclusive and wide-ranging power and this is clear from the fact that it may be exercised at any time before the judgment is pronounced, meaning also at a stage wherein the evidence and arguments are completed and the judgment is reserved.

It was further stated that if the Court is of the opinion that there was an omission in the framing of charge or if the existence of the factual ingredients constituting another offence is also inferred from a *prima facie* examination of the material brought on record, the alteration or addition of a charge can be done. Such material brought on record must have a direct nexus with the ingredients of the alleged offence. This Court cautioned that the power under this provision must be exercised judiciously and observed as follows:

"21. From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words "at any time before judgment is pronounced" in sub-section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence.

The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused."

(Emphasis supplied)

a. What is the meaning of the expression "alter" occurring in Section 216 CrPC.

147. P. Ramanatha Aiyar in his Law Lexicon (6th Edn.) defined "alter" as "to make a change in; to modify; to vary in some degree". "Alteration" is defined as a "change or substitution of one thing for another". Further, it has been elaborated that the term "alter" is to be distinguished from its synonyms i.e., "change" and "amend". To change something may import the substitution of an entirely different thing, while on the other hand, to alter would be to operate upon a subject matter which continues to be the same objectively while just modified in some particular.

To illustrate it better in the context of charging an accused with an offence, let's say an accused is charged with an offence initially under Section 323 IPC for simple hurt. If the Trial Court is of the opinion that the case is in fact one of grievous hurt, it may alter the charge of the accused for an offence under Section 325 IPC. This would be an alteration since the broad subject matter continues to be the same. Further, to amend would imply that the modification made in the subject improves it, which might not necessarily be the case with an alteration. In

other words, an amendment may involve an alteration but an alteration does not always amend.

148. In *Sohan Lal and Others v. State of Rajasthan* reported in (1990) 4 SCC 580, this Court while holding that an application under Section 216 would not be maintainable against persons who have already been discharged, elaborated the meaning of the words "alter and add to" as follows:

"12. Add to any charge means the addition of a new charge. An alteration of a charge means changing or variation of an existing charge or making of a different charge. Under this section addition to and alteration of a charge or charges implies one or more existing charge or charges."

(Emphasis supplied)

149. Therefore, to alter a charge would be to vary an existing charge and make a different charge. Hence, when the Court exercises its power under Section 216, either on its own motion or on an application made by the parties, and "alters" a charge, it would be necessary that the existing charge be varied and a new charge be made. In the instant case, in Criminal Appeal No. 1319 of 2013, the Trial Court in its order dated 30.11.2006 had held that the charge framed by his predecessor for the offence under Sections 8, 22 and 29 of the NDPS Act had not been made out and that the case of the accused had to be a case under the D&C Act which would be triable by the Metropolitan Magistrate. In Criminal Appeal No. 272 of 2014, again, the Trial Court in its order dated 17.04.2010 similarly held that the offences under Sections 8 and 22 of the NDPS Act were not made out and the matter would fall within the rigours of the D&C Act.

150. However, if careful attention is paid to the orders of the Special Judge in both the appeals, it cannot be said that they have exercised their power under Section 216 to "alter" the charge of the accused persons. We say so because, the charge which existed under Sections 8, 22 and 29 of the NDPS Act in Criminal Appeal No. 1319 of 2013 and under Sections 8 and 22 of the NDPS Act in Criminal Appeal No. 272 of 2014 respectively were not varied and a different charge under a specific provision of the D&C Act was not made. In such a circumstance, in effect, the Special Judge had discharged or deleted the charge of the accused persons under the NDPS Act in both the appeals. b. Whether charges could be deleted or the accused be discharged under Section 216 CrPC.

151. Section 216 CrPC provides the Court with the power to do two things - One, alter a charge and two, add to a charge. Nowhere, does the provision expressly or by necessary implication lead to an inference that a charge could be deleted altogether. No doubt, the Court is given an expansive and wide-ranging power. However, that must not mean that the powers conferred are without any limits.

152. In a recent decision of this Court in *K. Ravi v. State of Tamil Nadu and Another* reported in 2024 SCC OnLine SC 2283, this Court had categorically observed that Section 216 does not give any right to the accused to file a fresh application seeking discharge after the charge has been framed by the Court. Herein, several accused were charge-sheeted under Sections 147, 148, 323, 324, 307 and 302 of the IPC respectively. The respondent no. 2 - accused filed an application for discharge under Section 227 CrPC which was dismissed by the Sessions Court.

After charges were framed, the respondent no.2 along with the other accused then filed an application under Section 216 CrPC seeking alteration of charge, which was also dismissed. In revision, the High Court, however, set aside the charge framed against the respondent no. 2. While holding that an accused cannot seek a discharge under the garb of modification/alteration of charge through a Section 216 application, this Court also highlighted that it has become routine practice for the accused to file an application under Section 216 CrPC after their application for discharge under Section 227 CrPC is dismissed, sometimes in ignorance of the law but also on other occasions with the sole intent of derailing the trial. The relevant observations are as thus:

"7. From the above conspectus of events, it clearly transpires that the Respondent No. 2 after having failed to get himself discharged from the Sessions Court as well as from the High Court in the first round of litigation, filed another vexatious application before the Sessions Court under Section 216 of Cr. P.C., after the framing of charge by the Sessions Court, for modification of the charge. The Sessions Court having dismissed the said application, the Respondent No. 2 preferred the Revisional Application before the High Court under Section 397 and 401 of Cr. P.C. The High Court in its unusual impugned order, discharged the Respondent No. 2 (A-2) from the charges levelled against him, though his earlier application seeking discharge was already dismissed by the Sessions Court and confirmed by the High Court and that position had attained finality.

11. It is trite to say that Section 216 is an enabling provision which enables the court to alter or add to any charge at any time before judgment is pronounced, and if any alternation or addition to a charge is made, the court has to follow the procedure as contained therein. Section 216 does not give any right to the accused to file a fresh application seeking his discharge after the charge is framed by the court, more particularly when his application seeking discharge under Section 227 has already been dismissed.

Unfortunately, such applications are being filed in the trial courts sometimes in ignorance of law and sometimes deliberately to delay the proceedings. Once such applications though untenable are filed, the trial courts have no alternative but to decide them, and then again such orders would be challenged before the higher

courts, and the whole criminal trial would get derailed. Suffice it to say that such practice is highly deplorable, and if followed, should be dealt with sternly by the courts."

(Emphasis supplied)

153. A few High Courts have also rightly taken the view that an application under Section 216 CrPC cannot lead to the deletion of charge or the discharge of an accused. In a relatively recent decision of the High Court of Allahabad in *Dev Narain v. State of U.P.* and Another reported in 2023 SCC OnLine All 3216, it was stated that a prayer for discharge cannot be sustained in an application under Section 216 CrPC. Herein the sole-accused moved an application for discharge and the same was rejected.

The application under Section 482 CrPC filed before the High Court was also dismissed but with the observation that "it is open to the applicant to move an application for alteration of charge under Section 216 CrPC before the Trial Court". Charges were framed against the accused under Sections 498-A, 304-B, 323 IPC and Sections 3 and 4 of the Dowry prohibition Act, 1961. After the evidence of PW-1 was recorded, the accused moved an application under Section 216 CrPC for alteration of charge and the same also came to be dismissed by the Trial Court.

The High Court stated that the alteration of charge and deletion of charge hold different field and that these two cannot be intermingled. A perusal of the prayer made by the accused in the 216 CrPC application indicated that it was, in essence, a prayer for discharge and quashing of the charges levelled against him. Therefore, it was held that such a power to delete charges is not conferred on the Court under Section 216 CrPC. It was added that a charge once framed, it must lead either to an acquittal or conviction at the end of the trial and charges cannot be permitted to be deleted mid-trial. The relevant observations are reproduced hereinbelow:

"9. From perusal of above, is apparent that the Court may alter or add to any charge at any time before judgment is pronounced but alteration of charge and deletion of charge hold different field and these two cannot be intermingled, otherwise it will cause miscarriage of justice. This is admitted fact that the discharge application moved by the revisionist was dismissed by the trial court and the criminal revision moved by the revisionist against rejection of discharge application has been dismissed by this Court vide order dated 9.8.2017 in Criminal Revision No. 2500 of 2017, wherein this Court observed that the instant criminal revision is finally disposed of with a direction that in case, the revisionist is aggrieved with regard to the framing of the charge as on date, he may file an appropriate application at the appropriate stage when the evidence is

to be produced with regard to the alteration of charge and in case, such an application is filed, the same shall be heard and decided in accordance with law after hearing all parties concerned.

10. The charge has been framed against the accused by the court below under Sections 498-A, 304-B, 323 IPC and 3/4 of D.P. Act. The evidence of PW-1 Vibhuti Bhushan Garg was recorded on 1.9.2017 to 29.5.2018 and thereafter the present application under Section 216 Cr. P.C. has been filed for alteration of charge.

11. From perusal of prayer made in application under Section 216 Cr. P.C., it appears in essence that this is a prayer for discharge as the revisionist has stated that he may be discharged from charged penal sections and the charges levelled against him be quashed. The trial court in exercise of its powers under Section 216 Cr. P.C. cannot delete the charges framed by it for the said offences as the criminal procedure code does not confers such powers on the court. The trial court can only alter to a charge or to add to a charge, which has already framed. The discharge application moved by the revisionist has already been dismissed and said order has attained finality.

14. This Court in the case of Vibhuti Narayan Chaubey Alias v. State of U.P., 2003 Cri LJ 196 held that Section 216 of the code did not provide for deletion of a charge and that the word "delete" had intentionally not being used by the legislature. I am in agreement with this conclusion. The petitioner is seeking the deletion of a charge of conspiracy altogether that is not permissible under Section 216 of the Code. The charge once framed must lead to either acquittal or conviction at the conclusion of trial. Section 216 of the Code does not permit the deletion of the same. Subsequently, Delhi High Court in the case of Verghese Stephen v. Central Bureau Of Investigation, 2007 Cri LJ 4080, placed reliance on aforesaid judgment of this Court in the case of Vibhuti Narayan Chaubey (supra)."

(Emphasis supplied)

154. We are in agreement with the view that once charges have been framed by the Trial Court in exercise of the powers under Section 228 CrPC, the accused cannot thereafter be discharged, be it through an exercise of the powers under Sections 227 or 216 CrPC. It is reiterated that the language of Section 216 CrPC provides only for the addition and alteration of charge(s) and not for the deletion or discharge of an accused. If the Legislature had intended to empower the Trial Court with the power to delete a charge at that stage, the same would have been expressly and unambiguously stated. Therefore, at such a stage of the trial, the accused must necessarily either be convicted or acquitted of the charges that were so framed against him. No shortcuts must be allowed.

155. In both the appeals before us i.e. Criminal Appeal Nos. 1319 of 2013 and 272 of 2014 respectively, the Trial Courts vide their orders dated 30.11.2006 and 17.04.2010 have in effect deleted the charge framed for the offence under the provisions of the NDPS Act and then transferred the file to the Court of the Metropolitan Magistrate for proceeding in accordance with the provisions of the D&C Act, without arriving at a decision to acquit the accused as regards the charges already framed under the provisions of the NDPS Act. The same is impermissible under the scheme of our criminal procedure code and both the Trial Courts could be said to have committed a grave error while reaching the conclusion that as the offences were not triable by them, the case should be transferred to the court of the Metropolitan Magistrate respectively.

E. CONCLUSION

156. It cannot be said that the dealing in of "Buprenorphine Hydrochloride" would not amount to an offence under Section 8 of the NDPS Act owing to the fact that the said psychotropic substance only finds mention under the Schedule to the NDPS Act and is not listed under Schedule I of the NDPS Rules. There exists nothing to indicate that Rules 53 and 64 of the NDPS Rules respectively, are the governing rules in their respective Chapters, more so, when the language of the other rules in Chapters VI and VII respectively, are clear about their application to the substances mentioned under the Schedule to the Act as well.

157. All the psychotropic substances mentioned under the Schedule to the Act have potential grave and harmful consequences to the individual and the society at large, when abused. Some psychotropic substances mentioned under the Schedule to the NDPS Act are also mentioned under the D&C Act and the rules framed thereunder. This is only because those substances while capable of being abused for their inherent properties could also be used in the field of medicine. However, the mere mention of certain psychotropic substances under the D&C regime would not take them away from the purview of the NDPS Act, if they are also mentioned under the Schedule to the NDPS Act.

158. There arises no occasion for us to declare the interpretation given to Section 8 of the NDPS Act and the relevant NDPS Rules, by the decision in Sanjeev V. Deshpande (supra), as prospectively applicable. There exists no overwhelming reason for us to do so. On the other hand, in order to meet the ends of justice and with a view to ensure that public interest is safeguarded and to give effect to the salutary object behind the enactment of the NDPS Act, the decision must necessarily be retrospectively applicable. This Court in Sanjeev V. Deshpande (supra), perhaps, did not think fit to confine or restrict its interpretation of Section 8 of the NDPS Act to future cases only.

This is evinced from the fact that whilst overruling Rajesh Kumar Gupta (supra), it deliberately chose not to discuss the doctrine of prospective overruling let alone resort to it. This conspicuous silence in Sanjeev Deshpande (supra) as regards the prospective or retrospective effect of overruling Rajesh Kumar Gupta (supra) has to be borne in mind and given due deference. As a natural corollary to the aforesaid, we see no reason why we should deviate from the default rule of retrospectivity and instead, resort to the doctrine of prospective overruling. Therefore, pending cases, if any, which were instituted before the decision of this Court in Sanjeev V. Deshpande (supra) would also be governed by the law as clarified by it.

159. Furthermore, the retrospective application of the dictum in Sanjeev V. Deshpande (supra) would not give rise to any implications as regards the rights of the accused persons under Article 20(1) of the Constitution. This is because while overruling the decision in Rajesh Kumar Gupta (supra), the decision in Sanjeev V. Deshpande (supra) has only clarified the law as it stood from its inception and given true effect to the meaning assigned to the relevant provisions of the NDPS Act and the Rules thereunder, by the lawmakers.

The same cannot be construed as creating a new offence. Additionally, the overruling of a decision cannot be equated to the enactment of an ex-post facto law, especially when the interpretation given to the statute/provision in the overruling decision is not a novel and unreasonably expansive interpretation of the provision in question such that it was completely unforeseeable.

It cannot be reasonably argued that the indiscriminate dealing in of substances which are only mentioned under the Schedule to the NDPS Act and absent under Schedule I of the NDPS Rules, was indubitably legal and allowed by the legislation, prior to the decision in Sanjeev V. Deshpande (supra). Therefore, there remains no doubt in our minds that giving retrospective effect to the decision in Sanjeev V. Deshpande (supra) would be necessary considering the facts and circumstances in the background of which we are called upon to adjudicate these matters.

160. However, having held that the decision in Sanjeev V. Deshpande (supra) must be given retrospective effect, we find it necessary to clarify that acquittals which have already been recorded as a consequence of the decision in Rajesh Kumar Gupta (supra) and have attained finality, would not be unsettled in light of the overruling decision in Sanjeev V. Deshpande (supra) or the observations made by us.

161. We are, therefore, of the view that both the Trial Court and the High Court committed an error in holding that the offence under the provisions of the NDPS Act is not made out. The Trial Courts in both the appeals could also not have

discharged/deleted the charge under the NDPS Act framed against the accused persons while disposing of an application under Section 216 CrPC. This is something not permissible within our criminal procedure and the High Court unfortunately failed to take notice of this aspect.

162. In view of the law expounded by us, since the accused concerned in both the appeals were not acquitted in their respective trials, we direct that they be tried by the concerned Special Judge, NDPS, in accordance with law. The Trial Courts are directed to proceed with the trial and conclude it expeditiously.

163. With the aforesaid directions, we allow both the appeals filed by the appellants and set aside the impugned orders passed by the High Court.

164. We direct the Registry to send one copy each of this judgment to all the High Courts.

165. Pending application(s), if any, shall stand disposed of.

.....**J. (J.B. Pardiwala)**

.....**J. (Manoj Misra)**

New Delhi;

April 17, 2025.

IN THE SUPREME COURT OF INDIA

Subhash Aggarwal
Vs.
State of NCT of Delhi

**[Criminal Appeal No. _____ of 2025
@ SLP (Crl.) No.1069 of 2025]**

HEADNOTE - The absence of motive will not be fatal to the prosecution's case if there exists strong circumstantial evidence proving the guilt of the accused beyond a cavil of doubt. When the circumstances are very convincing and provide an unbroken chain leading only to the conclusion of guilt of the accused and not to any other hypothesis; the total absence of a motive will be of no consequence.

Motive is a very important link in the circumstances which could prove the guilt of the accused, and it loses its importance only when there is direct evidence of eyewitnesses, which is convincing and conclusive as to the guilt of the accused. However, it was also noticed that even if there may be a very strong motive for the accused to commit a particular crime, it does not lead to a conviction by itself, if the eyewitnesses are not convincing or the chain of circumstances is not complete.

JUDGMENT

K. Vinod Chandran, J.

1. Leave granted.
2. Filicide or suicide is the vexing question in the above case where a father was tried and convicted under Section 302 of the Indian Penal Code, 1860 read with Section 25/27 of the Arms Act, 1959. The Trial Court sentenced the accused to imprisonment for life under Section 302 and rigorous imprisonment respectively of one year and seven years for offences under Sections 25 and 27 of the Arms Act, 1959 besides a fine of Rs.1,000/- with default sentence, confirmed by the High Court.
3. We heard Mr. Varun Dev Mishra, learned counsel appearing for the appellant and Ms. Aakanksha Kaul, learned counsel representing the State.
4. Learned counsel for the appellant contended that the family of the accused had resorted to character assassination of the accused before the police and the Court, which alone led to the prosecution and the resultant conviction. There is no direct

evidence, and the circumstances attempted to be proved by the prosecution fails to find the guilt, squarely on the accused. The deceased was the only son of the accused and there was absolutely no motive not even alleged, to support the accusation of murder.

The wife of the accused examined as PW-3 stated in cross-examination that the accused maintained very good relations with his son. PW-1, his daughter, also said that just prior to the incident she saw the accused sleeping peacefully in his room. There is no motive or even a proximate incident which could lead to the accused killing his own son. Even his daughters who were examined as PW- 1 and PW-4 did not speak of any instance of harassment or violence perpetrated by the accused on his son.

5. There was no definitive opinion of the death being homicide and the clear indication is that it was a suicide. The doctor, examined as PW-20, refused to give a definite opinion on the death and even the ballistic expert was not able to come forth with a definite opinion. In fact, the appellant is right-handed, and gunshot residue was found only on the swab taken from his right hand; while the possibility of such residue being present is more probable on the hand which holds the barrel, that too more likely on the back of the hand and not on the palm.

More pertinently, though similar swabs were taken from the hands of the deceased, there is no report or evidence regarding the analysis made. The appellant has explained in his statement under Section 313 of the Code of Criminal Procedure, 1973 that except his wife all the other family members could handle and operate the gun, and it was kept hidden by the children. The learned counsel fervently argued for acquittal also on the plea taken that there was no conceivable reason why he should kill his only son, who is the youngest of his five children.

6. The learned counsel for the State pointed out that there is clinching evidence against the accused. The accused was the first person to detect the body, and he tried to convince the family and the neighbours, who came to the scene of occurrence, that his son had killed himself with a screwdriver. There was no blood stain on the screwdriver and PW-11, the neighbour who was summoned to his house deposed that when he accosted the accused with the fact of absence of blood on the screwdriver, the accused had no explanation.

Clearly the death was a homicide and there is no plausible reason to find suicide as has been categorically deposed by the ballistic expert, PW-10. Motive is not imperative, if there are very strong circumstances pointing to the guilt of the accused and the evidence of the family members clearly indicates the wayward ways of the accused and that he did not maintain good relations with his wife and children.

7. On facts, the family of the accused consisted of himself, his wife and five children: the deceased was the youngest son. Two of his elder daughters were married and the accused was staying along with his wife and three younger children in the house which was the scene of occurrence. On the night of 14th/15th December 2012, the mother and two daughters were sleeping in a room, the deceased son in an adjacent room and the father in the drawing room. At about 12:45 am, the mother and daughters woke up hearing the shouts of the father; that the brother is no more.

The mother and daughters in their deposition corroborated each other on the narration of how they came out of the room and found the deceased in a pool of blood. The mother who was examined as PW-3 and the sisters of the deceased who were examined as PW1 and PW-4 spoke in tandem about the accused having brandished a screwdriver, trying to convince them that the death was a suicide by reason of a self-inflicted wound, with the screwdriver. PW-11, a nearby resident, who was summoned by PW1, in his deposition corroborated the said version. PW-11 also went on to say that he had confronted the accused on the absence of blood stains on the screwdriver.

8. The cause of death is spoken of by PW-20, the doctor and PW-10, the ballistic expert. A single firearm entry wound was noticed as below: - "Firearm entry wound with irregular margin present from central line of chest 2cms between 5 and 6th rib of left side of chest, surrounding area of wound show abrasion collar, blackening present and margin of wound is inverted wound is round in shape and size of wound is 2 x2 cms. It is 14cms away from the left nipple and 16 cms from the right nipple and 20 cms. away from centre of clavical and 21 cms., away from umblicus and depth of the wound is about 15 cms. No other external injury were noted." [sic]

9. The death was deposed to be by reason of hemorrhagic shock and huge blood loss consequent upon firearm injury which was ante-mortem in nature, fresh in duration, caused by a bullet fired from close range. The Crl. A. @ SLP (Crl.) No.1069 of 2025 sole injury was sufficient to cause death in the ordinary course of nature, as deposed by the doctor. The doctor also spoke of the trajectory of the bullet inside the body, which was obliquely downwards from the left side of chest, first puncturing the lung and then taking an oblique turn to hit the heart.

On cross examination, the doctor was queried on what was meant by close range. The doctor distinguished close range and contact range to depose that close range means below one meter, which excludes contact range; the latter of which denotes that the weapon was in touch with the human body, when it was fired. On the question whether it could be a self-inflicted injury, the doctor did answer that it could only be spoken of by the ballistic expert.

10. The evidence of the doctor must be considered in juxtaposition with the evidence of the ballistic expert who was examined as PW-10; who was not questioned on the suicide angle as to whether the injury could be self-inflicted, even when he was recalled under Section 311, after the doctor's examination. PW-20 was also not the doctor who conducted the post-mortem but spoke based on the report and his expertise.

PW-10 categorically deposed "On the basis of above observations, the range of firing with reference to hole H1 on the shirt marked Ex.C1 and double barrel breech loading gun was within 3 feet (approximately) distance from the muzzle end of the barrel of double barrel breech loading gun." [sic]. In cross examination PW-10 had also deposed that during test fire conducted by him with the weapon of offence, it did not exhibit any performance resulting in an injury to the person who fired it.

The Counsel for the accused never questioned PW10 as to the theory of suicide, even after the doctor deposed that the ballistic expert only could speak on that. When the witness was recalled, there was only a casual query whether the police had enquired with him as to the wound being self-inflicted or caused by someone else, without being followed up. The evidence of the ballistic expert coupled with that of the doctor clearly indicates that the death was caused due to a gunshot injury sustained by the deceased and that it could not have been a self-inflicted injury.

11. The accused argues that the gunshot residue would normally be on the arm holding up the barrel and not the firing arm. The deposition of PW-10 indicates that parcel no. 8 contained the swab used to hand wash the right hand of the accused marked as RHS-1 and parcel no. 9 contained the swab from the left hand of the accused marked as LHS-1. The swab taken from around the hole of the entry wound marked as H-1 and H-2 showed gunshot residue particles both on the shirt and the banyan, respectively numbered as H-1 and H-2; worn by the deceased at the time of his sustaining the wound. Characteristic gunshot residue particles were detected in swab RHS-1 relating to the right hand.

12. That the accused was right-handed was elicited from PW-1, the daughter, in her cross examination. It also must be emphasized that the accused does not have a case that he handled the weapon after the body was found. This clinches the culpability of the accused insofar as the gunshot residue particles having been found in the right hand of the accused. His explanation in the Section 313 statement, is also that he was tortured at the police station, made to sign on blank papers and the police officers inserted a cotton into the barrel of the gun and forcefully rubbed it on his hands.

PW-1, 3 & 4 and PW-11 spoke of the accused having tried to convince them that the deceased killed himself with a screwdriver and brandished one, to fortify the contention. There were no blood stains seen on the screwdriver and the injury clearly is a gunshot injury and not one caused by a screwdriver. The falsity of the assertion of suicide with a screwdriver, at the scene of occurrence, coupled with the falsity of the claim of forceful rubbing of a cotton with a gunshot residue particle on his hands; since then, gun-shot residue would have been detected on both hands of the accused, is another circumstance against the accused.

13. Another plea taken by the learned counsel was that the best evidence of gunshot residue in the hands of the deceased was suppressed. True, the IO spoke of the doctor who conducted the post-mortem having taken swabs from the hands of the deceased; the result of analysis of which has not been placed before Court. We cannot but observe that even if gunshot residue was found in the hands of the deceased that would not lead to a definite conclusion of a self-inflicted injury, since the shot fired was in close range, as deposed by PW-20, which could even otherwise have left gunshot residue on the hands of the injured who was shot. 'Medical Jurisprudence' by Dr. R.M. Jhala and Sh. V.B. Raju, Retired Judge, speaks of the "Nature of injuries whether suicidal, homicidal or accidental" in the following manner:

"The most important and interesting point from legal point of view in the fire-arm injuries is the nature. It is always necessary to decide the question of the suicidal, homicidal or accidental nature of the injury. However, it should be realized and appreciated that the question cannot be answered correctly and confidently. A useful policy, from point of view of investigation would be to consider every fire-arm injury as homicidal unless proved otherwise. As with other types, of injuries, accessibility is the main factor. Certain situations are very often preferred in case of suicide. About 80% of the wounds are in the region of temple.

It is peculiar that heart is rarely the site for suicide, while chest is often the choice of homicidal fire-arm injury. Cadaveric spasm when present with revolver grasped firmly in hand is a very important confirmatory sign pointing to suicidal nature. The other important sign helping in determining the nature is the distance from which the weapon is alleged to be fired. As discussed in the earlier pages, the distance can be assessed from the type of the injury, powder marks, marks of explosion and burning. These prove useful in arriving at an authentic opinion as to the alleged weapon as well as the way in which it could be caused. In suicidal cases generally signs of firing from close vicinity and in accessible areas are present."

(underlining by us for emphasis)

The gun in the present case was not in the grip of the deceased and the wound was on the chest and not on the temple.

14. Taylor's; 'Principles and Practice of Medical Jurisprudence', in Chapter XI deals with 'Firearm Injuries'. Under the heading "Evidence of the proximity of the weapon when fired", it is stated that: 'Self-inflicted firearm wounds are usually contact wounds. Accidents may occur when a person is cleaning a gun or pistol with the muzzle pointed towards him, and then the wound is situated in front, close but not in contact.' [sic-page 303]. It has also been stated that "If a near wound be inflicted by a second person it may be impossible, in the absence of evidence, to say whether it was accidental or homicidal.

It is very necessary to compare the particulars of the wound very carefully with the statements made by the person implicated. They must be consistent" (sic-page-304). In the present case, it has been deposed by the doctor that the injury was inflicted at close range, as distinguished from contact range. Though the doctor had specifically spoken of a definite opinion being possible only by the ballistic expert; no such question was put to PW-10, even when he was recalled after the evidence of PW-20. In the wake of the above, it is our duty to examine the conduct of the person implicated, the accused, and the attendant circumstances, to understand whether they are consistent with the case set up of a self-inflicted injury.

15. At the risk of repetition, it must be stated, as already found by us that the accused had a case that the deceased died by a self-inflicted injury with a screwdriver and he does not have any explanation as to how he detected the body in the night when everybody was asleep. What assumes significance is also the aspect of gunshot residue detected on the right hand of the accused. The appellant has a contention that gunshot residue would be normally seen on the left hand which holds up the barrel, which remains a mere conjecture without any substantiation, not even from the ballistic expert.

No questions were asked to the ballistic expert, confronting him with the weapon as to whether it could have been fired with one hand, without holding up the barrel. Here we must notice that PW4, one of the police officers who reached the crime scene first, deposed, on identifying the gun as Ext. P1, that it was a small double barrel gun. PW10 the ballistic expert also deposed that the weapon was a double-barreled gun, without butt and a shortened barrel. PW14, the Investigating Officer spoke of the gun as a small one without a handgrip; thus, capable of being fired with one hand.

The gunshot residue found on the right hand of the accused also has not been explained properly by him and the version in the Section 313 statement has been found to be a deliberate falsehood. The statement made by the accused and the

explanation proffered are not consistent with the theory of self-inflicted injury. The decision in *Machindra v. Sajjan Galfa Rankhamb & Ors.*³ is not relevant. We also must presume; in accepting the contention, without any substantiation, that a right-handed man would only shoot with that hand.

16. In *C.T. Ponnappa v. State of Karnataka*⁴, the gun belonging to the father was recovered from the joint family house and the ballistic expert report also indicated that the shot was fired by the said gun. Since there was nothing to show that the owner of the gun handed it over to the accused, the mere fact of the shot having been made from the gun was not sufficient to implicate the appellant, was the finding. In the present case, the gun was owned by the father and his only explanation is that the gun was hidden by the children. No such suggestion was made to PW-1, 3 & 4. The accused towards the end of his Section 313 questioning also stated that the gun was in the house accessible to all and that the licence was misplaced: quite contrary to his earlier statement.

17. One other compelling contention taken by the accused is that there was no motive ascribed to the accused to kill his son, who was the only boy child of his five children. We cannot accept the fervent plea, as to the impossibility of the father killing the only boy child, which argument we reject at the outset as puerile. The thrust of the argument was on no motive existing for the alleged crime; especially when the accusation was that the father killed the son. There was neither a long-standing animosity between the father and son nor was there any immediate proximate incident which could lead to any inference of any motive is the argument, relying on precedents.

18. *Nandu Singh v. State of Chhattisgarh*⁵, was a case in which the deceased was found missing and later his body recovered. One of the witnesses deposed that the deceased was seen going out with the accused from a hotel which was the sole circumstance connecting the accused with the deceased which according to the learned Judges could not even be brought under the theory of last seen together, since there was nothing to indicate that they were seen together proximate to the crime. The total absence of motive also weighed with the Court in acquitting the accused.

19. Reliance was placed on *State of U.P. v. Kishanpal*⁶ wherein it was held that motive is something which is primarily known to the accused themselves and it is not possible for the prosecution to always explain what prompted or excited them to commit a particular crime. Motive is a very important link in the circumstances which could prove the guilt of the accused, and it loses its importance only when there is direct evidence of eyewitnesses, which is convincing and conclusive as to the guilt of the accused. However, it was also noticed that even if there may be a very strong motive for the accused to commit a particular crime, it does not lead

to a conviction by itself, if the eyewitnesses are not convincing or the chain of circumstances is not complete.

20. The declaration in the cited decisions and the decisions relied on therein, is to the effect that if the case is built solely upon circumstantial evidence, absence of motive will be a factor that weighs in favour of the accused. Just as a strong motive does not by itself result in a conviction, the absence of motive on that sole ground cannot result in an acquittal. When the eyewitnesses are not convincing, a strong motive cannot by itself result in conviction, likewise when the circumstances are very convincing and provide an unbroken chain leading only to the conclusion of guilt of the accused and not to any other hypothesis; the total absence of a motive will be of no consequence.

21. We extract paragraph 17 from a three-judge bench decision, *Jan Mohammad v. State of Bihar*⁷; which also is of vintage flavour, succinctly putting forth the proposition:

"Motive is a relevant fact under the Evidence Act (Section 8). It is an important element in a chain of presumptive proof where the evidence is purely circumstantial, but it may lose importance in a case where there is direct evidence by witnesses implicating the accused. In a case such as the present where the prosecution evidence itself shows that the relations between the deceased and the appellants were cordial, the absence of an apparent motive, though not necessarily fatal to the prosecution case, may reasonably be regarded as a fact in favour of the accused. We think, therefore, that the attempt to prove a motive against any of the appellants has failed." [sic]

22. *Suresh Chandra Bahri v. State of Bihar*⁸ held that in a case based on circumstantial evidence, proof of motive would 'supply a link in the chain of circumstances' but all the same, absence of motive cannot be a ground to altogether reject the prosecution case. Para 21 reads as follows:

"21. At the very outset we may mention that sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention.

In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the court that the accused was guilty of the offence charged with. But it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the

perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime."

(underlining by us for emphasis)

23. Sukhpal Singh v. State of Punjab⁹ found that if prosecution establishes motive, it will undoubtedly strengthen the prosecution case, but to say that absence of motive will be fatal to the prosecution, irrespective of other material before the court in the form of circumstantial evidence is far-fetched. Para 15 reads as follows:

"15. The last submission which are called upon to deal with is that there is no motive established against the appellant for committing murder. It is undoubtedly true that the question of motive may assume significance in a prosecution case based on circumstantial evidence. But the question is whether in a case of circumstantial evidence inability on the part of the prosecution to establish a motive is fatal to the prosecution case, we would think that while it is true that if the prosecution establishes a motive for the accused to commit a crime it will undoubtedly strengthen the prosecution version based on circumstantial evidence, but that is far cry from saying that the absence of a motive for the commission of the crime by the accused will irrespective of other material available before the court by way of circumstantial evidence be fatal to the prosecution. In such circumstances, on account of the circumstances which stand established by evidence as discussed above, we find no merit in the appeal and same shall stand dismissed.

(underlining by us for emphasis)

24. Motive remains hidden in the inner recesses of the mind of the perpetrator, which cannot, oftener than ever, be ferreted out by the investigation agency. Though in a case of circumstantial evidence, the complete absence of motive would weigh in favour of the accused, it cannot be declared as a general proposition of universal application that, in the absence of motive, the entire inculpatory circumstances should be ignored and the accused acquitted.

25. The other decisions relied on by the accused/ appellant are all with respect to the missing link and presumption of innocence unless proved guilty, and we need only refer to the celebrated judgment in Sharad Birdhichand Sarda v. State of Maharashtra¹⁰. In the present case, the accused and the deceased along with the wife of the accused and his two other children were residing in the house which was the scene of occurrence. The wife and two daughters were sleeping in another room, and they woke up hearing the shouts of the accused, who first detected the body.

They came out and saw the youngest child lying in a pool of blood and one of the daughters summoned the neighbours. The family members and the neighbour who were examined before Court spoke of the accused having tried to convince them that it was a suicide by a self-inflicted injury; found to be a deliberate falsehood. The accused does not say what led him to the body at the dead of the night, when all were asleep. The accused admitted that he owned the gun, but his explanation was that it was hidden by his children, which is not plausible in the teeth of the corroborated deposition of PW-1, 3 & 4 that it was in the custody of the husband and that only he could use it.

26. The accused, admittedly a right-handed person, had gunshot residue particles in his right hand. There were also gunshot residue particles around the gunshot wound by reason of which the son succumbed. Though a definitive opinion was not given by the doctor as to whether the wound was homicidal, no question was put to the ballistic expert. In fact, the suggestion was that since the gun did not have a butt, it could cause injury to the person shooting, which was denied based on the tests carried out.

The doctor deposed that the wound was not from a contact range. The circumstances coupled with the falsity of the claim made by the accused immediately after the detection of the body, to the onlookers and the false explanation given by the accused in his statement under Section 313, regarding both his hands having been forcefully smeared with gunshot residue provides further links in the chain of circumstances which is complete and leads only to the hypothesis of the guilt of the accused and not to any hypothesis of innocence.

27. We find absolutely no reason to interfere with the conviction and sentence of the accused as handed down by the Trial Court and confirmed by the High Court.

28. The appeal stands dismissed.

29. Pending applications, if any, shall also stand disposed of.

.....J. (Sudhanshu Dhulia)

.....J. (K. Vinod Chandran)

New Delhi;

April 17, 2025.

1 'the I.P.C.'

2 'the Cr.P.C.'

3 (2017) 3 SCR 36

4 (2004) 11 SCC 391

5 2022 SCC OnLine SC 1454

6 (2008) 16 SCC 73

7 (1953) 1 SCC 5

8 1995 Supp (1) SCC 80

9 (2019) 15 SCC 622

10 (1984) 4 SCC 116

IN THE SUPREME COURT OF INDIA

In Re: Compensation Amounts Deposited with Motor Accident Claims Tribunals and Labour Courts

[Suo Motu Writ Petition (C) No. 7 of 2024]

HEADNOTE – Issues directions to ensure direct bank transfer of compensation to road accident victims and workmen.

The Court noted that the States have not framed rules under Section 176 of the MV Act regarding the filing of applications before the Tribunals. Till such rules are framed, the Court directed the High Courts to frame practice directions incorporating the following conditions :

(a) While filing claim petitions under the 1988 Act, following particulars shall be incorporated:

- (i) Names and addresses (local and permanent) of the injured persons or the owners of the damaged property, as the case may be, their Aadhar and PAN details and email-id, if any; and
- (ii) Names and addresses (local and permanent) of all the legal representatives of the deceased victim of the accident who are claiming compensation, their Aadhar and PAN details and email-id, if any;

(b) If the aforesaid details are not furnished, the registration of the application should not be refused on that ground, but MAC Tribunals at the time of issuing notice may direct the applicant(s) to furnish the information and make the issue of the notice subject to making compliance;

(c) While passing an interim or final order of grant of compensation, the MAC Tribunals shall call upon the person or persons held entitled to receive compensation, to produce their bank account details along with either a certificate of the banker giving all details of the bank account of the person or persons entitled to receive the compensation including IFS Code, or a copy of a cancelled cheque of the bank account. The Tribunal shall call upon the claimants to produce the documents within a specified reasonable time;

(d) A further direction shall be issued to the persons entitled to receive compensation to keep on updating information regarding the bank accounts, email id, in case there is any change;

(e) In the event a consent award or consent order is made, the MAC Tribunals may direct the deposit of the compensation amount ordered to be released to the claimants directly to the bank accounts of the persons held entitled to receive

compensation. However, the consent terms must contain all relevant account details of the persons entitled to compensation in accordance with clause (c) above. The account details can also be incorporated in the order passed for the disbursement of the amount on the basis of a compromise between the parties. In case of compromise before the Lok Adalats, the MAC Tribunal, on the basis of the settlement, shall pass a consequential order in the above terms;

(f) It shall be the duty of the learned Judges presiding over the MAC Tribunal to verify from the certificate issued by the banker and ascertain whether the account is of the persons held entitled to receive compensation;

(g) The MAC Tribunals, while passing orders of withdrawal/disbursement, shall, in the ordinary course, pass an order of transfer of the requisite amounts directly to the bank account of the person/s entitled to receive compensation as per the account details furnished. If there is a long gap between the date of furnishing the account details and the date of filing application for withdrawal of the amount, the Tribunal will be well advised to get fresh account details of the claimants;

(h) Whenever the MAC Tribunal passes an order of deposit of compensation amount with the Tribunal, there shall be a direction issued to invest the amounts to be deposited in fixed deposit with any nationalised bank and the fixed deposit shall be with the standing instructions to the bank to renew the same after periodical intervals till further orders are passed by the Tribunal;

(i) Similarly, practice directions/rules be framed in respect of adjudication made under the 1923 Act. The above directions issued while passing awards in claims under the 1988 Act shall be applied in case of the claims for compensation under the 1923 Act;

(j) The Central Project Co-ordinator of e-court project or Registrar (Computer/IT) of the High Courts, as the case may be, with the help of the State Government, shall create a dashboard on which the information regarding the amounts lying deposited in connection with the compensation granted under 1988 or 1923 Acts shall be regularly uploaded with all details. It will help all concerned to implement the directions issued under this order;

(k) All the High Courts shall issue administrative directions to the MAC Tribunals and Commissioners under the 1923 Act to initiate a massive drive to ascertain the whereabouts of the persons who have been held to be entitled to receive compensation, but have not taken the same. This shall be done by taking the assistance of the District and Taluka Legal Services Authorities and para-legal volunteers;

(l) The State Governments shall provide assistance to the Legal Services Authorities of the local police officers/revenue officers of the district and taluka to trace the claimants who are held entitled to receive compensation;

(m) The State Legal Services Authorities shall monitor compliance with the directions issued in terms of clauses (k) and (l) above and report compliance within a period of four months from today.

These directions will bind the MAC Tribunals and the Commissioners under the 1923 Act till rule-making power is properly exercised by the Government. If the Rules framed by the State Government or practice directions already issued are consistent with the above directions, the Rules or the practice directions, as the case may be, shall be followed notwithstanding this order.

JUDGMENT

Abhay S. Oka, J.

1) An email was received by this Court from Shri B. B. Pathak, a retired District Judge from Gujarat. In the e-mail dated 25th May 2024, Shri Pathak pointed out that large amounts payable by way of compensation under the Motor Vehicles Act, 1988 (for short, 'the 1988 Act') and the Workmen's Compensation Act, 1923 (for short, 'the 1923 Act') are lying deposited with the Motor Accident Claims Tribunals (for short, 'the MAC Tribunals') and Labour Courts. Hon'ble the Chief Justice of India passed an administrative order on the basis of information received by e-mail from Shri B. B. Pathak for registration of the present Suo Motu Writ Petition.

2) On 8th July 2024, this Court issued notices to the State of Gujarat as well as the Registrar General of Gujarat High Court, directing them to produce before this Court the data of compensation amounts lying deposited with the MAC Tribunals as well as before the Commissioners under the 1923 Act.

By the order dated 26th July 2024, this Court requested Ms. Meenakshi Arora, the learned senior counsel appearing for the High Court of Gujarat, to assist the Court as amicus curiae. On the basis of a preliminary note containing recommendations submitted by the learned senior counsel appointed as amicus curiae, notices were issued to the Registrar Generals of the High Courts at Allahabad, Bombay, Calcutta, Delhi and Madras along with copies of earlier orders passed by this Court. Thereafter, time was granted to the High Courts to file affidavits/responses.

3) Ms. Vishakha, advocate-on-record representing the High Court of Gujarat, has filed a compilation of responses received from various High Courts along with

suggestions of the learned senior counsel appointed as amicus curiae. To understand the magnitude of the problem, in paragraph 5 on page 2 of the compilation submitted by Ms. Vishakha, the figures of unclaimed amounts have been set out. Paragraph 5 reads thus:

"At the very outset, the details pertaining to the unclaimed amounts as provided in the affidavits received are as under:

S. No.	High Court	Unclaimed Amount in MACT	Unclaimed Amount in Labour Courts
1.	Gujarat	Rs.2,82,00,37,779.18	Rs.6,61,39,777.19
2.	Allahabad	Rs.239 Crores approx	Rs.92,39,02,649.10
3.	Calcutta	Rs.2,53,37,676/-	Not available
4.	Bombay	Rs.4,59,10,66,846/-	
5.	Goa	Rs.3,61,60,495/-	

4) In the affidavits, the respective High Courts have given their own suggestions. Different High Courts have adopted different methods to deal with the issue. Some of the High Courts appointed committees to submit recommendations. The committee appointed by the High Court of Judicature at Bombay has given details of the procedure followed in such cases in different countries.

The report of the High Court of Judicature at Bombay refers to paragraph 742 of the Civil Manual applicable to the Courts in Maharashtra, which incorporates the requirement of deposit of unclaimed amounts into the treasury of the State Government. We have also carefully perused the recommendations of the learned senior counsel appointed as amicus curiae. She has summarised the best practices followed by various High Courts and has incorporated the same in her recommendations.

5) The issue arising in this suo motu petition is of great concern. The amounts represent the compensation granted to claimants in the claims filed under the 1988 and 1923 Acts. Though the claimants are held entitled to these amounts, they have not withdrawn the same. The fact that so many successful claimants have been deprived of compensation is very disturbing. It is necessary to find a solution.

6) There is a provision under Section 166 of the 1988 Act for making an application for compensation to the MAC Tribunal established under the said enactment. Sub- Section (1) of Section 166 reads thus:

"166. Application for compensation.-

(1) An application for compensation arising out of an accident of the nature specified in subsection (1) of Section 165 may be made-

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application:

Provided further that where a person accepts compensation under Section 164 in accordance with the procedure provided under Section 149, his claim petition before the Claims Tribunal shall lapse."

6.1 Under Section 176, rule making powers has been conferred on the State Governments to make rules providing for the form of application for claims for compensation and the particulars it may contain. Section 176 reads thus:

"176. Power of State Government to make rules.-

A State Government may make rules for the purpose of carrying into effect the provisions of Sections 165 to 174, and in particular, such rules may provide for all or any of the following matters, namely-

(a) the form of application for claims for compensation and the particulars it may contain, and the fees, if any, to be paid in respect of such applications;

(b) the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter;

(c) the powers vested in a Civil Court which may be exercised by a Claims Tribunal;

(d) the form and the manner in which and the fees (if any) on payment of which an appeal may be preferred against an award of a Claims Tribunal; and

(e) any other matter which is to be, or may be prescribed."

7) It is not clear how many States have exercised the rule making power under clause (a) of Section 176 for prescribing the form of the application under

Section 166(1). Applications for compensation can be made by the persons who have sustained injuries or by the owners of the damaged property and in case of fatal accidents, by all or any of the legal representatives of the deceased. Even an agent duly authorised by the person injured or the legal representatives of the deceased can also file a claim petition.

8) In absence of the exercise of the rule making power under Section 176 of the 1988 Act by the State Governments, the respective High Courts can either frame rules of procedure or issue practice directions for ensuring that material details are disclosed while filing claim applications under Section 166(1) of the 1988 Act.

9) Till the rules are not framed, the High Courts shall either issue practice directions or formulate rules of procedure by incorporating the following provisions:

a) While filing claim petitions under the 1988 Act, following particulars shall be incorporated:

(i) Names and addresses (local and permanent) of the injured persons or the owners of the damaged property, as the case may be, their Aadhar and PAN details and email-id, if any; and

(ii) Names and addresses (local and permanent) of all the legal representatives of the deceased victim of the accident who are claiming compensation, their Aadhar and PAN details and email-id, if any;

(b) If the aforesaid details are not furnished, the registration of the application should not be refused on that ground, but MAC Tribunals at the time of issuing notice may direct the applicant(s) to furnish the information and make the issue of the notice subject to making compliance;

(c) While passing an interim or final order of grant of compensation, the MAC Tribunals shall call upon the person or persons held entitled to receive compensation, to produce their bank account details along with either a certificate of the banker giving all details of the bank account of the person or persons entitled to receive the compensation including IFS Code, or a copy of a cancelled cheque of the bank account. The Tribunal shall call upon the claimants to produce the documents within a specified reasonable time;

(d) A further direction shall be issued to the persons entitled to receive compensation to keep on updating information regarding the bank accounts, email id, in case there is any change;

(e) In the event a consent award or consent order is made, the MAC Tribunals may direct the deposit of the compensation amount ordered to be released to the claimants directly to the bank accounts of the persons held entitled to receive compensation. However, the consent terms must contain all relevant account details of the persons entitled to compensation in accordance with clause (c) above. The account details can also be incorporated in the order passed for the disbursement of the amount on the basis of a compromise between the parties. In case of compromise before the Lok Adalats, the MAC Tribunal, on the basis of the settlement, shall pass a consequential order in the above terms;

(f) It shall be the duty of the learned Judges presiding over the MAC Tribunal to verify from the certificate issued by the banker and ascertain whether the account is of the persons held entitled to receive compensation;

(g) The MAC Tribunals, while passing orders of withdrawal/disbursement, shall, in the ordinary course, pass an order of transfer of the requisite amounts directly to the bank account of the person/s entitled to receive compensation as per the account details furnished. If there is a long gap between the date of furnishing the account details and the date of filing application for withdrawal of the amount, the Tribunal will be well advised to get fresh account details of the claimants;

(h) Whenever the MAC Tribunal passes an order of deposit of compensation amount with the Tribunal, there shall be a direction issued to invest the amounts to be deposited in fixed deposit with any nationalised bank and the fixed deposit shall be with the standing instructions to the bank to renew the same after periodical intervals till further orders are passed by the Tribunal;

(i) Similarly, practice directions/rules be framed in respect of adjudication made under the 1923 Act. The above directions issued while passing awards in claims under the 1988 Act shall be applied in case of the claims for compensation under the 1923 Act;

(j) The Central Project Co-ordinator of e-court project or Registrar (Computer/IT) of the High Courts, as the case may be, with the help of the State Government, shall create a dashboard on which the information regarding the amounts lying deposited in connection with the compensation granted under 1988 or 1923 Acts shall be regularly uploaded with all details. It will help all concerned to implement the directions issued under this order;

(k) All the High Courts shall issue administrative directions to the MAC Tribunals and Commissioners under the 1923 Act to initiate a massive drive to ascertain the whereabouts of the persons who have been held to be entitled to receive compensation, but have not taken the same. This shall be done by taking

the assistance of the District and Taluka Legal Services Authorities and para-legal volunteers;

(l) The State Governments shall provide assistance to the Legal Services Authorities of the local police officers/revenue officers of the district and taluka to trace the claimants who are held entitled to receive compensation;

(m) The State Legal Services Authorities shall monitor compliance with the directions issued in terms of clauses (k) and (l) above and report compliance within a period of four months from today.

10) These directions shall continue to bind the MAC Tribunals and the Commissioners under the 1923 Act till rule-making power is properly exercised by the Government. The Registry shall forward copies of this order to the Registrar Generals of all the High Courts as well as the Member Secretaries of the State Legal Services Authorities of all the States.

We direct the High Courts to take up implementation of the aforesaid directions at the earliest and submit compliance reports to this Court on or before 30th July 2025, so that further directions, if necessary, can be issued. The Registrar Generals, in their report, shall set out the details of the amounts still lying without disbursement. The Registry shall forward soft copies of the reports to Ms. Vishakha, AOR.

11) We make it clear that if the Rules framed by the State Government or practice directions already issued are consistent with the above directions, the Rules or the practice directions, as the case may be, shall be followed notwithstanding this order.

12) We make it clear that all the High Courts are free to take measures in addition to what is directed under this order to ensure that the pending amounts reach the claimants.

13) List for reporting compliance on 18th August 2025.

.....J. (Abhay S. Oka)

.....J. (Ujjal Bhuyan)

New Delhi;

April 22, 2025

IN THE SUPREME COURT OF INDIA

**Amruddin Ansari (D) through LRS. & Ors.
Vs.
Afajal Ali & Ors.**

[Petition(s) for Special Leave to Appeal (C) No. 11442/2023]

HEADNOTE – The dismissal of a suit or application for default under Rules 2 or 3 of Order IX of the CPC does not prevent the filing of a fresh suit, as such dismissal does not constitute a judgment or decree, and therefore, the principle of res judicata does not apply.

An order of dismissal of a suit or application in default under Rule 2 or Rule 3 of Order IX of the C.P.C. is neither an adjudication or a decree nor it is an appealable order. If that is so, such order of dismissal of a suit under Rule 2 or Rule 3 of Order IX of the C.P.C. does not fulfill the requirement of the term “judgment” or “decree”, inasmuch as there is no adjudication. In our considered opinion, therefore, if a fresh suit is filed, then such an order of dismissal cannot and shall not operate a res judicata.

JUDGMENT

J.B. Pardiwala, J.

1. This petition arises from the judgment and order passed by the High Court of Chhattisgarh at Bilaspur dated 24.10.2019 in Second Appeal No.424/2005 by which the Second Appeal filed by the respondents herein (original plaintiffs) came to be allowed and thereby, the judgment and order passed by the First Appellate Court reversing the decree passed by the Trial Court came to be set aside.

2. For the sake of convenience, the petitioners herein shall be referred to as the original defendants and the respondents herein shall be referred to as the original plaintiffs.

3. The facts giving rise to this petition may be summarized as under:

a. The history of this litigation goes something like this. In the first instance, the father of the original plaintiffs instituted a Civil Suit No.37A/1996 in the Court of Ld. Civil Judge, Ramanujganj, District- Sarguja, Chhattisgarh for declaration, cancellation of sale deed and a permanent injunction. It appears from the materials on record that the said suit came to be dismissed under the provisions of Order IX Rule 2 of the Civil Procedure Code, 1908 (for short "the C.P.C."). In such circumstances, the father of original plaintiffs preferred an application under

Order IX Rule 4 for restoration of the suit. The said application under Order IX Rule 4 of the C.P.C. came to be dismissed. The matter was not carried further. The order passed by the Trial Court rejecting the application filed under Order IX Rule 4 of the C.P.C. attained finality.

b. Later, the original plaintiffs (legal heirs) instituted a fresh suit bearing No.27A/2001 in the Court of Civil Judge, 1st Class, Ramanujganj, Tehsil Paal, District-Sarguja, Chhattisgarh for the same reliefs.

c. The Trial Court framed the following issues:

"1. Whether the Plaintiffs are having ownership right over the suit property mentioned in Appendix-A attached to the suit?

2. Whether the executed Sale Deed dated 19.12.86 is having no effect on the plaintiffs being fake, fabricated and illegal?

3. Whether the Plaintiffs are entitled for grant of a decree of permanent injunction against the defendants with respect to the suit land that the Defendant Nos.1,2,3, 4 and 5 themselves and their relatives, friends, servants and agents be restrained from claiming ownership or entering into the suit property or creating any hindrance thereupon?

4. Whether daughters of Late Rahmat Ali are necessary parties to the suit?

5. Whether the principal of res judicata is applicable in the present suit? 6. Whether there is lesser court fee paid in the suit?

7. Relief and costs?"

d. All the aforesaid issues came to be answered in favour of the plaintiffs.

e. The original defendants being dissatisfied with the judgment and decree passed by the Trial Court challenged the same before the District Court in First Appeal. The First Appeal came to be allowed. The judgment and decree passed by the Trial Court was set aside.

f. Being dissatisfied with the judgment and order passed by the First Appellate Court, the plaintiffs went before the High Court in Second Appeal.

g. The High Court formulated the following three substantial questions of law for its consideration:

"i) "Whether the learned first Appellate Court was justified in holding that since the decree holder did not deposit the deficit court fees within the period allotted

by the trial Court, the decree becomes in executable, is correct particularly in view of the fact that the deficit court fees has been deposited by the plaintiff/decreed holder with the permission of the trial Court?"

ii) "Whether the finding of the first Appellate Court that the instant suit was not maintainable in view of the doctrine of res judicata, is justified in the absence of any evidence that the earlier suit was between the same parties and for the same relief?"

iii) "Whether the finding of the appellate Court that the document titled as Vazib Dava of Ex.P.1, by which the patta holder Abdul Rajak has relinquished his right in favour of the plaintiffs could be ignored only on the ground that the same has not been proved by examining the attesting witnesses particularly in the light of the fact that the same has not been disputed by the defendants?"

h. The High Court, while allowing the Second Appeal answered all the three substantial questions of law referred to above in favour of the plaintiffs. The judgment and order passed by the First Appellate Court was set aside and the judgment and decree passed by the Trial Court came to be restored.

4. In such circumstances referred to above, the original defendants are before this Court with the present petition.

5. We heard Mr. Mr. Abhinav Jaganathan, the learned counsel appearing for the original defendants (petitioners) and Ms. V. Mohana, the learned Senior Counsel appearing for the respondent Nos.1 and 2 respectively (original plaintiffs).

6. The learned counsel appearing for the defendants (petitioners) has three-fold submissions to canvass before us. First, according to him, the second suit itself was not maintainable. He would submit that once an application under Order IX Rule 4 of the C.P.C. stands rejected and if such order is not challenged before the higher Court and attains finality, then a second suit for the same cause of action and for the very same relief is not maintainable.

His second submission is with respect to the evidentiary value of the document i.e. Wajib Dava (Exhibit P-1). According to him, the Wajib Dava of 1952 could be said to be hit by Section 54 of the last principles of Mohammedan Law read with Section 6(a) of the Transfer of the Property Act, 1882. He would also submit that being an unregistered document, the same could not have been read into evidence for the purpose of establishing a valid title over the property. Thirdly, according to the learned counsel the fresh suit filed by the plaintiffs could be said to be hit by the doctrine of res judicata.

7. On the other hand, Ms. V. Mohana, the learned Senior Counsel appearing for the plaintiffs would submit that no error not to speak of any error of law could be

said to have been committed by the High Court in passing the impugned judgment and order. She would submit that the High Court is right in taking the view that the suit was maintainable and was not hit in any manner by the provisions of Order IX Rule 4 of the C.P.C. As regards the document i.e. Wajib Dava (Exhibit P-1), she submitted that the same has been very well considered by the High Court in all respects. In such circumstances referred to above, the learned Senior Counsel prayed that there being no merit in the petition, the same may be dismissed.

ANALYSIS

8. Having heard the learned counsel appearing for the parties and having gone through the materials on record, two questions fall for our consideration:

i) Whether after the dismissal of the petition for restoration of suit under Order IX Rule 4 of the C.P.C. a fresh suit is maintainable?

ii) Whether after dismissal of the suit for default, a fresh suit is barred by res judicata?

9. Order IX Rule 4 of the C.P.C. reads thus:

"ORDER IX -Appearance of parties and consequence of non-appearance

4. Plaintiff may bring fresh suit or Court may restore suit to file.- Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for [such failure as is referred to in rule 2], or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit."

10. It appears that the High Court placed reliance on a decision of the Privy Council in Bhudeo vs. Musammat Baikunthi¹. In the said decision, the Privy Council took the view that the two remedies prescribed under Order IX Rule 4 of the C.P.C. are not mutually exclusive. The Privy Council looked into the prefix "or" and ultimately held as under:

"1. The point raised is whether the two remedies allowed to a plaintiff whose suit has been dismissed under Order IX, Rule 2 or 3, namely, the remedy of bringing a fresh suit or applying to have the dismissal set aside, are mutually exclusive. The words of Order IX, Rule 4, are materially the same as the words of Section 99, Act XIV of 1882, upon this point. The wording is not very happy. The use of the word "or" presents many difficulties.

In spite of the fact that the word "or" is used and in spite of the fact that the remedy of bringing a fresh suit is placed first and the remedy of having the order set aside is placed second, I am of opinion that the lower Appellate Court is right. I cannot read into the words of the section the meaning that when a person, in good faith believing his suit to have been wrongfully dismissed, comes into Court to have that order set aside and fails to succeed, that person incur the penalty of not being permitted to bring another suit upon the same facts.

The selection of the remedy of bringing a fresh suit involves the plaintiff in the necessity of paying a fresh Court-fee and a man would naturally wish to take his chance of getting his suit restored and avoiding payment of a fresh Courtfee. It does not seem likely that it was the intention of the Legislature that if he took this chance, he was to be deprived of all other remedy in event of failure. The whole of the argument on the side of the appellant practically rests upon the use of the solitary word "or," and I do not think that there is sufficient force in that argument to support the appellant's contention. I, therefore, dismiss this appeal with costs."

11. We are in respectful agreement with the view taken by the Privy Council as regards the interpretation of Order IX Rule 4 of the C.P.C.

12. There is one another reason to take the view that a fresh suit is maintainable even after the rejection of the application filed under Order IX Rule 4 of the C.P.C., keeping in mind Order IX Rule 8 and Order IX Rule 9 respectively of the C.P.C.

13. Order IX Rule 8 of the C.P.C. reads thus:

"8. Procedure where defendant only appears- Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder."

14. Order IX Rule 9 of the C.P.C. reads thus: "9. Decree against plaintiff by default bars fresh suit-

(1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit. and shall appoint a day for proceeding with suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party."

15. The plain reading of Order IX Rule 4 of the C.P.C. does not bar the filing of a fresh suit, of course, subject to limitation and if that were the intention, we might have found in it a provision similar to that in Order IX Rule 9 of the C.P.C. referred to above, which states that where a suit is dismissed under the Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action.

16. The basic difference between the two provisions i.e. Rule 4 and Rule 9 of Order IX CPC is that in the case where the suit is dismissed under Rule 2 or Rule 3 of Order IX, the remedy provided is under Rule 4 of Order IX of the C.P.C. In case of such dismissal, the plaintiff either brings a fresh suit on the same cause of action or he may apply for setting aside the order of dismissal and for restoration of suit. Whereas if the suit is dismissed under Rule 8 of Order IX of the C.P.C., the plaintiff cannot bring a fresh suit on the same cause of action. The only remedy available to the plaintiff is to move an application for setting aside the order of dismissal and for restoration of suit.

17. From bare reading of the aforesaid two provisions i.e. Rule 4 and Rule 9 of Order IX of the C.P.C., it is manifestly clear that under Rule 4 of Order IX of the C.P.C., the legislature in express term has not precluded the plaintiff from filing a fresh suit on the same cause of action in the event suit is dismissed under Rule 2 or Rule 3 of Order IX of the C.P.C., whereas Rule 9 of Order IX debars the plaintiff from filing a fresh suit in a case where the suit is dismissed under Rule 8 of Order IX of the C.P.C. The only remedy provided for such dismissal is to file an application under Rule 9 of Order IX of the C.P.C. for restoration of suit.

18. In the case of Govind Prasad v. Har Kishen reported in AIR 1929 Allahabad 131, a similar question arose for consideration as to the maintainability of the second suit. In that case the suit filed by the plaintiff was dismissed under Order IX Rule 3 of the C.P.C., in consequence of neither party having appeared when the suit was called for hearing. The plaintiff-appellant to have the suit restored but the restoration application was dismissed. The plaintiff then brought a new suit upon the same cause of action. The learned Judge dismissed the suit holding that the same is not maintainable. In the Civil Revision filed before the Allahabad High Court, the learned Judge Weir, following the earlier decisions (39 I.C.191 and 63 I.C.239), set aside the order of dismissal of suit and held that a fresh suit on the same cause of action is maintainable.

19. In the case of Mt. Balkesia v. Mahant Bhagwan Gir reported in AIR 1937 Patna 9, a similar question came for consideration before a Division Bench of the

Patna High Court. In that case also taking the similar view the learned Judge James, observed:

"Mr. Khurshaid Husnain argues, in the second place, that the present suit should be regarded as barred by reason of the provisions of O.9, R. 4. O.9, R.4, provides that where a suit is dismissed under R. 2, or R. 3, the plaintiff may bring a fresh suit, or he may apply for an order to set the dismissal aside. Mr. Khurshaid Husnain argues that these two provisions are mutually exclusive, so that if the plaintiff elects to avail himself of his right to apply to have the order of dismissal set aside, he is thereby precluded from availing himself of the right to institute a fresh suit.

The only decisions in point which have been brought to our notice by Mr. Khurshaid Husnain are adverse to this argument : 63 I C 239 of Stuart, J., A I R 1926 All 678 of Daniels, J., and 50 All 837 of Weir, J., all of the Allahabad High Court. In all these cases it has been held that the alternative provisions of R.4 are not mutually exclusive, and that a plaintiff whose application for a restoration of his suit has been dismissed is not precluded from instituting a fresh suit.

I do not consider that any ground has been made out which justifies us in differing from the view expressed by the learned Judges whom I have named. It appears to us that a reasonable reading of the rule provides that the plaintiff may bring a fresh suit or he may apply for a setting aside the dismissal. If he satisfies the Court and obtains an order setting aside the dismissal, he proceeds with his original suit. If having applied for an order to set aside the order of dismissal, he fails to satisfy the Court and his application is dismissed, he is left to his alternative remedy which is that he may, subject to the law of limitation, bring a fresh suit."

20. Agreeing with the view, the learned Judge Rowland, has observed:

"Rowland, J.- I agree. With reference to the argument that the dismissal of a suit under O. 9, R. 3, Civil P. C., may, coupled with the dismissal of an application for rehearing, operate to preclude the plaintiff from suing again on the same cause of action, I would like to add a few words. It seems to me that S. 9. Civil P.C., is fatal to the appellants' argument. This section declares that the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. That is subject to such provisions as those of S. 11 which bars suits on matters already judiciously decided between the parties or of O. 9, R. 9, which precludes a plaintiff from suing again on the same cause of action where his suit has been dismissed under R. 8, that is to say on appearance of the defendant and in the absence of the plaintiff.

In the absence of some such provision as that with which O. 9, R. 9 commences, a dismissal under O. 9, R. 3 would still, in my opinion, not operate to preclude the plaintiff from suing again even if O. 9, R. 4 did not expressly save his right of suit. R. 4 in effect does not create but declares the right of bringing a fresh suit while at the same time permitting the plaintiff in the alternative to proceed with his original suit. The former option the plaintiff has as of right; the other option is available to him only if he can satisfy the Court that he had sufficient cause for the non-appearance or other default which led to the dismissal of the suit. On the other points I have nothing to add."

21. In the light of the provisions contained in Order IX and the law discussed hereinabove, it can be safely concluded that in case of dismissal of suit under Order IX Rule 4 of the C.P.C. the plaintiff has both the remedies of filing of fresh suit or application for restoration of the suit. If he chooses one remedy, he is not debarred from availing himself of the other remedy. Both these remedies are simultaneous and would not exclude either of them.

22. The next question i.e. question No. (II), that falls for consideration is as to whether after dismissal of suit in default under Rule 2 and Rule 3 of Order IX of the C.P.C., a fresh suit is barred by the principle of res judicata.

23. The principle of res judicata is based on the common law maxim "nemo debet bis vexari pro una et eadem causa", which means that no man shall be vexed twice over the same cause of action. It is a doctrine applied to give finality to a lis. According to this doctrine, an issue or a point once decided and attends finality, should not be allowed to be reopened and re-agitated in a subsequent suit. In other words, if an issue involved in a suit is finally adjudicated by a Court of competent jurisdiction, the same issue in a subsequent suit cannot be allowed to be re-agitated. It is, therefore, clear that for the application of principle of res judicata, there must be an adjudication of an issue in a suit by a court of competent jurisdiction.

24. The term "judgment" has been defined in Section 2(9) of the C.P.C. which means a statement given by a Judge of the grounds of a decree or order.

25. The term "decree" has been defined under Section 2(2) of the C.P.C. which reads as under:-

"(2) "Decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include-

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default."

26. From a plain reading of the term "decree", it is manifestly clear that to constitute a decree, there must be a formal expression of an adjudication which conclusively determines the right of the parties with regard to all or any of the matters in controversy in the suit, but the decree shall not include any adjudication from which an appeal lies as an appeal from an order or any order of dismissal for default. It is, therefore, evidently clear that a dismissal of a suit or application for default particularly under Rule 2 or Rule 3 of Order IX of the C.P.C. is not the formal expression of an adjudication upon any right claimed or the defence set up in a suit.

An order of dismissal of a suit or application in default is also not appealable order as provided under Order XLIII of the C.P.C. If we read Order XLIII C.P.C., we will find that orders passed under Order IX, Rule 9 of the C.P.C. or Order IX Rule 13 of the C.P.C. are made appealable, but order passed under Order IX Rule 4 of the C.P.C. is not appealable. It is, therefore, clear that an order of dismissal of a suit or application in default under Rule 2 or Rule 3 of Order IX of the C.P.C. is neither an adjudication or a decree nor it is an appealable order.

If that is so, such order of dismissal of a suit under Rule 2 or Rule 3 of Order IX of the C.P.C. does not fulfill the requirement of the term "judgment" or "decree", inasmuch as there is no adjudication. In our considered opinion, therefore, if a fresh suit is filed, then such an order of dismissal cannot and shall not operate a res judicata.

27. So far as the document Wajib Dava (Exhibit P-1) is concerned, we are convinced with the line of reasoning assigned by the High Court.

28. In view of the aforesaid, we see no good ground to interfere with the impugned judgment passed by the High Court. In the result, this petition fails and is hereby dismissed.

29. Pending application(s), if any, shall stand disposed of.

.....J. (J.B. Pardiwala)

.....J. (R. Mahadevan)

New Delhi

April 22,2025.

1 (1921) 63 I.C. 239

IN THE SUPREME COURT OF INDIA

Angadi Chandranna

Vs.

Shankar & Ors.

**[Civil Appeal No. 5401 of 2025
arising out of SLP (C) No. 6799 of 2022]**

HEADNOTE – After the joint family property has been distributed in accordance with law, it ceases to be joint family properties and the shares of the respective parties become their self-acquired properties.

There is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, then there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available. That apart, while considering the term 'nucleus' it should always be borne in mind that such nucleus has to be established as a matter of fact and the existence of such nucleus cannot normally be presumed or assumed on probabilities.

For a property to be considered as an ancestral property, it has to be inherited from any of the paternal ancestors up to three generations.

JUDGMENT

R. Mahadevan, J.

1. Leave granted.

2. The appellant is the purchaser of a property bearing Sy. No. 93 measuring 7 acres 20 guntas situated at Mahadevapura Village, Parashurampura Hobli, Challakere Taluk¹. He has come up with the present appeal against the judgment and order dated 12.08.2021 passed by the High Court of Karnataka at Bengaluru² in Regular Second Appeal No.1417 of 2006. By the impugned order, the High Court allowed the Regular Second Appeal thereby setting aside the judgment and decree dated 21.02.2006 passed by the Civil Judge (Senior Division), Challakere³ in Regular Appeal No.291 of 2002 and affirming the judgment and decree dated 21.12.2001 passed by the Civil Judge (Junior Division) and Judicial Magistrate First Class, Challakere⁴, in O.S.No.169 of 1994.

3. The appellant herein is Defendant No.2 and the Respondent Nos.1 to 4, who are the sons and daughters of Defendant No.1 (C. Jayaramappa), are the plaintiffs. For the sake of convenience, the parties are referred to as per their rank in the aforesaid suit.

4. Defendant No.1 and his two brothers viz., C. Thippeswamy and C. Eshwarappa, after the death of their father and uncle, who was issueless, divided the joint family properties under a registered partition deed dated 09.05.1986. Subsequently, Defendant No.1 purchased the suit property from his elder brother C. Thippeswamy by way of a registered sale deed dated 16.10.1989. Thereafter, Defendant No.1 sold the suit property to Defendant No.2 by a registered sale deed dated 11.03.1993.

5. When the facts stood thus, the plaintiffs had instituted a suit bearing O.S.No.169 of 1994 before the trial Court seeking partition and separate possession of the suit property. After due trial, the trial Court vide judgment and decree dated 21.12.2001, decreed the suit as prayed for, by holding that the plaintiffs are entitled for partition and separate possession by metes and bounds through revenue authorities. Challenging the same, Defendant No.2 moved Regular Appeal bearing No.291 of 2002.

The First Appellate Court vide judgment and decree dated 21.02.2006, allowed the appeal and set aside the judgment and decree passed by the trial Court. Aggrieved by the same, the plaintiffs filed Regular Second Appeal No.1417 of 2006 which was allowed and the judgment and decree passed by the First Appellate Court was set aside by the High Court, by the judgment and order dated 12.08.2021. Therefore, Defendant No.2 is before us with the present appeal.

6. The learned counsel for the appellant / Defendant No.2, at the outset, contended that the question of law framed by the High Court for adjudication, is a pure question of fact, which cannot be framed or decided while exercising jurisdiction under Section 100 of the Code of Civil Procedure, 1908. In this regard, reliance was placed on the decision of this Court in Jaichand (Dead) Through LRs & Ors. v. Sahnulal & Anr.5 and Gurnam Singh (Dead) by LRs & Ors. v. Lehna Singh (Dead) by LRs6.

6.1. According to the learned counsel, the joint family property was partitioned in the year 1986; subsequently, one of the brothers, Thippeswamy, sold his share i.e., the suit property to Defendant No.1 vide registered sale deed dated 16.10.1989; and thereafter, Defendant No.1 sold the suit property to Defendant No.2 vide registered sale deed dated 11.03.1993.

The evidence adduced by Defendant No.2 would clearly show that the suit property was purchased by Defendant No.1 using his own funds and loan obtained from DW3 Narasimhamurthy and hence, the same should be considered as self-acquired property of Defendant No.1. As such, at the time of sale, the suit property was no longer a part of joint family property. Considering the said aspect, the First Appellate Court rightly arrived at the conclusion that the suit property was a self-acquired property of Defendant No.1.

6.2. It is further submitted that after the execution of the sale deed dated 11.03.1993 by Defendant No.1 in favour of Defendant No.2 in respect of the suit property, the plaintiffs, who are the sons and daughters of Defendant No.1, had filed the suit for partition and separate possession, without seeking the relief of cancellation of the said sale deed.

Though the trial Court framed an issue, it decided that the said issue does not arise for consideration, as in a suit for partition, there is no necessity to seek a relief of declaration of sale deed executed in favour of third parties as null and void. In this connection, the learned counsel referred to a decision of this court in *Murugan & Ors. v. Kesava Gounder (Dead) Through LRs. & Ors.*⁷, wherein, it was held that a specific prayer for setting aside the sale deed is mandatory in the suit for declaration and separate possession.

6.3. It is also submitted that the High Court erred in arriving at the finding that Defendant No.1 got the suit property under the will dated 18.12.1978 and the same blended into the joint family properties since then. Whereas, the property received by the Defendant No.1 under the partition deed was different from the suit property and that, the suit property was purchased by him out of his own funds and the loan obtained from DW3 Narasimhamurthy.

Hence, the doctrine of blending would not apply to the present case. The legal position in this regard is that the doctrine of blending of self-acquired property into joint family pool would apply only when such self-acquired property is voluntarily thrown into the common stock with intention to abandon separate claim over the same [Refer: *Mallesappa Bandeppa Desai & Anr. v. Desai Mallappa alias Mallesappa & Anr.*⁸, and *Lakkireddi Chinna Venkata Reddi & Ors. v. Lakkireddi Lakshmana*⁹].

6.4. Stating so, the learned counsel prayed to allow this appeal by setting aside the impugned judgment and order passed by the High Court.

7. On the contrary, the learned counsel for the respondents / plaintiffs submitted that the suit property was acquired by Defendant No.1 through a sale deed dated 16.10.1989, for a total consideration of Rs.15,000/- from C. Thippeswamy, using nucleus funds or joint family funds viz., income derived from the land allotted to

the share of Defendant No.1 through partition; income derived from doing coolie work; cash of Rs.10,000/- given during partition; and cash given by Mallamma (grandmother of the respondents) by selling her property at Rayadurga and hence, the same should be treated as ancestral property and not self-acquired property.

7.1. It is further submitted that when the partition among the Defendant No.1 and his brothers, came into effect i.e., on 09.05.1986, the plaintiffs were minors and were co-parceners with respect to the properties or amounts that were divided and allotted to Defendant No.1's share, as the family continued to reside jointly. As such, the plaintiffs have a right over the suit property.

7.2. Referring to Hindu Law by Mulla, the learned counsel submitted that the character of the ancestral property does not change with respect to the sons, even after partition, as it is a settled principle of law that the share that a cosharer obtains upon the partition of ancestral property, continues to be ancestral for his male issues, who acquire an interest in it by birth, whether they exist at the time of partition or are born subsequently. Therefore, the suit property, which was acquired/purchased by Defendant No.1, remains ancestral property and the plaintiffs have a right over the same. In this regard, the learned counsel placed reliance on the decision of this Court in *Yudhishter v. Ashok Kumar*¹⁰.

7.3. It is also submitted that even assuming but not admitting that joint family property once divided through partition, no longer remains as such and is considered self-acquired, the court must examine the facts and evidence to determine how Defendant No.1 acquired the suit property for Rs.15,000/- in 1989, either using nucleus funds/joint family funds or with a loan obtained from DW.3. According to the learned counsel, there was no reasonable possibility that within a period of just three years, the Defendant No.1 could have accumulated a sum of Rs.15,000/- solely by doing coolie work or by cultivating the land allotted to him by way of partition, and acquired the suit property.

Further, no convincing and reliable material was produced that Defendant No.1 obtained loan from DW.3. That apart, there were contradictions and inconsistencies in the defendants' side's deposition only to suggest that the suit property was acquired using joint family funds. On the other hand, the plaintiffs have successfully discharged their burden by producing sufficient material to establish that the suit property was acquired using joint family funds, and the character of the suit property must still be regarded as ancestral.

7.4. Ultimately, the learned counsel submitted that there is no evidence to show that the suit property was sold for the benefit of the estate. Rather, it shows that Defendant No.1 was in dire need of money to continue his bad habits and not to look after the estate. That apart, the amount received by Defendant No.1 after selling the suit property was never handed over to the plaintiffs for their

betterment. Therefore, it is submitted that the suit property was sold without the consent of the plaintiffs and without any legal necessity, making the sale deed void.

7.5. Pointing out the above, the learned counsel submitted that considering all these aspects, both the trial Court and High Court rightly decreed the suit in favour of the plaintiffs and the same do not call for any interference by this court.

8. We have heard the learned counsel for both sides and perused the materials available on record.

9. As evident from the facts, there was a partition deed dated 09.05.1986, among Defendant No.1 and his two brothers in respect of the ancestral properties, after the death of their father, Channappa, who had two wives and three sons through them. 'A' schedule property was allotted to C. Thippeswamy (son through the first wife, Mallamma); 'B' schedule property was allotted to C. Eshwarappa, (son through the second wife, Parvathamma); 'C' schedule property was allotted to Defendant No. 1, (another son through the second wife, Parvathamma); and 'D' schedule property was divided into equal shares among Defendant No.1 and his brothers.

Subsequently, Defendant No.1 purchased the suit property, which was allotted to the share of C. Thippeswamy through partition deed dated 09.05.1986 (A-schedule property), by a sale deed dated 16.10.1989 for Rs.15,000/-. Thereafter, he sold the suit property to Defendant No.2 on 11.03.1993 for a sale consideration of Rs.20,000/-. It is pertinent to mention here that the suit property is the property allotted to C. Thippeswamy, later purchased by Defendant No.1 and not the property which was received by Defendant No.1 through will.

10. Contending that the suit property was acquired by Defendant No.1 using joint family funds and should therefore be treated as ancestral; he cannot sell it without the consent of the plaintiffs; and plaintiffs 1 and 3, being coparceners of the joint family, have a share in the suit property, while plaintiffs 2 and 4 have a right to maintenance from it, the plaintiffs instituted the suit bearing O.S.No.169 of 1994 for partition and separate possession.

The defence raised was that the suit property was self-acquired property of Defendant No.1 and hence, Defendant No.1 has the right to sell it to Defendant No.2. Before the trial Court, on the side of the plaintiffs, PW1 to PW3 were examined and Exs.P1 to P3 were marked; and on the side of the defendants, DW1 to DW4 were examined and Exs.D1 to D10 documents were marked. Upon analysing the same, the trial Court decreed the suit in favour of the plaintiffs, which was reversed by the First Appellate Court. However, the High Court set aside the judgment passed by the First Appellate Court and restored the judgment

of the trial Court. Therefore, this appeal came to be filed by the appellant / Defendant No.2.

11. On the basis of the pleadings and submissions made by the parties, the main dispute in the lis is, whether the suit property was ancestral or selfacquired property of Defendant No.1.

12. Before delving into the facts of the case, this court in Jaichand (supra) expressed its anguish at the High Court for not understanding the scope of Section 100 CPC, which limits intervention only to cases where a substantial question of law exists, and clarified that the High Court can go into the findings of facts under Section 103 CPC only under certain circumstances, as stated in the following passages:

"23. We are thoroughly disappointed with the manner in which the High Court framed the so-called substantial question of law. By any stretch of imagination, it cannot be termed even a question of law far from being a substantial question of law. How many times the Apex Court should keep explaining the scope of a second appeal Under Section 100 of the Code of Civil Procedure and how a substantial question of law should be framed? We may once again explain the well-settled principles governing the scope of a second appeal Under Section 100 of the Code of Civil Procedure.

24. In Navaneethammal v. Arjuna Chetty reported in MANU/SC/2077/1996 : 1998: INSC: 349 : AIR 1996 S.C. 3521, it was held by this Court that the High Court should not reappreciate the evidence to reach another possible view in order to set aside the findings of fact arrived at by the first appellate Court. 25. In Kshitish Chandra Purkait v. Santosh Kumar Purkait reported in MANU/SC/0647/1997 : 1997:INSC:487 : (1997) 5 S.C.C. 438), this Court held that in the Second Appeal, the High Court should be satisfied that the case involves a substantial question of law and not mere question of law.

26. In Dnyanoba Bhaurao Shemade v. Maroti Bhaurao Marnor reported in MANU/SC/0058/1999 : 1999 (2) S.C.C. 471, this Court held: Keeping in view the amendment made in 1976, the High Court can exercise its jurisdiction Under Section 100, Code of Civil Procedure only on the basis of substantial questions of law which are to be framed at the time of admission of the Second Appeal and the Second Appeal has to be heard and decided only on the basis of such duly framed substantial questions of law. A judgment rendered by the High Court Under Section 100 Code of Civil Procedure without following the aforesaid procedure cannot be sustained.

27. This Court in Kondira Dagadu Kadam v. Savitribai Sopan Gujar reported in MANU/SC/0278/1999 : 1999:INSC:192 : AIR 1999 S.C. 2213 held: The High

Court cannot substitute its opinion for the opinion of the first appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.

28. It is thus clear that Under Section 100, Code of Civil Procedure, the High Court cannot interfere with the findings of fact arrived at by the first Appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.

29. The High Court in the Second Appeal can interfere with the findings of the trial Court on the ground of failure on the part of the trial as well as the first appellate Court, as the case may be, when such findings are either recorded without proper construction of the documents or failure to follow the decisions of this Court and acted on assumption not supported by evidence. Under Section 103, Code of Civil Procedure, the High Court has got power to determine the issue of fact.

The Section lays down: Power of High Court to determine issue of fact: In any Second Appeal, the High Court may, if the evidence on the record is sufficient to determine any issue necessary for the disposal of the appeal,- (a) Which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or (b) Which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in Section 100.

30. In *Bhagwan Sharma v. Bani Ghosh* reported in MANU/SC/0094/1993 : AIR 1993 S.C. 398, this Court held: The High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the first appellate court which was the final court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature. But, after setting aside the findings of fact on that ground the Court had either to remand the matter to the first appellate Court for a rehearing of the first appeal and decision in accordance with law after taking into consideration the entire relevant evidence on the records, or in the alternative to decide the case finally in accordance with the provisions of Section 103(b).

If in an appropriate case the High Court decides to follow the second course, it must hear the parties fully with reference to the entire evidence on the records relevant to the issue in question and this is possible if only a proper paper book is prepared for hearing of facts and notice is given to the parties. The grounds

which may be available in support of a plea that the finding of fact by the court below is vitiated in law does not by itself lead to the further conclusion that a contrary finding has to be finally arrived at on the disputed issue. On a reappraisal of the entire evidence the ultimate conclusion may go in favour of either party and it cannot be prejudged.

31. In the case of Hero Vinoth v. Seshammal reported in MANU/SC/2774/2006 : 2006:INSC:305 : (2006) 5 SCC 545 this Court explained the concept in the following words: It must be tested whether the question is of general public importance or whether it directly and substantially affects the rights of the parties. Or whether it is not finally decided, or not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.

32. It is not that the High Courts are not well-versed with the principles governing Section 100 of the Code of Civil Procedure. It is only the casual and callous approach on the part of the courts to apply the correct principles of law to the facts of the case that leads to passing of vulnerable orders like the one on hand."

12.1. In the present case, in our view, the so-called substantial question of law framed by the High Court does not qualify to be a substantial question of law, rather the exercise of the High Court is a venture into the findings of the First Appellant Court by re-appreciation of evidence. It is settled law that the High Court can go into the findings of facts only if the First Appellate Court has failed to look into the law or evidence or considered inadmissible evidence or without evidence.

Section 103 permits the High Court to go into the facts only when the courts below have not determined or rendered any finding on a crucial fact, despite evidence already available on record or after deciding the substantial question of law, the facts of a particular case demand re-determination. For the second limb of Section 103 to apply, there must first be a decision on the substantial question of law, to which the facts must be applied, to determine the issue in dispute.

When the First Appellate Court in exercise of its jurisdiction has considered the entire evidence and rendered a finding, the High Court cannot re-appreciate the evidence just because another view is possible, when the view taken by the First Appellate Court is plausible and does not suffer from vice in law. When the determination of the High Court is only by way of re-appreciation of the existing evidence, without there being any legal question to be answered, it would be axiomatic that not even a question of law is involved, much less a substantial one.

It will be useful to refer to another judgment of this Court in Chandrabhan (Deceased) through L.Rs & Ors. v. Saraswati & Ors.¹¹, wherein it was held as follows:

"33. The principles relating to Section 100 of the Code of Civil Procedure relevant for this case may be summarised thus:

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents and involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general Rule is that the High Court will not interfere with findings of facts arrived at by the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.

34. In this case, it cannot be said that the First Appellate Court acted on no evidence. The Respondents in their Second Appeal before the High Court did not advert to any material evidence that had been ignored by the First Appellate Court. The Respondents also could not show that any wrong inference had been drawn by the First Appellate Court from proved facts by applying the law erroneously.

35. In this case, as observed above, evidence had been adduced on behalf of the Original Plaintiff as well as the Defendants. The First Appellate Court analysed the evidence carefully and in effect found that the Trial Court had erred in its analysis of evidence and given undue importance to discrepancies and inconsistencies, which were not really material, overlooking the time gap of 34 years that had elapsed since the date of the adoption. There was no such infirmity in the reasoning of the First Appellate Court which called for interference.

36. Right of appeal is not automatic. Right of appeal is conferred by statute. When statute confers a limited right of appeal restricted only to cases which involve substantial questions of law, it is not open to this Court to sit in appeal over the factual findings arrived at by the First Appellate Court."

12.2. In the present case, the First Appellate Court analyzed the entire oral evidence adduced by both parties, as well as the documentary evidence relied upon by either side, and dismissed the suit. The authority to re-consider the evidence is available only to the First Appellate Court under Section 96 and not to the High Court in exercise of its authority under Section 100, unless the case falls under the exceptional circumstances provided under Section 103.

While so, the re-appreciation of the entire evidence, including the contents of the exhibits, reliance on and wrongful identification of a different property and treating the same to be the suit property actually in dispute to prescribe another view without any substantial question of law, only illustrate the callousness of the High Court in applying the settled principles. Therefore, the High Court erred in setting aside the judgment and decree of the First Appellate Court.

13. Further, it is a settled principle of law that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, then there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.

That apart, while considering the term 'nucleus' it should always be borne in mind that such nucleus has to be established as a matter of fact and the existence of such nucleus cannot normally be presumed or assumed on probabilities. This Court in *R.Deivanai Ammal (Died) v. G. Meenakshi Ammal*¹², dealt with the concept of Hindu Law, ancestral property and the nucleus existing therein. The relevant paragraphs are extracted below for ready reference:

"13. First let us consider the nature of the suit properties, namely, self-acquired properties of late Ganapathy Moopnar or ancestral properties and whether any nucleus was available to purchase the properties. Under the Hindu Law it is only when a person alleging that the property is ancestral property proves that there was a nucleus by means of which other property may have been acquired, that the burden is shifted on the party alleging self-acquisitions to prove that the property was acquired without any aid from the family estate. In other words the mere existence of a nucleus however small or insignificant is not enough.

It should be shown to be of such a character as could reasonably be expected to lead to the acquisition of the property alleged to be part of the joint family property. Where the doctrine of blending is invoked against a person having income at his disposal and acquiring property, the reasonable presumption to make is that he had the income at his absolute disposal unless there is evidence to the contrary. If a coparcener desires to establish that a property in the name of a female member of the family or in the name of the manager himself has to be accepted and treated as property acquired from the joint family nucleus, it is absolutely essential that such a coparcener should not only barely plead the same, but also establish the existence of such a joint family fund or nucleus.

Even if the joint family nucleus is so established, the prescription that the accretions made by the manager or the purchases made by him should be deemed to be from and out of such a nucleus does not arise, if there is no proof that such nucleus of the joint family is not an income-yielding apparatus. The proof required is very strict and the burden is on the person who sets up a case that the property in the name of a female member of the family or in the name of the manager or any other coparcener is to be treated as joint family property.

There should be proof of the availability of such surplus income or joint family nucleus on the date of such acquisitions or purchases. The same is the principle even in the cases where moneys were advanced on mortgages over immoveable properties. The onus is not on the acquirer to prove that the property standing in his name was purchased from joint family funds. That may be so, in the case of a manager of a joint family, but not so in the case of all coparceners. For a greater reason it is not so in the case of female members.

14. The doctrine of blending of self-acquired property with joint family has to be carefully applied with reference to the facts of each case. No doubt it is settled that when members of a joint family by their joint labour or in their joint business acquired property, that property, in the absence of a clear indication of a contrary intention, would be owned by them as joint family property and their male issues would necessarily acquire a right by birth in such property. But the essential sine qua non is the absence of a contrary intention. If there is satisfactory evidence of an intention on the part of the acquirer such property to treat it as his own, but not

as joint family property, the presumption which ordinarily arises, according to the personal law of Hindus that such property would be regarded as joint family property, will not arise.

15. It is a well-established principle of law that where a party claims that any particular item of property is joint family property, the burden of proving that it is so rests on the party asserting it. Where it is established or admitted that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the presumption arises that it was joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family.

But no such presumption would arise if the nucleus is such that with its help the property claimed to be joint could not have been acquired. In order to give rise to the presumption, the nucleus should be such that with its help the property claimed to be joint could have been acquired. A family house in the occupation of the members and yielding no income could not be nucleus out of which acquisitions could be made even though it might be of considerable value.

16. In a Hindu joint family, if one member sues for partition on the foot that the properties claimed by him are joint family properties then three circumstances ordinarily arise. The first is an admitted case when there is no dispute about the existence of the joint family properties at all. The second is a case where certain properties are admitted to the joint family properties and the other properties in which a share is claimed are alleged to be the accretions or acquisitions from the income available from joint family properties or in the alternative have been acquired by a sale or conversion of such available properties.

The third head is that the properties standing in the names of female members of the family are benami and that such a state of affairs has been deliberately created by the manager or the head of the family and that really the properties or the amounts standing in the names of female members are properties of the joint family. While considering the term 'nucleus' it should always be borne in mind that such nucleus has to be established as a matter of fact and the existence of such nucleus cannot normally be presumed or assumed on probabilities.

The extent of the property, the income from the property, the normal liability with which such income would be charged and the net available surplus of such joint family property do all enter into computation for the purpose of assessing the content of the reservoir of such a nucleus from which alone it could, with reasonable certainty, be said that the other joint family properties have been purchased unless a strong link or nexus is established between the available surplus income and the alleged joint family properties. The person who comes to

Court with such bare allegations without any substantial proof to back it up should fail.

17. It is also a well-established doctrine of Hindu Law that property which was originally self-acquired may become joint property if it has been voluntarily thrown by the coparcener into the joint stock with the intention of abandoning all separate claims upto it. But the question whether the coparcener has done so or not is entirely a question of fact to be decided in the light of all the circumstances of the case. It must be established that there was a clear intention on the part of the coparcener to waive his separate rights and such an intention will not be inferred from acts which may have been done from kindness or affection.

The important point to keep in mind is that the separate property of a Hindu coparcener ceases to be his separate property and acquires the characteristics of his joint family or ancestral property, not by mere act of physical mixing with his joint family or ancestral property, but by his own volition and intention by his waiving or surrendering his special right in it as separate property. Such intention can be discovered only from his words or from his acts and conduct."

14. It is also to be noted that in Hindu law, for a property to be considered as an ancestral property, it has to be inherited from any of the paternal ancestors up to three generations. In this regard, it would be appropriate to refer to the judgment of this Court in *Govindbhai Chhotabhai Patel & Ors. v. Patel Ramanbhai Mathurbhai*¹³, wherein it has been held as under:

"18. The learned counsel for the appellants has referred to *Shyam Narayan Prasad v. Krishna Prasad*, (2018) 7 SCC 646 : (2018) 3 SCC (Civ) 702]. That is a case in which the property in question was held to be ancestral property by the trial court. The plaintiffs therein being sons and grandson of one of the sons of Gopal Prasad, the last male holder was found to have equal share in the property. The question examined was whether the property allotted to one of the sons of Gopal Prasad in partition retains the character of coparcenary property. It was the said finding which was affirmed by this Court. This Court held as under: (SCC p. 651, para 12)

"12. It is settled that the property inherited by a male Hindu from his father, father's father or father's father's father is an ancestral property. The essential feature of ancestral property, according to Mitakshara law, is that the sons, grandsons, and great grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth. The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. After partition, the property in the hands of the son will continue to be the ancestral property and the natural or adopted son of that son will take interest in it and is entitled to it by survivorship."

20. In view of the undisputed fact, that Ashabhai Patel purchased the property, therefore, he was competent to execute the will in favour of any person. Since the beneficiary of the will was his son and in the absence of any intention in the will, beneficiary would acquire the property as self-acquired property in terms of C.N. Arunachala Mudaliar case [C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar, (1953) 2 SCC 362 : 1954 SCR 243 : AIR 1953 SC 495].

The burden of proof that the property was ancestral was on the plaintiffs alone. It was for them to prove that the will of Ashabhai intended to convey the property for the benefit of the family so as to be treated as ancestral property. In the absence of any such averment or proof, the property in the hands of donor has to be treated as self-acquired property. Once the property in the hands of donor is held to be self-acquired property, he was competent to deal with his property in such a manner he considers as proper including by executing a gift deed in favour of a stranger to the family."

15. With regard to coparcenary property, the principle laid down by this Court in Rohit Chauhan v. Surinder Singh & Ors.¹⁴ would be relevant as follows:

"11. In our opinion coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the joint Hindu family and before the commencement of the Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family.

It is not static. We are further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener.

12. The view which we have taken finds support from a judgment of this Court in M. Yogendra v. Leelamma N. [(2009) 15 SCC 184 : (2009) 5 SCC (Civ) 602] in which it has been held as follows: (SCC p. 192, para 29)

"29. It is now well settled in view of several decisions of this Court that the property in the hands of a sole coparcener allotted to him in partition shall be his separate property for the same shall revive only when a son is born to him. It is

one thing to say that the property remains a coparcenary property but it is another thing to say that it revives. The distinction between the two is absolutely clear and unambiguous. In the case of former any sale or alienation which has been done by the sole survivor coparcener shall be valid whereas in the case of a coparcener any alienation made by the karta would be valid."

14. A person, who for the time being is the sole surviving coparcener as in the present case Gulab Singh was, before the birth of the plaintiff, was entitled to dispose of the coparcenary property as if it were his separate property. Gulab Singh, till the birth of plaintiff Rohit Chauhan, was competent to sell, mortgage and deal with the property as his property in the manner he liked. Had he done so before the birth of plaintiff, Rohit Chauhan, he was not competent to object to the alienation made by his father before he was born or begotten.

But, in the present case, it is an admitted position that the property which Defendant 2 got on partition was an ancestral property and till the birth of the plaintiff he was the sole surviving coparcener but the moment plaintiff was born, he got a share in the father's property and became a coparcener. As observed earlier, in view of the settled legal position, the property in the hands of Defendant 2 allotted to him in partition was a separate property till the birth of the plaintiff and, therefore, after his birth Defendant 2 could have alienated the property only as karta for legal necessity.

It is nobody's case that Defendant 2 executed the sale deeds and release deed as karta for any legal necessity. Hence, the sale deeds and the release deed executed by Gulab Singh to the extent of entire coparcenary property are illegal, null and void. However, in respect of the property which would have fallen in the share of Gulab Singh at the time of execution of sale deeds and release deed, the parties can work out their remedies in appropriate proceeding."

16. In the instant case, the plaintiffs raised a specific plea throughout the proceedings that the suit property was purchased by Defendant No.1 using family nucleus viz., income derived from the lands allotted to the share of Defendant No.1; income derived from doing coolie work; cash of Rs.10,000/- received at the time of partition; and cash received from Mallamma (grandmother of the respondents) who sold her property at Rayadurga and therefore, the suit property should be treated as ancestral and the plaintiffs, who were co-parceners, have a right in it.

17. It cannot be disputed that the properties divided among Defendant No.1 and his brothers through partition deed dated 09.05.1986, are joint family properties. However, as per Hindu law, after partition, each party gets a separate and distinct share and this share becomes their self-acquired property and they have absolute rights over it and they can sell, transfer, or bequeath it as they wish. Accordingly,

the properties bequeathed through partition, become the self-acquired properties of the respective sharers.

18. Apparently, the plaintiffs did not question the partition deed (Ex. P1) effected among the brothers. It states that the respective parties shall hereinafter enjoy the properties allotted to their share with a right to sell, lease, gift, encumber, etc. The partition deed further reveals that the suit property was allotted to C. Thippeswamy, one of the brothers of Defendant No.1; and Defendant No.1 was allotted 10 acres of land, which was different from the suit property measuring 7 acres 20 Guntas allotted to the said C. Thippeswamy.

It also proceeds to state that after the death of the father Channappa, the joint family became unmanageable due to difference of opinion among the members and therefore, they decided that it was not good to stay together and partitioned the lands allotted to them. Thus, the intention of the parties and the recitals in the partition deed establish that the parties wanted to go their separate ways and did not want the property to remain as joint family property.

19. As reiterated above, after the joint family property has been distributed in accordance with law, it ceases to be joint family properties and the shares of the respective parties become their self-acquired properties. Hence, the suit property acquired by Defendant No.1 became his self-acquired property, on being sold by his brother Thippeswamy to him, vide sale deed dated 16.10.1989. It is the contention of the plaintiffs that the suit property was purchased by Defendant No.1 using family nucleus and thus, should be considered as ancestral property.

Whereas, the defence raised was that Defendant No.1 acquired the suit property with the aid of his own funds and loan obtained from DW3- Narasimhamurthy. DW1- Chandrashekar clearly stated in his deposition that Defendant No.1 obtained a loan from DW3, out of which, he purchased the suit property and that he repaid the loan amount through a sale deed executed in respect of 4 acres of land to DW3 and out of the balance amount, he performed his daughter's marriage. It was also stated by DW1 that apart from the suit property, Defendant No.1 had various lands and a house as well. DW2 Lakshmanappa stated in his evidence that he had signed the partition deed (Ex. P1) executed among Defendant No.1 and his brothers in 1986; and he denied the payment of Rs.10,000/- to the share of Defendant No.1.

He further deposed that Thippeswamy, elder brother of Defendant No.1, residing in Bangalore, sold his share to Defendant No.1 as he was unable to look after the same. His evidence also establishes that Defendant No.1 obtained loan from DW3 and he sold his land to him for repayment of the said loan in 1993 by executing a sale deed (Ex. D1), in which, DW2 was a witness; and at that time, the wife and children of Defendant No.1 were present. DW3 - Narasimhamurthy

in his evidence, stated that Defendant No.1 obtained loan from him for purchase of land of his brother, in October 1989 and he repaid the same by selling his 4 acres of land to him in 1993; and at the time of execution of sale deed by Defendant No.1 to DW3, his wife and children were present.

It is the evidence of DW4 - Linganna that Defendant No.1 executed a sale deed in favour of DW3 in respect of 4 acres of land, for the repayment of loan borrowed by him and DW4 was the witness to the said document. He also categorically stated that Defendant No.1 had purchased about 7 acres of land, after obtaining loan from DW3 and prior to the execution of sale deed in favour of DW3. It is categorically stated in the sale deed dated 11.03.1993 that the suit property was a self-acquired property of Defendant No.1.

The sale deed (Ex.P2) does not anywhere disclose that the suit property purchased by Defendant No.1 was ancestral property or was purchased from the income received from the joint family property, except for a mere reference to the partition deed (Ex. P1), which according to us, is not sufficient to come to a conclusion that the properties allotted to the share of Defendant No.1 should also be treated as joint family properties, and no evidence was let in by the plaintiffs to prove that the other properties allotted to Defendant No.1 yielded income and that it was only from that entire income that the suit property was purchased. No records have been produced in this regard.

Though PW2 stated that during the partition, all the three brothers were allotted Rs.10,000/- each, there was no recital to that effect in the partition deed (Ex. P1) and hence, it cannot be believed. It is well established that the contents in a document would prevail over any contrary oral evidence. Regarding the contention that Mallamma had sold her property in order to help Defendant No.1 to purchase the suit property, except the statement of PW2, there is no evidence in this regard. Further, the said Mallamma was not examined and the sale deed executed by her was not produced to substantiate the same.

It is also clear from the depositions on the defendants' side that Defendant No.1 was not having any bad habits and his wife and children were present, at the time of execution of the sale deed. Whereas, there were inconsistencies in the statements of PW1 and PW2 in demonstrating that the suit property was an ancestral property. The mere existence of sons and daughters in a joint Hindu family does not make the father's separate or self-acquired property as joint family property. It was also the claim of the defendants that Defendant No.1 performed the marriage of his daughter with the funds received as sale consideration, which according to us, is the role of a Kartha, and therefore, has to be treated as act of necessity and duty. This fact has not been objected to by the plaintiffs.

19.1. It is also to be mentioned here that when the income derived from the joint family property or when a joint family property is sold and the sale consideration is utilised for maintenance and education within the joint family, the same are to be treated as out of necessity as it is the duty of every Kartha to do so. Hence, it is sufficient to satisfy the legal necessity if the Kartha had sold the property and used the funds for upbringing the children. That apart, under the customary practices and tradition in this country, it is the father who performs the marriage of his children and therefore, the expenses incurred for that purposes are also to be treated as expenses out of necessity.

19.2. At the cost of repetition, the property in dispute is the property purchased by Defendant No.1 from his brother C. Thippeswamy. The High Court rather than ascertaining as to how this property was acquired, it erroneously went into a fact- finding inquiry in the Second Appeal regarding the property received by Defendant No.1 under a Will, a narration of which is found in the recital of the partition deed.

The High Court even failed to notice that the partition took place in 1986, whereas, the suit property was purchased only in 1989. This deviation, in our view, has further contributed to the miscarriage of justice. That apart, the High Court ought not to have relied upon disproved circumstances claimed by the plaintiffs against Defendant No.1 alleging that he alienated another property to presume that the suit property was also sold under similar circumstances. In fact, the said sales were not challenged by the plaintiffs.

Thus, taking note of the facts and circumstances of the case and also the principles enunciated in the above decisions, in our considered opinion, Defendant No.1 acquired the suit property out of the loan obtained from DW3 and not from the income derived from the nucleus funds or joint family funds, and hence, the suit property should be considered as his self-acquired property. As such, Defendant No.1 has the right to sell the suit property and accordingly, the sale deed executed by him in favour of Defendant No.2 is perfectly valid. That apart, the evidence on record also displays that the object of the sale of the suit property was for the benefit of the family and therefore, we also disagree with the findings of the High Court on this aspect.

20. Regarding the doctrine of blending of self-acquired property with joint family, it is settled law that property separate or self- acquired of a member of joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein but to establish such abandonment a clear intention to waive separate rights must be established.

From the mere fact that other members of the family were allowed to use the property jointly with himself, or that the income of the separate property was utilized out of generosity to support persons whom the holder was either bound or not bound to support, or from the failure to maintain separate accounts, abandonment cannot be inferred, for an act of generosity or kindness, will not ordinarily be regarded as an admission of a legal obligation [See: Lakkireddi Chinna Venkata Reddy & Ors. v. Lakkireddi Lakshamama¹⁵ and K.V. Narayanan v. K.V.Ranganandhan & Ors.¹⁶].

In the present case, this question does not arise, as the suit property, which was purchased from C. Thippeswamy by Defendant No.1, is different from the property which is said to have been received by Defendant No.1 through a Will that allegedly blended with the joint family property. The plaintiffs have not adduced any evidence to show that the property received through the Will, blended with the joint family properties and that income was received from that property, which was utilized to purchase the suit property. There is no finding on this aspect by the High Court as well.

On the other hand, as stated above, we are satisfied with the evidence on record that the suit property is a self-acquired property. However, the High Court erroneously applied the doctrine of blending under the Hindu joint family law by relying upon judgments that are not applicable to the case on hand, re-appreciated evidence without framing any substantial question of law and allowed the appeal filed by the plaintiffs. This, according to us, is not sustainable for the aforesaid reasons.

21. In view of the foregoing discussion, the impugned judgment and order of the High Court is set aside, and the judgment and decree of the First Appellate Court is restored. Accordingly, this appeal stands allowed. The parties shall bear their own costs.

22. Connected Miscellaneous Application(s) shall stand disposed of.

.....**J. [J.B. Pardiwala]**

.....**J. [R. Mahadevan]**

New Delhi;

April 22, 2025.

1 For short, "the suit property"

2 Hereinafter referred to as "the High Court"

3 Hereinafter referred to as "the First Appellate Court"

4 Hereinafter referred to as "the trial Court"

5 2024 SCC OnLine SC 3864

6 (2019) 7 SCC 641

7 (2019) 20 SCC 633

8 (1961) 3 SCR 779

9 (1964) 2 SCR 172

10 (1987) 1 SCC 204

11 MANU/SC/1224/2022: 2022 INSC 997

12 AIR 2004 MADRAS 529

13 (2020) 16 SCC 255

14 (2013) 9 SCC 419

15 1964 (2) SCR 172

16 (1977) 1 SCC 244

IN THE SUPREME COURT OF INDIA

**Murlidhar Aggarwal (D.) through his LRS. Atul Kumar Aggarwal
Vs.**

Mahendra Pratap Kakan (D.) through LRS. and Ors.

[Civil Appeal No. 4275 of 2017]

HEADNOTE – The eviction is not restricted to the bona fide need of the landlord, even the landlord's family requirement would qualify as bona fide need for eviction of the tenant. The bona fide requirement for occupation of the landlord has to be liberally construed and, as such, even the requirement of the family members would be covered.

JUDGMENT

K.V. Viswanathan, J.

1. The present appeal calls in question the correctness of the Judgment and Order dated 09.01.2013 in Writ-A No. 8508 of 1999 passed by the High Court of Judicature at Allahabad. By the said Judgment and Order, the High Court dismissed the Writ Petition of the appellant and confirmed the order of the Appellate Authority. The Appellate Authority had reversed the order of the Prescribed Authority dated 20.12.1983 by which the Prescribed Authority had allowed the application of the appellant and ordered the eviction of the respondent-Ram Agya Singh on the ground of bona fide need.

BRIEF FACTS:-

2. On 13.10.1952, the respondents entered the suit property by virtue of a lease deed executed by one Ram Swarup Gupta, the then owner of the suit property. The lease was for a period of 10 years. The predecessor-in-interest of the present appellant, one Shri Murlidhar Aggarwal purchased the suit property on 26.03.1962. The suit property is a Cinema building situated at 31, Shiv Charan Lal Road, Allahabad, popularly known as Mansarovar Palace, along with its furniture, fixture and fittings.

3. There is a previous round of litigation which requires a brief mention. Case No. 124 of 1965 was instituted by Murlidhar Aggarwal seeking eviction under Section 7A of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 (for short '1947 Act'). An order of eviction was made by the Additional District Magistrate which was confirmed by the Additional Commissioner.

On a revision filed under Section 7F of the 1947 Act, the tenants succeeded in getting the eviction order set aside by filing a representation before the State

Government. Though the learned Single Judge at the behest of Shri Murlidhar Aggarwal quashed the order of the State Government, the Division Bench reversed the order and this Court, by a judgment reported in *Murlidhar Aggarwal v. State of U.P.*, (1974) 2 SCC 472, confirmed the order of the Division Bench. The net result was that the proceedings came to an end and the tenants continued to occupy the premises.

4. On 09.10.1975, Murlidhar Aggarwal, the predecessor-in-interest of the appellant herein filed Case No. 301 of 1975 under Section 21(1)(a) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short 'Act of 1972'). Though Rajkumar Aggarwal was applicant no. 2 before the Appellate Authority, it is not in dispute that he has since relinquished his claim.

5. As is clear from the order of the Prescribed Authority, it was specifically pleaded in the application that the said Shri Murlidhar Aggarwal was living at the mercy of his father; that he has his wife and children to look after; that there was no independent business which they are doing and that in spite of their father's repeated advice to start some business they are not able to get a place to start the business; that the opposite party is refusing to vacate the premises in spite of the expiry of the lease; that the opposite party has other places where he is carrying on business apart from their own residential house; that the opposite party has cinema business in Gazipur and Varanasi and are also doing film distribution business. It was specifically pleaded that there was no independent income for the applicants, and they are in bona fide need of the property. It was also pleaded that their need was pressing, bona fide and genuine.

6. In response, the respondent-tenant (Ram Agya Singh, the predecessor of the respondents) pleaded that he has spent around Rs. 30,000/- over the property, that the applicants are in joint family business with their father Radhey Shyam Aggarwal; that Radhey Shyam Aggarwal is running his business in the name of Ajanta Talkies; and that the wife of Murlidhar Aggarwal, Prem Lata is a colicensee with her father-in-law in the Ajanta Talkies business. It was also pleaded that the applicants have share in the firm Murlidhar Gyanendra Kumar and that the monthly income was more than sufficient for applicant No. 1 to maintain himself, his wife and children.

As far as their own business in Gazipur was concerned, it was contended that it was in the name of the predecessor of the respondent(s) and the premises of Gazipur were tenanted. The running of the film distribution business in the name of Chitra Lok Films was admitted. It was disputed that the need of the applicant is bona fide and it was pleaded that a lot of employees were dependent on the income from the Cinema which is being run in the suit premises.

7. The Prescribed Authority held that in the earlier round, bona fide requirement was found and the said finding was not disturbed throughout. It independently examined the bona fide need in the present application. The Prescribed Authority disbelieved the contention that the applicant Murlidhar Aggarwal was part of the joint family business with his father Radhey Shyam Aggarwal. The Prescribed Authority held that no proof was adduced by the respondent(s) to show that the Ajanta Talkies business was inherited by the applicants.

8. The Prescribed Authority found that the applicant was getting a salary of Rs. 1200/- from Ajanta Talkies business and Rs. 500/- per month from Radhey Shyam and Sons and this was the only source of income of applicant no. 1-Murlidhar Aggarwal.

9. The Prescribed Authority found that the respondent tenant could not dispute the bona fide need of the applicant. The Prescribed Authority further found that the applicant no.1-Murlidhar Aggarwal had only some casual income which came from some speculative business and the income was Rs. 11,142/- in 1975-76 and Rs. 9115/- in 1976-77 and the applicant had a loss of Rs. 10,118/- in 1974-75. It was concluded that the applicant no. 1-Murlidhar Aggarwal was possessing wealth in the negative. In the end, the Prescribed Authority recorded the following findings:-

"In the present case the income of applicant No1 does not exceed more than Rs.11,000/-. The applicant No 2 income does not exceed more than Rs. 10,000/-. They are hardly paying income Tax. The applicant No 2 has no other business to do. His only income is from the interest on deposits. They have wealth in minus. The opposite party stated in his written statement in para No 2 that the premises are purchased for doing profiteering. Applicant No1 is married have children to look after. The applicant are (sic) his demand for the release of the premises for doing the Cinema business.

The premises are not released. If applicant started to earn his bread himself and for his family by doing speculation and doing service elsewhere. It does not mean (sic) they have no bona fide need of premises. The applicant has to look for the avenues of income to support his family. It is not the requirement of law that applicant should sit idle till his premises are not released. The opposite party failed to establish that there is deceit in the need of the applicants.

It appears that premises are honestly and in good faith required by landlord for carrying out his business as applicant No 2 is still out of business. There is felt need on the part of landlord for the release therefore; they are passing his claim from 1965. The element of deceit is absent. Therefore, I reach at conclusion that the premises in dispute are bona fide required by the landlord. There is felt need on the part of landlord for carrying the business."

10. Thereafter, the aspect of comparative hardship was appreciated. The Prescribed Authority recorded the following findings: -

"The three sons of the opposite party got the 2 proprietors (sic.) at Ghazipur by a Will which is paper No Annexure Paper No 27/A. the one property is Regal Talkies and other property is not disclosed. The opposite party inherited the ancestral property as only father of opposite party bequeathed the self acquired property of his 3 grand sons. Thus the sons of opposite party are well settled. The opposite party is man of substance and running several Cinema Houses and paying 7 lacks Tax to Government. He is man of 76 year and confined to bed as admitted in the Court. His all daughters are married. He is also running the business of film distribution. I am putting on the weighing scale the need of both the parties to Judge the comparative hardship.

On one hand the opposite party Ram Agya Singh is man of substance running several Cinema Houses in U.P doing also film distributing business. His all the three sons are well settled. He is owner No50/B/51/B and 36/A. He has no wordly liabilities to discharge on his shoulders. His all daughters are married. He is man of 76 years old and confined to bed. Fast approaching toward the point of eternal sleep fixed for every human being. The applicant No 1 is married and started to do service in Ajanta Talkies and M/s Radhey Shyam and sons on the monthly salary due to forced circumstances to maintain his family. He has no other business to do. His income hardly exceeds Rs. 1000/- per year. He started to do speculation business to look after his family which is no longer a good job.

He has to discharge the wordly liabilities that are to perform the marriages of his daughter. He is man of 40 years age and have to long face the world. His sons are not settled and pursuing the studies. After giving the human touch to the whole affair it clear that balance is in favour of landlord applicant. The premises were leased out to opposite early for the period of 10 years in year'1952. He is enjoying the premises from last 31 years. I reach at conclusion on the basis of above findings that landlord will suffer more hardship if the premises in question not released in their favour."

So finding, the Prescribed Authority ordered the eviction of the respondent and further ordered the payment of Rs. 72,000/- as equivalent to rent of 5 years as compensation for goodwill and loss of business.

11. The respondent filed an appeal before the XIth Addl. District Judge Allahabad, challenging the order of the Prescribed Authority. Arguments that were already rejected about the alleged multiple businesses of the appellant were once again canvassed.

12. The Appellate Authority discarded the finding of the Prescribed Authority insofar as it was held by the said Authority that bona fide need had already been found in the earlier round of litigation. Be that as it may, we will keep this aspect of the matter aside since we find that the Appellate Authority has not given convincing reasons for dislodging the independent findings arrived at in the present proceedings by the Prescribed Authority that the need for the appellant was bona fide. The only finding recorded in this regard by the Appellate Authority is as follows: -

"I fully agree with the contention of the applicants that on the basis of the evidence the need of the respondents/ applicants for the disputed building is not bona fide. My above view gets this support from the fact of the applicants of the application. Appellant No. 1 has stated that he does not have any business and or his savings and money have been invested in the purchase of disputed building for cinema. This fact has not only been denied by the opposite party but it has also been proved by the evidence. Appellant has not denied this fact that the business in the name of M/s Radhey Shyam & Sons and M/s Murlidhar & Gynander Kumar and M/s Ajanta Talkies are not in his possession.

The opposite party/appellant in this respect has clearly stated and has also proved by the evidence that 40% partnership of applicant No. 1 exists in M/s Radhey Shyam & Sons and applicant No. 2 was a student and unmarried person at the time of filing of application. Thus the applicants has admitted that his income is also from other sources which includes M/s Radhey Shyam and Sons, M/s Ajanta Talkies, M/s Murlidhar Gyanander Kumar and income tax is also being paid by him. The opposite party/appellant also produced important documents pertaining to income tax department on the file by which it becomes clear that admittedly respondent is having income from the business.

Therefore, the case of the applicants that they are not having any business becomes completely (sic) proved untrue completely. In this respect the judgment passed by the Ld. Prescribed Authority is wholly against the facts. The Ld. Prescribed Authority has drawn this conclusion that the income of the applicants is not sufficient whereas the applicants have taken this stand that they do not have any business. In view of this the Prescribed authority in fact has found an additional new case as proved contrary to the stand taken by the applicants which is wholly against the facts available on the file."

13. We find that this finding is wholly unsustainable. The Prescribed Authority, after analyzing the documents, has concluded that the wealth of the applicant was in the negative and the income was also abysmally low and referred to the documentary evidence as extracted hereinabove. The only reason given by the Appellate Authority is that since the appellants took the stand that they have no other business and the finding of the Prescribed Authority was that the income is

not sufficient, the Prescribed Authority has found a new case wholly against the facts available on record.

This finding is completely untenable. The Prescribed Authority found that while there was some income from speculative transactions which was sporadic, the only consistent income for applicant was his salary income and concluded that the wealth was in the negative as far as the applicants were concerned. There is no contradiction, much less has any new case been made out.

14. The other finding is about the fate of the Ajanta Talkies business after the death of Radhey Shyam Aggarwal, father of Murlidhar Aggarwal. The Prescribed Authority had found that the respondents had not established as to how the applicants have a stake in Ajanta Talkies. The Appellate Authority has recorded the following finding.

"The finding of the lower court that the onus of proving the fact that the property of late Radhey Shyam was acquired by applicants in succession, is against the law and cannot be accepted. And such type of finding cannot be accepted and the findings made on this basis that the applicants are not the owners of Ajanta Talkies is against the facts."

15. Thereafter, the Appellate Authority dealt with the other businesses run by the tenant and recorded the following finding:-

"On the other hand the Ld. Counsel of the appellant disclosed about the above mentioned business according to which Regal Talkies was in the ownership of late Thakur Sehdev Singh wherein Late R.A. Singh is a tenant of Rs. 100/- per month after the death of Thakur Sehdev Singh as per paper No. 11 List 928 all sons of late Shri R.A. Singh got this building in succession and between the family members of opposite party in Suit No. 15 of 1972 by way of paper No. 19A Annexure 15 partition suit is pending in the Court. It has also been shown that Gazipur is the backward area and two other cinema halls Sahni Talkies and Subhadra Talkies are also opened which are in better condition and therefore the business of Regal Talkies is running in loss.

In this respect documents were also made available on the file in which Regal Talkies running in loss is shown. Besides this it is also worth mentioning that the business of Mansarovar Cinema situated at Allahabad cannot be compared with the business of Regal Talkies Ghaziabad as clear by the comparative table of income brought on the file. Likewise in respect of Chitra Talkies situated at Varanasi it has been proved that it was taken on rent and the contract has been expired and now this business is not being done by the opposite party. In the same manner it has been shown in respect of Chitralok films that no business was done by this company and now it is not in existence.

Likewise in respect of income derived from agricultural land it can be said on the basis of available evidence that this is not such an income shows upon which full dependency can be attributed. Likewise on behalf of applicant it has been told about Allahabad Motor Garage that the same is also running in loss and it was submitted that Mansarovar Cinema is only the business of opposite party and his source of income and thus on the basis of available evidence the need of disputed building by the opposite party is real bona fide and urgent and the need of the applicants cannot be said to be bona fide."

16. What is clear is that there are several businesses which the family of respondents run. All that is mentioned is that partition suits are pending; that Gazipur is a backward area and that certain other businesses are either on loss or have since closed down. As far as agricultural income is concerned, it was concluded summarily that it was not such an income on which full dependency could be attributed. Thereafter, the Appellate Authority had found that the respondent could be put to greater hardship if eviction is ordered.

17. It is this finding which has been affirmed by the High Court.

18. Mr. Balbir Singh, learned Senior Counsel for the appellant contended that the Prescribed Authority having correctly arrived at the finding of bona fide need by independently analyzing the evidence in the case and there were no good grounds for the Appellate Authority to reverse the said finding. It was also brought to the notice that during the pendency of the proceeding in the High Court, Murlidhar Aggarwal died and his son Atul Kumar Aggarwal has filed an affidavit stating that he has no source of income and that he does not have any other business. Further it is averred that there is no commercial property except this suit property and that Atul Kumar is crippled on account of the malfunctioning of the hip bone and is moving with a limp.

19. On the other hand, Mr. Anand Varma, learned Counsel for the respondents has reiterated the finding of the Appellate Authority. It is further contended that legal heirs cannot continue the litigation on the basis of the need of their father and ought to prefer a fresh application for release in accordance with law, setting up their own requirement for release of the premises in question.

Learned counsel for the respondents contended that at no stage of the present proceedings have the legal heirs of the appellant set up their own need and requirement for the property in question. According to the learned Counsel, the legal heirs are already well settled and have no need for the property. According to the learned Counsel, Civil Appeal @ Special Leave Petition, which has been filed on the basis of the need of the appellant i.e. the original applicant, is thus not maintainable.

20. We have considered the submissions of learned Counsel for the parties and perused the records.

RELEVANT STATUTORY PROVISIONS:-

21. Section 21(1)(a) of the 1972 Act, along with the proviso is extracted hereinbelow: -

"21. Proceedings for release of building under occupation of tenant.-

(1) The prescribed Authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists namely-

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust;

Provided that where the building was in the occupation of a tenant since before its purchase by the landlord, such purchase being made after the commencement of this Act, no application shall be entertained on the grounds, mentioned in clause (a), unless a period of three years has elapsed since the date of such purchase and the landlord has given a notice in that behalf to the tenant not less than six months before such application, and such notice may be given even before the expiration of the aforesaid period of three years:

Provided further that if any application under clause (a) is made in respect of any building let out exclusively for nonresidential purposes, the prescribed authority while making the order of eviction shall, after considering all relevant facts of the case, award against the landlord to the tenant an amount not exceeding two years' rent as compensation and may, subject to rules, impose such other conditions as it thinks fit :

Provided also that no application under clause (a) shall be entertained-

(i) for the purposes of a charitable trust, the objects of which provide for determination in respect of its beneficiaries on the ground of religion, caste or place of birth;

(ii) in the case of any residential building, for occupation for business purposes;

(iii) in the case of any residential building, against any tenant who is a member of the armed forces of the Union and in whose favour the prescribed authority under the Indian Soldiers (Litigation) Act, 1925 (Act No. IV of 1925) has issued a certificate that he is serving under special conditions within the meaning of section 3 of that Act, or where he has died by enemy action while so serving, then against his heirs:

Provided also that the prescribed authority shall, except in cases provided for in the Explanation, take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed.

Explanation- In the case of a residential building: (i) where the tenant or any member of his family who has been normally residing with or is wholly dependent on him has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town area, no objection by the tenant against an application under this sub-section shall be entertained;

Note- For the purposes of this clause a person shall be deemed to have otherwise acquired a building, if he is occupying a public building for residential purposes as a tenant, allottee or licensee.

(ii) [***]

(iii) where the landlord of any building is -

(1) a serving or retired Indian Soldier as defined in the Indian Soldiers (Litigation), Act, 1925 (IV of 1925) and such building was let out at any time before his retirement; or

(2) a widow of such a soldier and such building was let out at any time before the retirement or death of her husband, whichever, occurred earlier; and such landlord needs such building for occupation by himself or the members of his family for residential purposes, then his representation that he needs the building for residential purposes for himself or the members of his family shall be deemed sufficient for the purposes of clause (a), and where such landlord owns more than one building this provision shall apply in respect of one building only."

22. Rule 16(2) of The Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (hereinafter referred to as the "Rules of 1972") is set out hereinbelow:-

"16. Application for release on the ground of personal requirement.-

(2) While considering an application for release under clause (a) of sub-section (1) of Section 21 in respect of a building let out for purposes of any business, the Prescribed Authority shall also have regard to such facts as the following-

(a) the greater the period since when the tenant opposite party, or the original tenant whose heir the opposite party is, has been carrying on his business in that building, the less the justification for allowing the application;

(b) where the tenant has available with him suitable accommodation to which he can shift his business without substantial loss there shall be greater justification for allowing the application;

(c) the greater the existing business of the landlords own, apart from the business proposed to be set up in the leased premises, the less the justification for allowing the application, and even if an application is allowed in such a case, the Prescribed Authority may on the application of the tenant impose the condition where the landlord has available with him other accommodation (whether subject to the Act or not) which is not suitable for his own proposed business but may serve the purpose of the tenant, that the landlord shall let out that accommodation to the tenant on a fair rent to be fixed by the Prescribed Authority;

(d) where a son or unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant of the landlord has, after the building was originally let out, completed his or her technical education and is not employed in Government service, and wants to engage in self-employment, his or her need shall be given due consideration.

23. We must notice, at the outset, in this case that the bona fide need was found established by the Prescribed Authority by its judgment of 20.12.1983. Shri Murlidhar Aggarwal died during the pendency of the proceedings in the High Court. We have carefully scanned the finding and we find that elaborate reasons have been adduced and cogent finding recorded. Whether we apply the bona fide need as on the date of the eviction petition or take into account the subsequent events, we find that the bona fide need of the appellant on the facts of the present case is made out on both scenarios.

24. Section 21(7) of the 1972 Act is an important provision which reads as under:-

"21. Proceedings for release of building under occupation of tenant-

(7). Where during the pendency of an application under clause (a) of sub-section (1), the landlord dies, his legal representatives shall be entitled to prosecute such application further on the basis of their own need in substitution of the need of the deceased."

ANALYSIS AND REASONS:-

25. It is well settled that the bona fide requirement for occupation of the landlord has to be liberally construed and, as such, even the requirement of the family members would be covered. [See *Joginder Pal v. Naval Kishore Behal*, (2002) 5 SCC 397 and *Dwarkaprasad v. Niranjana and Anr.*, (2003) 4 SCC 549]

26. In this case, we have Section 21(7) additionally to reinforce the position. In the absence of any denial to the facts that Atul Kumar, the son of Murlidhar Aggarwal is crippled and has no other source of income or any other business, the need of the appellant has been clearly established in this case. Hence, the objection to the maintainability of the special leave petition is rejected.

27. The repeated reference to the alleged existence of other businesses of the appellant does not carry the case of respondents any further. At the outset, the bona fide need of the appellant is clearly established. No doubt, Rule 16(2)(c) of the Rules of 1972 does mention that greater the existing business of the landlords own, the less the justification for allowing the application. It is also true that comparative hardship is to be appreciated under the proviso to Section 21(1)(a) of the 1972 Act. We have weighed the evidence on record and found that taking the case of the respondents at its highest, and even if we believe each and every averment of the respondents at best, the parties in financial terms could be said to be equally poised. The respondents who own several businesses have managed to cling on to the premises for the last 63 years, after the expiry of the 10-year lease.

28. In *Mohd. Ayub and Anr. v. Mukesh Chand*, (2012) 2 SCC 155, this Court, by relying on *Ganga Devi v. District Judge, Nainital and Ors.*, (2008) 7 SCC 770 and *Bhagwan Dass v. Jiley Kaur (Smt) and Anr.*, 1991 Supp (2) SCC 300, held that one of the circumstances to be seen while appreciating the comparative hardship is to examine whether the tenant has brought on record any material to indicate that at any time during the pendency of the long drawn-out litigation, he made any attempt to seek an alternative accommodation and was unable to get it.

This factor will be one of the circumstances to be taken into consideration while determining whether the claim of the landlord is bona fide. In this case, nothing is on record to show that the tenant who has been in the premises for a total of 73 years with 63 years of them after the expiry of the lease, has made any attempt to seek any alternative accommodation and nothing is brought on record to show that he was unable to get one.

29. In *Sushila v. IInd Addl. District Judge, Banda and Ors.*, (2003) 2 SCC 28, interpreting Rule 16 of the Rules of 1972, it was held as under:-

"10. A bare perusal of Rule 16 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972, makes it clear that the Rule only

prescribes certain factors which have also to be taken into account while considering the application for eviction of a tenant on the ground of bona fide need. Sub-rule (2) of Rule 16 quoted earlier relates to the cases of eviction from an accommodation for business use.

Clause (a) of sub-rule (2) provides, greater the period of tenancy less the justification for allowing the application; whereas according to clause (b) in case the tenant has a suitable accommodation available to him to shift his business, greater the justification to allow the application. Availability of another suitable accommodation to the tenant, waters down the weight attached to the longer period of tenancy as a factor to be considered as provided under clause (a) of subrule (2) of Rule 16.

Yet another factor which may in some cases be relevant under clause (c) is where the existing business of the landlord is quite huge and extensive leaving aside the proposed business to be set up, there would be lesser justification to allow the application. The idea behind clause (c) is apparent i.e. where the landlord runs a huge business eviction may not be resorted to for expansion or diversification of the business by uprooting a tenant having a small business for a very long period of time. In such a situation if eviction is ordered it is definitely bound to cause greater hardship to the tenant.

11. In the case in hand we find that even though the period of tenancy of the respondent is no doubt long but availability of another shop to him where he can very well shift his business as found by the prescribed authority, neutralises the factor of length of tenancy in the accommodation in dispute. We further find that the landlady has no other shop where she can establish her son who is married and unemployed. There is nothing on the record to indicate that the business of the father of Prem Prakash is so huge or that it is a very flourishing business so as to attract application of clause (c) of Rule 16(2).

As observed earlier it is clear that the length of the period of tenancy as provided under clause (a) of sub-rule (2) of Rule 16 of the Rules, 1972 is only one of the factors to be taken into account in context with other facts and circumstances of the case. It cannot be a sole criterion or deciding factor to order or not the eviction of the tenant. Considering the facts in the light of Rule 16 pressed into service on behalf of the respondent, we find that according to the guidelines provided therein balance tilts in favour of the unemployed son of the landlady whose need is certainly bona fide and has also been so accepted by the respondent before us."

30. Applying the same, we find that in this case also nothing has been brought on record to show that the business of the appellant's family is so vast as to neutralize their bona fide claim to evict the respondents from the suit property.

31. In *Nidhi v. Ram Kripal Sharma*(D.) Thr. LRs, (2017) 5 SCC 640, the landlady had moved away to a different town after marrying an officer of the Indian Revenue Service. Notwithstanding that the Court found her bona fide need had subsisted as she wanted the premise not just for herself but to accommodate her parents & grandparents like in the present case, the need for the family was found.

32. In *Sheshambal (D.) Thr. LRs. v. Chelur Corporation Chelur Building and Ors.*, (2010) 3 SCC 470, where the landlady lost throughout from the Trial Court stage, this Court while confirming the eviction decree found that none of the married daughters had a bona fide need for the premises and that the death of the landlady on facts of that case brought to an end the ground of personal requirement. The said case is wholly distinguishable from the facts that are established in the present case.

33. We finally bring the "curtains down" on this long drawn out litigation concerning the cinema hall. For the reasons stated above, the appeal is allowed and the judgment and order of the High Court dated 09.01.2013 in Writ-A No. 8508 of 1999 is set aside.

The respondents are granted time till 31.12.2025 to vacate the premises and to deliver vacant and peaceful possession of the suit premises, subject to the respondents filing the usual undertaking and clearing all arrears, if any, of rent/use and occupation charges, within 4 weeks from today. No order as to costs.

.....J. [M. M. Sundresh]

.....J. [K. V. Viswanathan]

New Delhi;

April 24, 2025.

IN THE SUPREME COURT OF INDIA

K.P. Tamilmaran

Vs.

The State by Deputy Superintendent of Police

**[Criminal Appeal No._____ of 2025
@ SLP (Criminal) No. 1522 of 2023]**

**[Criminal Appeal No._____ of 2025
@ SLP (Criminal) No. 123 of 2023]**

**[Criminal Appeal No._____ of 2025
@ SLP (Criminal) No. 11241 of 2022]**

**[Criminal Appeal No._____ of 2025
@ SLP (Criminal) No. 11242 of 2022]**

**[Criminal Appeal No._____ of 2025
@ SLP (Criminal) No. 4151 of 2023]**

**[Criminal Appeal No._____ of 2025
@ SLP (Criminal) No. 126 of 2023]**

**[Criminal Appeal No._____ of 2025
@ SLP (Criminal) No. 124-125 of 2023]**

**[Criminal Appeal No._____ of 2025
@ SLP (Criminal) No. 3616 of 2023]**

HEADNOTE –

- A.** Evidence of hostile witness cross-examined by prosecution can't be discarded fully. Court must assess what can be accepted.
- B.** Just because a witness has supported some, though not all, aspects of a case, it would not automatically mean that the witness has to be declared as 'hostile'.
- C.** When a witness contradicts the story of the side for which he/she is a witness, it is ultimately for the Court to decide whether the statement has to be accepted or not.
- D.** A party can cross-examine its own witness under Section 154 Evidence Act, even without getting a declaration of 'hostility'. The only restriction to cross-examination under Section 154 Evidence Act is that the party, who seeks to cross-examine its own witness, must obtain the leave of the Court. Whether there is a declaration of 'hostility' or not, one thing is clear that evidence of

witness, who has been cross-examined under Section 154 Evidence Act by the party who called such witness, cannot be washed off entirely and it is for the Court to see what can be retrieved from such evidence.

- E.** If part of the evidence of a hostile witness corroborates with other reliable evidence, then that part of the evidence is admissible. Once a prosecution witness has been declared hostile and then cross-examined by the prosecution, then it is for the Court to evaluate the veracity of the testimony.
- F.** An additional witness summoned as per Section 311 of the Code of Criminal Procedure can be examined as a Prosecution Witness if the Court finds that such a person ought to have been examined as a prosecution witness but was omitted due to oversight.
- G.** The powers under Section 165 (judge's power to put questions or order production) of the Evidence Act are complementary to Section 311 (power to summon a material witness, or examine person present) of the Code of Criminal Procedure and can be exercised by either party to the case or suo moto by the Court when either party wants to bring a person as an additional witness at any stage of the trial even when evidence is closed.
- H.** Court witnesses can be cross-examined by either side but only with the leave of the Court. Further, the cross-examination is to be restricted only to what was stated by this witness in his/her reply to the questions of the Court, and a Court witness cannot be contradicted to his/her previous statements made before the police i.e., statements under section 161 CrPC. The proviso to section 162(1)5 of CrPC makes it very clear that only prosecution witnesses can be contradicted against their previous Section 161 CrPC statements. Under the proviso to Section 162(1) CrPC, Section 161 CrPC statements of any prosecution witness can be used by the defence to contradict such a witness during the cross-examination. The prosecution may also contradict its own witness during cross-examination regarding the previous statements made before the police, but again it can only be done with the leave of the Court.

JUDGMENT

Sudhanshu Dhulia, J.

1. Leave granted.
2. The challenge before this Court in all these Appeals is to the decision of the Madras High Court dated 08.06.2022. Before proceeding to the impugned

judgment, it is necessary to trace the trajectory of this case from the Trial Court onwards, since it has passed through a maze of facts.

3. A total of fifteen accused had faced trial, and the Trial Court ultimately convicted thirteen of them. Amongst them, A-1 to A-3, A-5 to A-8, A-10 to A-13 were convicted primarily under Sections 302 read with 149 of the Indian Penal Code (for short 'IPC'). They were all sentenced to life imprisonment, except A-2 (Maruthupandiyan), who was given death sentence by the Trial Court. A-14 and A-15 were the police officers, who were convicted by the Trial Court under Sections 217, 218 of IPC and Sections 3(2)(i), 4 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'SC/ST Act'), and both of them were sentenced to life imprisonment. A-4 (Ayyasamy) and A-9 (Gunasekaran) were acquitted by the Trial Court, and no appeal against their acquittal was filed before the High Court.

4. By the impugned judgment, the High Court has modified the conviction and sentence of A-14 (Sub-inspector K.P. Tamilmaran), acquitting him for offences under Section 3(2)(i) of the SC/ST Act and Section 218 of IPC, but maintaining his conviction for offences under Section 4 of the SC/ST Act and Section 217 of IPC, and thus reducing the sentence imposed from life imprisonment to two years rigorous imprisonment.

The conviction and sentence of another police officer (A-15, Inspector M. Sellamuthu) has been upheld. In the case of A-2, the conviction by the Trial Court has been maintained but the sentence was changed from death penalty to life imprisonment. The High Court has also acquitted two other accused, i.e. A-3 (Rangasamy) and A-13 (Chinnadurai). The remaining appeals of all other co-accused were dismissed, and their conviction and sentence was upheld.

5. No appeal has been filed against the acquittal of the abovementioned accused by the High Court. Before us, now the remaining eleven accused i.e. A-1, A-2, A-5 to A-8, A-10 to A-12, A-14, A-15, have challenged their conviction and sentence.

6. At this stage, it is necessary to bring a few crucial aspects of this case, in order to have a better perspective.

7. This is a case of a dastardly murder of a young couple, Murugesan and Kannagi, who were only in their early twenties, when they were killed. Both of them were administered poison in full view of a large number of villagers. The masterminds and the main perpetrators of this macabre act were none other than the father and the brother of the girl Kannagi. The reason behind the murder of this young couple was that Kannagi, belonging to the 'Vanniyar' community, had dared to marry Murugesan, who was a 'Dalit' from the same village. So, at the

root of this crime is the deeply entrenched hierarchical caste system in India, and ironically, this most dishonorable act goes by the name of honour-killing!

8. The brief facts of the case are as follows:

i. Kannagi and Murugesan, both residents of village 'Pudukoorapettai' in District Cuddalore, Tamil Nadu, were in love. Murugesan had just completed his B.E. (Chemical Engineering) from a college in Chidambaram, Tamil Nadu, and was employed in Bangalore, whereas Kannagi was completing her B.Com. studies from the same college. Knowing well that the Vanniyar community, to which Kannagi's family belonged, would never allow their union, the two got secretly married before the Registrar of Marriage at Cuddalore on 05.05.2003, and got their marriage registered. The marriage certificate was marked as Exhibit P-1 before the Trial Court.

ii. After performing their marriage, the two returned to their village and were leading a normal life with their respective families, but then in the first week of July, 2003, both left their village quietly without attracting any attention.

iii. On 03.07.2003, A-2 (Maruthupandiyan), brother of Kannagi, reached the house of PW-1 Samikannu (father of Murugesan), with a big sickle in his hand, and ordered PW-1 to bring his son back to the village. The reason why he was looking for Murugesan, A-2 said, was that Murugesan had borrowed money from him which he was now refusing to return. Samikannu (PW-1) leaves his house the same day to look for Murugesan. He goes to his sister-in-law's house in the village Rasapalayam where he met Murugesan and asked Murugesan to send Kannagi to her parents.

Thereafter, PW-1 returned to his house that day. After a gap of four days, on 07.07.2003, A-2 again comes to the house of PW-1 and threatens him for the second time to bring Murugesan back to the village. On 07.07.2003, PW-1 again goes in search of Murugesan but he returns only on 08.07.2003, and by that time, his son and Kannagi had already been murdered. It is further on record that, on 07.07.2003, A-2 also threatened A-4 (Ayyasamy), who was made an accused by the prosecution, though he was the uncle of Murugesan. A-2 repeats the same false story of Murugesan borrowing money from him, which he had refused to return and therefore he was on a lookout for him.

iv. The prosecution story then proceeds to state that on 07.07.2003, A-4 leaves his village Pudukoorapettai for the house of PW-15 (Tamilarsi), sister of Murugesan, in Vannangudikadu village, where Murugesan was hiding. A-4 brings Murugesan back to Pudukoorapettai village and presents him before A-1 (Duraishamy) and A-2 (Maruthupandiyan), father and brother of Kannagi, respectively.

v. By the time Murugesan was brought to the village, it was evening (on 07.07.2003). Thereafter, as per the prosecution story, A-1 to A-13 undressed Murugesan, tied him to a post and then he was mercilessly beaten by the mob including A-1 to A-13. This was done in full view of many villagers who were present there, yet there was no attempt to stop this savage brutality. A-1 to A-13 continued to torture Murugesan compelling him to reveal the whereabouts of Kannagi.

After much physical torture and beating, when Murugesan was unable to bear it any longer, he finally revealed that Kannagi was in PW-23 Saroja's house (who was the mother-in-law of A-4). Immediately a Tata Sumo car was arranged by A-1, which was driven by PW-22 (Jayatharasan), in which A-4 to A-11 climbed and proceeded to Moongilthuraipattu village where PW-23's house was located, with the intention of getting Kannagi back to Pudukoorapettai village.

vi. Kannagi was finally brought to her village, and by this time it was about 5:30 AM in the morning (of 08.07.2003). Both Kannagi and Murugesan were then taken to a cashew grove near the village. Once there, A-1 gets Nuvacron1 (insecticide/poison) in a steel tumbler and gives it to his son A-2, and orders him to administer that to his daughter Kannagi.

vii. A-2 then forced Nuvacron down Kannagi's throat which caused her death in minutes. The prosecution story here though also suggests that A-2 tried to administer the remaining Nuvacron to Murugesan but when Murugesan resisted, this task was assigned to A-4. All the same, we must note that this version of prosecution, that A-4 administered or tried to administer poison to Murugesan, was not accepted in view of the evidence of PW-49 (Chinnapillai, step-mother of Murugesan) who had said that she saw A-2 administering poison to her son Murugesan.

Like Kannagi, Murugesan too died minutes after being forced to drink the poison. PW-49 is an eyewitness who has stuck to her deposition that it was A-2 who had administered poison to her son Murugesan, and not A-4. A-4 has ultimately been acquitted by the Trial Court and as stated above, no appeal against his acquittal was filed before the High Court. We will deal with this aspect in greater detail at a later point in this judgment. We must also point out here that PW-49 was not mentioned in the charge-sheet as one of the prosecution witnesses. It was only in the middle of the trial that an application was moved under Section 311 of the Code of Criminal Procedure, 1973 (for short 'CrPC') by the prosecution to bring PW-49 as a witness.

viii. Returning to the facts of the case. The two bodies were then burnt in different places-Kannagi in the village cremation ground and Murugesan at a place nearby.

ix. Meanwhile, as per the prosecution case, A-14 and 15 (police officers) not only knew about these events but they had also visited the crime scene, according to some of the witnesses on 08.07.2003 itself, and yet they did not lodge an FIR, which was their statutory duty under Section 154 and Section 157 CrPC. Not only this, but when PW-49 goes to the police station to lodge an FIR on 08.07.2003, she was rebuffed and abused at the police station, and practically thrown out of the station.

x. It was only after a gap of nine days, when some leaders belonging to the Dalit community raised this issue through Press and Media and a support was gathered from the public, that a case was finally registered on 17.07.2003 as Crime No.356 of 2003 under Sections 147, 302, 201 of IPC at police station Virudhachalam. The FIR, however, was registered on the basis of the extra-judicial confession of A-1 before PW-32 (Ashokan), who was the Village Administrative Officer. In this FIR, eight accused were named, four belonging to the Dalit community and the other four belonging to the Vanniyar community.

The Dalits included PW-1 (Samikannu), who was none other than the father of the deceased Murugesan; A-4 (Ayyasamy), who was the uncle of Murugesan and who allegedly brought Murugesan back to Pudukoorapettai village from his sister's house; Ilayaperumal, another uncle of Murugesan, and Kannadasan, who ultimately became a prosecution witness as PW-33. The four Vanniyaars who were made accused were A-1, A-2 (who were the father and brother of Kannagi, respectively), A-3 and Anbalagan, who later became a prosecution witness as PW-29.

xi. Based on this FIR, an investigation was done by the local police and a charge-sheet was filed on 16.09.2003 against all the eight above-mentioned accused under Sections 147, 302, 201 of IPC.

xii. Meanwhile, the questionable manner in which the entire investigation was carried out by the local police, compelled the family of the deceased Murugesan to seek interference from the Madras High Court where a petition was filed with a prayer that the investigation in this case must be handed over to the Central Bureau of Investigation (for short 'CBI'). The High Court, by its order dated 22.04.2004, allowed this application and directed that the investigation be handed over to CBI.

xiii. On 21.05.2004, the CBI again registered its FIR under Sections 147, 302, 201 of IPC and started the investigation. A charge-sheet was filed on 14.10.2005 against fifteen accused, which included two Dalits i.e. A-4 (Ayyasamy) and A-9 (Gunasekaran), two police officers i.e. A-14 (K.P Tamilmaran) and A-15 (M. Sellamuthu). The remaining accused belong to the Vanniyar community. As we have already stated in the beginning, A-4 and A-9 were acquitted by the Trial

Court, while accused A-3 and A-13 were later acquitted by the High Court in Appeal.

xiv. There has been an inordinate delay caused in this case. The incident is of 7th and 8th July, 2003, and the Trial was concluded only on 24.09.2021. The delay on account of the belated filing of the FIR, etc. we have already discussed above, but the case was only committed to Sessions on 15.03.2010 i.e. after more than seven years. The proceedings again remained stalled till charges were ultimately framed on 14.07.2017. An additional charge under Section 3 of the SC/ST Act was framed by the Trial Court against A-14 and A-15 in 2020. As noticed by the High Court, the reason for this long and inordinate delay was because of the multiple petitions filed by the accused for one reason or the other primarily as a challenge to the proceedings itself.

9. As mentioned in the beginning, the High Court in appeal, by the impugned judgment, modified the sentence of A-2 from death penalty to life imprisonment, while upholding his conviction. A-14 and A-13 were acquitted by the High Court. A-14 was acquitted for offences under Section 3 of SC/ST Act and Section 218 of IPC.

10. The eleven accused who stood convicted and sentenced by the High Court are now before us. Their defence is based primarily on the alleged weaknesses of the prosecution theory, the inconsistencies and frequent contradictions in the statements of key prosecution witnesses, including its star witness PW-49 (Chinnapillai), etc. The learned senior counsels for the appellants, Mrs. Anjana Prakash, Mr. Ratnakar Dash, Mr. M. Sathyanarayanan, Mr. Siddharth Aggarwal and Mr. S. Nagamuthu have tried to convince this Court that the testimonies of the prosecution witnesses are unreliable and there has been a total failure on the part of the prosecution to prove its case beyond reasonable doubt.

11. The contention on behalf of A-14 and A-15 (the two police officers- K.P. Tamilmaran and M. Sellamuthu, respectively), raised by learned senior counsel Mr. Siddharth Aggarwal and Mr. Gopal Sankaranarayanan, respectively, is that none of the witnesses have specifically identified them as the officers at the police station who refused to lodge the FIR when apprised of the incident. It is the contention of A-15, additionally, that merely because he had filed the charge-sheet against persons belonging to both the Dalit and Vanniyar community, the investigation conducted by him cannot be said to be motivated by a desire to falsely implicate members of the Dalit community.

12. We have heard learned senior counsels for the accused as well as the learned counsel, Mr. Rahul Shyam Bhandari, for the family of Murugesan and Mr. Vikramjit Banerjee, the learned Additional Solicitor General representing CBI.

13. In order to appreciate the sequence of events and the role of the accused, it is important to look at the testimonies of PW-1 (Samikannu-father of Murugesan), PW-2 (Velmurugan-younger brother of Murugesan), PW-3 (Palanivel-second younger brother of Murugesan), PW-15 (Tamilarasi-sister of Murugesan), and PW- 49 (Chinnapillai-step-mother of Murugesan), who are the main prosecution witnesses.

14. But before we do that, it may be necessary to say a few words about some essential aspects of this case, in order to set the context for the examination of testimonies of these key prosecution witnesses. Delay in Trial and evidentiary value of so-called "hostile witness"

15. The long and inordinate delay which has been caused in this case, right from the lodging of the FIR, speaks volumes about the gross inefficiency at the hands of the prosecution on the one hand and dilatory tactics employed by the defence on the other hand, which together led to a slow trial.

16. The second and more crucial aspect is that many of the prosecution witnesses in this case have turned, what has come to be known as 'hostile'; a fact which has been strongly pressed by the defence in their favour. The defence would also argue that the Trial Court and High Court have mainly relied on the testimonies of the family members of Murugesan, who are interested witnesses.

17. In our opinion, there is no force in these arguments and as will be seen, there was enough material placed by the prosecution before the Trial Court, which was sufficient to prove the guilt of the accused, beyond a reasonable doubt.

18. When a witness, produced on behalf of prosecution, deposes against the prosecution version and goes against his/her own previously recorded statements, the prosecution can request the Court to declare such a witness as hostile and seek permission from the Court to cross-examine its own witness. This is the procedure followed in a Trial, as we all know. In the present case, there are as many as fifty-one prosecution witnesses and it is also a fact that many of them have turned hostile by turning against their earlier statements made before the police under section 161 CrPC, and even before the Magistrate under section 164 CrPC, in some cases.

This phenomenon is not new, in fact it is sadly a common occurrence in our criminal Courts today, much to the despair and frustration of the prosecution. This case, therefore, is no exception. Despite this, however, there are witnesses in the present case, especially PW-1, PW-2, PW-3, PW- 15 and PW-49, whose evidence, in the form of their testimonies before the Court, is more than sufficient to convict the present appellants. A word here about the evidentiary value of a so-called hostile witness.

19. The Indian Evidence Act, 1872 (hereinafter 'Evidence Act') allows a party, with the leave of the Court, to cross-examine its own witness. Section 154 of the Evidence Act originally read as follows:

"154.Question by party to his own witness – The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party."

20. The Calcutta High Court, in *Khijiruddin Sonar v. Emperor* 1925 SCC OnLine Cal 259, while interpreting Section 154 of the Evidence Act, held that "When a witness who has been called by the prosecution is permitted to be cross-examined on behalf of the prosecution under the provisions of Section 154 of the Evidence Act, the result of that course being permitted is to discredit that witness altogether and not merely to get rid of a part of his testimony".

21. But this judgment in *Khijiruddin* was overruled by a five-Judge bench of the Calcutta High Court in *Praphullakumar Sarkar v. Emperor* 1931 SCC OnLine Cal 7. The High Court was answering a reference from a Division Bench regarding the specific question of whether the testimony of a witness, who was cross-examined by the party which produced him/her, should be discarded totally, partially, or not discarded at all. Chief Justice Rankin, speaking for three other Judges and himself, answered the reference in the following terms:

"24. In my opinion, the fact that a witness is dealt with under Section 154 of the Evidence Act, even when under that Section he is "cross-examined" to credit, in no way warrants a direction to the jury that they are bound in law to place no reliance on his evidence, or that the party who called and cross-examined him can take no advantage from any part of his evidence. There is, moreover, no rule of law that if a jury thinks that a witness has been discredited on one point they may not give credit to him on another. The rule of law is that it is for the jury to say. Of the seven questions stated by the Division Bench I propose that we should answer four, viz.-

(3) whether the evidence of a witness treated as "hostile" must be rejected in whole or in part;

(4) whether it must be rejected so far as it is in favour of the party calling the witness;

(5) whether it must be rejected so far as it is in favour of the opposite party. These three questions I would answer in the negative.

(6) Whether the whole of the evidence so far as it affects both parties favourably or unfavourably, must go to the jury for what it is worth.

25. To this question, I would be content to answer "yes, "."

22. Justice Buckland, in the above case, in his concurring opinion holds that there is no law which states that the evidence of a witness, who has been cross-examined by its party, should be entirely rejected. In his opinion, it is for the jury (or the Judge) to form an opinion regarding the value of the testimony of such a witness.

23. All the same, later this Court in *Jagir Singh v. State (Delhi)* (1975) 3 SCC 562 held to the contrary and approved the decision of the Calcutta High Court in *Khijiruddin*. This is what was said in *Jagir Singh* by Justice Bhagwati:

"7. Now, it is apparent from the judgment of the High Court that the conviction of the appellant rested entirely on the evidence of Pritam Singh (P.W. 10) and Sajjan Singh (P.W. 13). Swaran Singh (P.W. 11) was also examined on behalf of the prosecution but his evidence is of no help to the prosecution because he went back on the story of the prosecution and was permitted to be cross-examined on behalf of the prosecution. It is now well settled that when a witness, who has been called by the prosecution, is permitted to be cross-examined on behalf of the prosecution, the result of that course being adopted is to discredit that witness altogether and not merely to get rid of a part of his testimony. See *Khijiruddin v. Emperor*."

24. However, it is to be noted that *Jagir Singh* does not refer to the five-Judge Bench decision of the Calcutta High Court in *Praphullakumar Sarkar*.

25. But then in a subsequent decision (of which Justice Bhagwati was also a part) i.e., *Sat Paul v. Delhi Administration* (1976) 1 SCC 727, it was held differently. Justice Sarkaria, speaking for the Bench, clarified the earlier judgment in *Jagir Singh*, and held that what has been held in *Jagir Singh* would only be applicable where a witness through cross-examination by the party which calls it, is totally discredited. It is only in such a situation that the Court, as matter of prudence, discards his/her evidence in its entirety.

26. As a general rule, the testimony of a witness who has been crossexamined by the party which produced him/her will not stand totally discredited, and it is for the Court to consider what value should be attached to this testimony. After referring to a series of judgments on this point, the Court in *Sat Paul* held as follows:

"52. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the

witness stands thoroughly discredited or can still be believed in regard to a part of his testimony.

If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as matter of prudence, discard his evidence in toto.

53. It was in the context of such a case, where, as a result of the cross-examination by the Public, Prosecutor, the prosecution witness concerned stood discredited altogether, that this Court in *Jagir Singh v. State (Delhi Admn.)* with the aforesaid rule of caution - which is not to be treated as a rule of law - in mind, said that the evidence of such a witness is to be rejected en bloc."

(Emphasis Provided)

27. An examination of the cases referred above shows that there can be no doubt about the fact that the evidence of a witness, who has been cross-examined by the side which produced him/her, cannot be totally discarded [Also see: *Neeraj Dutta v. State (NCT of Delhi)*, (2023) 4 SCC 731].

28. It may also be worthwhile to mention here that by the Criminal Law Amendment Act of 2005, sub-section 2 was added to section 154 of the Evidence Act. The amended section 154 of the Evidence Act now reads as under:

154. Question by party to his own witness.-

(1) The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.

(Emphasis Provided)

29. By way of the above amendment, the position which had been reiterated by this Court has now come in the statute itself.

30. The word 'hostile' or 'hostile witness' has not been used anywhere in the Evidence Act. The logic behind this exclusion seems to be that the declaration of witness as 'hostile witness' carries a specific significance under the English law,

from where this term has been derived, where liberty is only granted to a side to cross-examine its own witness when such declaration of 'hostility' is made. The position in India is different and here it is left to the discretion of the Court to allow a party to cross-examine its own witness, regardless of a declaration of 'hostility'. This has been explained by this Court in *Sat Paul*:

"38. To steer clear of the controversy over the meaning of the terms "hostile" witness, "adverse" witness, "unfavourable" witness which had given rise to considerable difficulty and conflict of opinion in England, the authors of the Indian Evidence Act, 1872 seem to have advisedly avoided the use of any of those terms so that, in India, the grant of permission to cross-examine his own witness by a party is not conditional on the witness being declared "adverse" or "hostile".

Whether it be the grant of permission under Section 142 to put leading questions, or the leave under Section 154 to ask questions which might be put in cross-examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the discretion of the court (see the observations of Sir Lawrence Jenkins in *Baikuntha Nath v. Prasannamoyi* [AIR 1922 PC 409: 72IC 286]). The discretion conferred by Section 154 on the court is unqualified and untrammelled and is apart from any question of "hostility". It is to be liberally exercised whenever the court from the witnesses demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice.

The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. Therefore, in the order granting such permission, it is preferable to avoid the use of such expressions, such as "declared hostile", "declared unfavourable", the significance of which is still not free from the historical cobwebs which, in their wake bring a misleading legacy of confusion, and conflict that had so long vexed the English Courts."

(Emphasis Provided)

31. The phrase 'hostile witness' is commonly used in criminal jurisprudence and court proceedings. We too cannot escape the blame of using the term 'hostile witness' in our judgment. We do it for pragmatic reasons. Some words like 'hostile witness' in this case are now a part of our legal vocabulary. There is no point in inventing or substituting new words or phrases, at least in the present case, and we leave that for the future. But what is necessary, however, is to explain the meaning of the term as it is now to be understood. The phrase 'hostile witness' has come to be used for a witness who gives a statement contrary to the story of the side for which he/she is a witness.

All the same, because a witness has supported some, though not all, aspects of a case, it would not automatically mean that this witness has to be declared 'hostile'. A party can cross-examine its own witness under Section 154 Evidence Act, even without getting a declaration of 'hostility'. The only restriction to cross-examination under Section 154 Evidence Act is that the party, who seeks to cross-examine its own witness, must obtain the leave of the Court. Whether there is a declaration of 'hostility' or not, one thing is clear that evidence of witness, who has been cross-examined under Section 154 Evidence Act by the party who called such witness, cannot be washed off entirely and it is for the Court to see what can be retrieved from such evidence.

32. This can be understood from another aspect. We shall now refer to the definition of the term 'evidence' given under Section 3 of the Evidence Act. It reads as follows:

"Evidence" - "Evidence" means and includes -

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence."

(Emphasis Provided)

33. The statements made by a witness in Court, including in cross-examination, either conducted by the opposite party or by the party who produced the witness, would come under the definition of 'evidence' under Section 3 of the Evidence Act, since this evidence has come before the Court with its permission. Moreover, there is no specific bar under the Evidence Act which mandates that such evidence has to be discarded. Thus, it would form part of the entire evidence which the Court can examine while arriving at its decision, and it is for the Court to determine what value has to be given to that piece of evidence or how such evidence has to be used in a given case.

34. Viewed from a different perspective, the rejection of the entire testimony of a prosecution witness, who has been cross-examined by the prosecution, would not only harm the case of the prosecution but perhaps also of the defence in a given case. This is because as the law stands today, the benefit of the testimony of such witness can be taken by both the prosecution and the defence, allowing them to use it to build their case [See: *Paulmeli v. State of T.N.* (2014) 13 SCC 90, *Ramesh Harijan v. State of U.P.* (2012) 5 SCC 777]. In any case, ultimately, it will be the cause of justice that will suffer if the testimony of such witness is

totally discarded. It is, therefore, rightly left to the discretion of the Court to test the evidentiary value of such a testimony.

35. Here, we may also take note of Section 155 of the Evidence Act² which allows a party, with permission of the Court, to impeach the credibility of its own witness as per the procedure laid down therein.

36. It is though trite and much overstated but the maxim "falsus in uno, falsus in omnibus"³, is not applicable to our criminal justice system. It is for the Court to distinguish the wheat from the chaff while dealing with the depositions of a hostile witness. Courts can rely upon that part of the deposition of a hostile witness which is corroborated by other evidence on record. This Court in *Bhajju v. State of Madhya Pradesh* (2012) 4 SCC 327 discussed the worth of the evidence of a hostile witness in the following words:

"36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence."

If part of the evidence of a hostile witness corroborates with other reliable evidence, then that part of the evidence is admissible. Once a prosecution witness has been declared hostile and then cross-examined by the prosecution, then it is for the Court to evaluate the veracity of the testimony. There can be several reasons for a witness to turn hostile and the court must also look into these factors while evaluating the evidence given by a hostile witness. It is an uncomfortable reality in our criminal Courts for a prosecution witness to turn hostile. But then the purpose of a Trial Court is to go to the truth of the matter. Whatever evidence is there before the Court must be examined, tested, corroborated (whenever necessary), before a verdict can be finally given.

37. One of the many reasons for witnesses turning hostile is the long delay usually caused in a trial. This is again unfortunate but true in our country. The present case is no exception. Here, the incident occurred in the year 2003, the case was committed to Sessions in the year 2010 and charges were framed as late as in the year 2017, and the judgment was finally pronounced by the Trial Court on 24.09.2021. It took eighteen years!

38. The role played here by the accused in delaying the trial cannot be discounted, as already stated. The records also reveal that the depositions of most of the prosecution witnesses were recorded only towards the end of the year

2017. Moreover, CBI in this case had filed its charge-sheet, inter alia, against two persons belonging to Dalit community.

Although, these two (A-4 and A-9) were finally acquitted by Trial Court as there was absolutely nothing against them, but in the process, prosecution had to declare many of its witnesses belonging to the Dalit community as hostile simply because these witnesses did not depose against A-4 and A-9. It is also clear now, in any case, that these two were wrongly made accused by the prosecution. All the same, the benefit of such witnesses turning hostile cannot be given to other accused who were found involved in the offence, on the overwhelming weight of other evidence.

Related witnesses are not necessarily interested witnesses

39. Another plea taken by the defence is that many witnesses who have deposed against them, such as PW-49, PW-1, PW-15, are interested witnesses. PW-49 for example being the step-mother of Murugesan, the boy who was killed. Now, so far as witnesses being interested witnesses is concerned, it is a settled position of law that the Court cannot ignore the testimonies of witnesses only because they are close relatives of the victim. A Three-Judge Bench of this Court in *Jaikam Khan v. State of U.P.* (2021) 13 SCC 716 notes:

"28. No doubt that, merely because the witnesses are interested and related witnesses, it cannot be a ground to disbelieve their testimony. However, the testimony of such witnesses has to be scrutinised with due care and caution. Upon scrutiny of the evidence of such witnesses, if the court is satisfied that the evidence is creditworthy, then there is no bar on the court in relying on such evidence."

In cases where the crime is committed at the residence or a place near the residence of the deceased, it is the close relatives who are likely to be a witness to the crime. They are natural witnesses. This Court in *State of A.P. v. S. Rayappa*, (2006) 4 SCC 512, while noting the difference between interested witness and related witness, observed as follows:

"6. By now it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as an interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted somehow or the other either because of animosity or some other reasons.

7. On the contrary it has now almost become a fashion that the public is reluctant to appear and depose before the court especially in criminal case because of

varied reasons. Criminal cases are kept dragging for years to come and the witnesses are harassed a lot. They are being threatened, intimidated and at the top of all they are subjected to lengthy cross-examination. In such a situation, the only natural witness available to the prosecution would be the relative witness. The relative witness is not necessarily an interested witness. On the other hand, being a close relation to the deceased they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished. The only requirement is that the testimony of the relative witnesses should be examined cautiously."

40. Keeping these principles in mind, we shall now discuss the testimonies of prosecution witnesses:

i. PW-1 (Samikannu) is the father of Murugesan who was made an accused in the first FIR filed by the local police when A-15 was the I.O. PW-1 is one of the main witnesses of the prosecution. PW-1 states that, five days prior to the death of Murugesan i.e. on 03.07.2003, at around 5 PM, A-2 (Maruthupandiyar), armed with a big sickle, comes to his house and orders him to find Murugesan and bring him to his house as Murugesan had borrowed money from him which he now refuses to return. A-2 threatened PW-1 with dire consequences, if he did not bring Murugesan.

On 03.07.2003 itself, PW-1 leaves his village for his sister-in law Dhanavalli's house in Rasapalayam, where he found Murugesan with Kannagi. Murugesan informed PW-1 that Kannagi is A-1's daughter. Upon hearing this, PW-1 pleaded with him to ask Kannagi to return to her family as she belongs to a higher caste. On the same day, i.e. 03.07.2003, PW-1 returns to his village. Thereafter, four days later, on 07.07.2003, A-2 again threatens PW-1 to bring back Murugesan and PW-1 yet again leaves his village in search of Murugesan. This time, since PW-1 could not find Murugesan, he delays his return to his village, and when he reaches his village the next day (on 08.07.2003), Murugesan and Kannagi had already been killed.

ii. PW-2 (Velmurugan), is the younger brother of Murugesan. He was seventeen years old at the time of the incident. In Court, PW-2 had deposed that at 11 AM on 07.07.2003, A- 2 and his aides intercepted PW-2 near the village water tank while he was returning to his village from Virudhachalam. They questioned him on the whereabouts of Murugesan, repeating the story of the money which was lent to Murugesan. PW-2 was then forcibly taken by them and confined in a store-room near the water tank and was only released in the evening, after Murugesan was brought back to the village. When PW-2 went home, his mother PW-49 (Chinnapillai) informed him that A-4 had brought Murugesan back to the village.

PW-2 then went to the sugarcane field of A-1, where he was joined by PW-3 (Palanivel). At the sugarcane field, PW-2 saw that A-2 and A-7 were threatening Murugesan to disclose the location of Kannagi. He then saw A-4 (Ayyasamy) asking A-1 (C. Duraisamy) as to why A-1 was inquiring Murugesan regarding Kannagi, when the only reason given to A-4 for their search of Murugesan was the money which was to be recovered from him. To this, A-1 then answered that he had to weave a story of 'loan', in order to bring Murugesan. Later, PW-2 and PW-3 returned home.

At around 7 PM on 07.07.2003, the villagers were heard saying that Murugesan was being beaten near Mariamman temple. PW-2 proceeded to the place near Mariamman temple. There, he saw A-1, A-2, A-4, A-5, A-6, A-7, A-9, A-10, A-11, and hundred other villagers gathered. PW-2 witnessed Murugesan being tortured. He was hung upside down with his leg tied by a rope to a borewell situated near the water tank. PW-2 then states how Murugesan finally disclosed the location of Kannagi who was in the house of PW-23 (Saroja) at Moongilthuraipattu.

Having got this information, A-1 asked PW-22 (Jayatharasan) to bring the vehicle, which was a Tata Sumo Jeep, in which A-5, A-6, A-7, A-8, A-9, and A-10 jumped in and also compelled A-4 to sit with them, and then they all left for Moongilthuraipattu. Murugesan was watched by A-1, A-2 and others. A-1 and A-2 then forced PW-2 to go back and PW-2 further states that he, along with his brother PW-3, slept in A-4's motor shed that night, fearing they will be harmed in case Kannagi was not found.

iii. PW-3 (Palanivel) is the second younger brother of Murugesan. In his deposition, PW-3 speaks about A-2 threatening his father (PW-1) on 03.07.2003 to compel PW-1 to bring Murugesan back to Pudukoorapettai village. PW-3 has also testified to the fact that A-2 later threatened A-4, asking him to bring Murugesan back to the village, and that A-4 was the one who, in fact, brought Murugesan to the village. PW-3 has also spoken about the wrongful detention of PW-2 (Velmurugan) and his subsequent release once Murugesan returned.

PW-3 further deposed that A-2 and his men had beaten Murugesan near the water tank and village temple, which was witnessed by nearly fifty villagers. PW-3 also confirmed the presence of A-1, A-2, A-5, A-6, A-7, A-9, A-12, and A-13 at the site where Murugesan was beaten and tortured. He recollects seeing that A-4 (Ayyasamy) (A-4, as we know, belongs to the Dalit community and was the uncle of Murugesan, who was made an accused by the prosecution, but later acquitted by the Trial Court) was also tied along with Murugesan.

PW-3 then goes on to speak about the Tata Sumo being driven by PW-22 coming to the scene and A-4, A-5, A-6, A-7, A-8, A-9, A-10 boarding the vehicle, which

then headed towards Moongilthuraipattu. Like PW-2, PW- 3 also speaks about returning home later, but he says that they (PW-2 and PW-3) slept in their backyard at night. He also says that when he returned to the house at around 7 AM on 08.07.2003, his mother PW-49 (Chinnapillai), A-4, PW-16 (Amaravathi) informed him that Murugesan had been poisoned and killed.

iv. PW-15 (Tamilarasi), who is the sister of Murugesan, deposed that at around 11 AM on 07.07.2003, Murugesan was in her house in Vannangudikadu village. Later when she found him missing, she along with PW-16 (Amaravathi-who also lived in Vannangudikadu village), proceed for Pudukoorapettai, the village of Murugesan. Once they reached the village she saw A-2, A-5 and A-12 beating Murugesan, and hurling casteist abuses at him. PW-15 further says that there was a huge crowd of villagers also present at the spot. Later when Murugesan finally disclosed the location of Kannagi as he could not stand the torture, a Tata Sumo vehicle was brought to the spot, in which some of the accused went to bring Kannagi. PW-15 along with PW-2, PW-3, PW-16, and PW-49 then returned home. The next day i.e. 08.07.2003, PW-15 was told by PW-16 and PW-49 that Murugesan had been killed.

v. PW-16 (Amaravathi), the aunt of Murugesan, has not fully confirmed the prosecution story. She only states that she saw Murugesan in PW-15's house, where he told PW-16 that he had not borrowed any money from A-2. She denies any knowledge of the events that took place thereafter, and states that she was informed of the death of Murugesan by other persons. This witness was also declared, what we call 'hostile'.

vi. PW-49 (Chinnapillai), the step-mother of Murugesan, is the star witness of the prosecution. She states that A-2 threatened her husband, PW-1, to bring back Murugesan, on 03.07.2003, and then how her husband PW-1 left the village to find Murugesan but returns without Murugesan. She further deposes that how again, on 07.07.2003, A-2 threatened PW-1 to bring back Murugesan and PW-1 again left the village in search of Murugesan and returned on 08.07.2003, after the death of Murugesan and Kannagi. PW-49 further testified that it was A-4 who finally brought Murugesan to the village. She specifically identified A-2, A-3, A-8, A-10, A-13 as the accused who had beaten and tortured her son near the temple. PW-49 also states that A-2, A-6, A-7, A-8, A-10, A-12 assaulted A-4 and compelled him to get into the Tata Sumo vehicle which was requisitioned to bring Kannagi. Thereafter, they forced PW-49 to leave the place.

41. So far, the following facts emerge from the testimonies reproduced above:

i. On 03.07.2003, A-2 (Maruthupandiyar) threatened PW-1 (Samikannu) to bring back Murugesan. PW-1 goes to his sister-in-law's house where he met Murugesan

and asked Murugesan to send Kannagi to her parental home. On the same day, PW-1 returns to his village.

ii. On 07.07.2003, A-2 again threatened PW-1 to bring Murugesan back to the village, and PW-1 once again leaves his village in search of Murugesan. But this time, he could not find Murugesan and fearing that A-2 would harm him if he returns without Murugesan, PW-1 did not return to his village that day.

iii. On 07.07.2003, A-2 also threatened A-4 (Ayyasamy) to bring Murugesan back to the village and it was A-4 who finally brought Murugesan back to the village

iv. Murugesan was battered and tortured by A-1, A-2 and their men in order to elicit the location of Kannagi, which he ultimately revealed after he was unable to bear the torture. Many villagers were present when all this was happening.

v. A Tata sumo vehicle, driven by PW-22 (Jayatharasan), went to find Kannagi and bring her back to the village.

42. It is from this point onwards that the case depends mainly on the testimony of PW-49 (Chinnapillai), who is the step-mother of Murugesan, and an eyewitness. She is the most important witness, as she has seen the macabre act of the actual poisoning of the two innocent lives. Although, PW-16 (Amaravathi), the aunt of Murugesan, was also produced by the prosecution as an eye-witness, but she has turned hostile and denies even being present on the spot.

43. PW-49, all the same, states that after PW-2, PW-3, PW-15, PW- 16 and she were compelled to leave the place where Murugesan was tortured, they returned home. At dawn on 08.07.2003, PW- 16 and PW-49 went near the temple, but did not find Murugesan there. PW-49 heard some villagers saying that Murugesan would be poisoned. PW-49 and PW-16 ran through the temple when they heard a noise. They followed the sound which led them to a place where PW-49 saw Murugesan tied to a tree in a cashew grove. She says that A-4 was also tied to a tree. PW-49 further states that barring A-14 and A-15, all the accused were present there. She specifically states that A-2 poured poison down her son's throat.

She tried to stop A-2 but was held back by the accused. After A-2 had administered poison to Murugesan, PW- 49 fainted and it was PW-16 who sprinkled water on her face to bring her back to consciousness. PW-49 then states that she immediately went to the Virudhachalam police station, but no one listened to her. On the contrary, she was given casteist slurs and driven away. After she returned home, PW-1 also came back. Then, A-3 and others told them that Murugesan's body had been set ablaze. Upon hearing this, PW-49, PW-1,

PW-15 went to the place where Murugesan's body was being burnt. All that they could recover was a ring that Murugesan used to wear.

44. From a perusal of the evidence, it is also clear that the accused before us had brought Kannagi to Pudukoorapettai village, where she was also killed by administration of poison along with Murugesan.

45. In the present case, PW-49, who is an eyewitness, was not cited as a witness in the charge-sheet submitted by the CBI. What she had said before the police during investigation under Section 161 CrPC is what she later deposed more or less as a witness in the Court. There may be some discrepancies in PW-49's deposition but on overall consideration of the evidence, these will be of no help to the defence.

46. The prosecution, however, was not confident that this witness would withstand the cross-examination, considering she was uneducated and extremely inarticulate. It was only later during the trial that an application was moved on behalf of the prosecution under Section 311 CrPC to summon PW-49 as an additional witness, which was allowed, and PW-49 was made a prosecution witness. This order of the Sessions Court was challenged before the High Court by none other than PW-14, who prayed that PW-49 ought to be examined as a 'Court witness' rather than a prosecution witness.

PW-1 approached the High Court with this prayer because the apprehensions weighing in his mind were that if his wife (PW-49, Chinnapillai) is examined as a prosecution witness, she may be declared hostile, and the benefit thereof would ultimately be availed by the accused. However, the High Court dismissed PW-1's petition and affirmed the decision of the Trial Court summoning Chinnapillai as a prosecution witness. The High Court held that these apprehensions have to be disregarded for the reason that the Trial Court is empowered under Section 165 of the Evidence Act to take care of any apprehensions as raised by PW-1 regarding PW-49 turning hostile.

Prosecution Witness and Court Witness, and Section 311 CrPC and Section 165 of the Evidence Act

47. Before moving further, we consider it necessary to deal with the law relating to section 311 CrPC under which PW-49 was summoned as a witness. Section 311 CrPC reads as follows:

"311. Power to summon material witness, or examine person present.-

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already

examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

This Section 311 of CrPC provides wide powers to a Criminal Court, to do the following:

- i. Summon any person as a witness, or
- ii. Examine any person present in court, though not summoned as witness, or
- iii. Recall and re-examine any person already examined

The above powers can be exercised 'at any stage of any inquiry, trial or other proceeding' under the CrPC. The provision can be divided into two parts. The word 'may' is used in the first part of the section which grants the Court the discretion to summon a witness. In contrast, the second part of the Section uses the word 'shall' which casts a duty on the Court to summon and examine or recall or re-examine any such person as a witness when it appears to the Court that it is essential to do so for a just decision in the case. In other words, the second part is mandatory, and Courts are obligated to exercise their powers under Section 311 CrPC when the evidence of any person is essential for a just decision of the case. (See: *Jamatraj Kewalji Govani v. State of Maharashtra* 1967 SCC OnLine SC 19)

48. As is clear from the language of the provision itself, there is a wide discretion with the Courts under Section 311 CrPC. These powers can be exercised suo moto or on an application moved by either side. After all, the object is that the Court must not be deprived of the benefit of any valuable evidence. It is absolutely necessary that the Court must be apprised of the best evidence available. Thus, Courts have been given wide powers to decide on their own if a witness is required to be called or recalled for examination or re-examination.

This power under Section 311 CrPC can be invoked at any stage of the trial, even after the closing of the evidence. Section 311 CrPC can also be read along with Section 165 of the Evidence Act, as the powers of the Court under Section 165 of the Evidence Act are complementary to Section 311 of CrPC. As discussed above, powers under Section 311 CrPC can either be exercised on an application moved by either side to the case or suo moto by the Court. In case a person is not listed as a witness in the charge-sheet but later, the prosecution desires to bring that person as an additional prosecution witness, then the prosecution can move an application to bring this person as a prosecution witness.

It is then for the Court to decide whether such a person is required as a witness or not. If the Court finds that such a person should have been examined as a prosecution witness and he/she was omitted from the list of witnesses due to

some oversight, mistake or for any other reason, the Court may allow the application and such a person can be examined as a prosecution witness. Thereafter, the normal course of examination-in-chief, cross-examination, etc. would follow as per the procedure. On the other hand, when the Court calls a person as a Court witness, there are some restrictions regarding the cross-examination of such witness.

49. In a case where neither party is interested in examining a person as a witness yet the Court feels that the evidence of such a person is necessary for a just decision, the Court though cannot compel either the prosecution or the defence to call a witness, but it can invoke its power under Section 311 CrPC, read with Section 165 of the Evidence Act and call such a person as a Court witness. Whether a person is required to be examined as a witness for a just decision is again a question which has to be decided by the Court on the basis of the facts of that particular case. (See: Rama Paswan v. State of Jharkhand (2007) 11 SCC 191)

50. As far as cross-examination of a Court witness is concerned, no party can claim cross-examination of a Court witness as a matter of right. A Court witness can only be examined with the leave of the Court [See: Zahira Habibullah Sheikh & Anr. v. State of Gujarat & Ors. (2006) 3 SCC 374 and Jamatraj (Supra)]. Where a Court witness says something prejudicial to any party, then such a party must be allowed to cross-examine that witness.

51. Also, as discussed earlier, Court witnesses can be cross-examined by either side but only with the leave of the Court. Further, the cross-examination is to be restricted only to what was stated by this witness in his/her reply to the questions of the Court, and a Court witness cannot be contradicted to his/her previous statements made before the police i.e. statements under section 161 of CrPC. The proviso to section 162(1)5 of CrPC makes it very clear that only prosecution witnesses can be contradicted against their previous Section 161 CrPC statements. Under the proviso to Section 162(1) of CrPC, Section 161 CrPC statements of any prosecution witness can be used by the defence to contradict such a witness during the cross-examination.

The prosecution may also contradict its own witness during cross-examination regarding the previous statements made before the police, but again it can only be done with the leave of the Court. [See: Mahabir Mandal & Ors. v. State of Bihar (1972) 1 SCC 748, Dipakbhai Jagdishchandra Patel v. State of Gujarat & Anr. (2019) 16 SCC 547] All the same, none of these restrictions apply to the Court, which has wide power under Section 165 of the Evidence Act to ask any questions. The Courts are not barred from putting questions which may contradict the witness with the previous statements made before the police. The special powers of the Court under Section 165 of the Evidence Act are not impaired or

controlled by the provisions of Section 162 of the CrPC. (See: Raghunandan v. State of U.P. (1974) 4 SCC 186)

52. The powers of a Court under Section 165 of the Evidence Act and the importance of Section 165 in the meaningful conduct of a trial is brilliantly explained by Justice O. Chinnappa Reddy with distinctive clarity of his letters in Ram Chander v. State of Haryana (1981) 3 SCC 191:

"What is the true role of a Judge trying a criminal case? Is he to assume the role of a referee in a football match or an umpire in a cricket match, occasionally answering, as Pollock and Maitland [Pollock and Maitland : The History of English Law] point out, the question "How is that", or, is he to, in the words of Lord Denning "drop the mantle of a Judge and assume the robe of an advocate?" [Jones v. National Coal Board, (1957) 2 All ER 155 : (1957) 2 WLR 760] Is he to be a spectator or a participant at the trial? Is passivity or activity to mark his attitude? If he desires to question any of the witnesses, how far can he go? Can he put on the gloves and 'have a go' at the witness who he suspects is lying or is he to be soft and suave? These are some of the questions which we are compelled to ask ourselves in this appeal on account of the manner in which the Judge who tried the case put questions to some of the witnesses.

2. The adversary system of trial being what it is, there is an unfortunate tendency for a Judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive elements entering the trial procedure. If a criminal court is to be an effective instrument in dispensing justice, the presiding Judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth. As one of us had occasion to say in the past:

"Every criminal trial is a voyage of discovery in which truth is the quest. It is the duty of a presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by Section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact, relevant or irrelevant. Section 172(2) of the Code of Criminal Procedure enables the court to send for the police-diaries in a case and use them to aid it in the trial. The record of the proceedings of the Committing Magistrate may also be perused by the Sessions Judge to further aid him in the trial."

3. With such wide powers, the court must actively participate in the trial to elicit the truth and to protect the weak and the innocent. It must, of course, not assume the role of a prosecutor in putting questions. The functions of the Counsel, particularly those of the Public Prosecutor, are not to be usurped by the judge, by descending into the arena, as it were. Any questions put by the Judge must be so as not to frighten, coerce, confuse or intimidate the witnesses."

53. Justice O. Chinnappa Reddy then goes on to say that a judge can "ask any question, in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant". But then while doing this the Judge must take both the prosecution and the defence with him.

54. In the present case, in our opinion, the High Court was right in dismissing the apprehensions of PW-1 that the prosecution would get PW-49 declared hostile to the benefit of the accused. These apprehensions were not well-founded. PW-49 is an eyewitness, she ought to have been made a prosecution witness in the first instance. Theoretically speaking, the Trial Court could have called her as a Court witness, in light of the facts of the present case, as her evidence was absolutely essential for the just decision of the case.

All the same, before the Trial Court could have done it, the prosecution itself moved an application to summon her as a prosecution witness and therefore, in our opinion, the Trial Court rightly made her a prosecution witness by allowing such an application. In the present case, PW-49 did not support the case of prosecution on some aspects, such as the role of A-4 and A-9 (Dalits who were made accused), yet her evidence in respect of other accused was correctly relied upon by the Trial Court in convicting the other accused.

The findings of the Court on the role of A-14 & A-15 - the Police Officers

55. Now coming to the role of A-14 (K.P. Tamilmaran) and A-15 (M. Sellamuthu), who were the Sub-Inspector and Inspector, respectively, of the Virudhachalam police station at the relevant point of time.

56. A-14 and A-15 were convicted by the Trial Court under Sections 217 & 218 of IPC and Sections 3(2)(i) & 4 of SC/ST Act. However, the High Court acquitted A-14 for offences under Sections 218 and Section 3(2)(i) of SC/ST Act. Whereas conviction and sentence under other provisions were upheld by the High Court.

57. Before we proceed to examine their role, it is necessary to state that the police station, where these two officers were posted and which has the jurisdiction of the village, is not very far from the village in any case as noticed by the High Court, it was about 3 kilometres from the village. It is very difficult to believe that a dastardly double murder takes place in the village, and those incharge of

the police station remain unaware of the crime. To the contrary, it has come in the evidence that the police refused to lodge the FIR against the accused villagers belonging to the Vanniyar community, when the incident was reported by a Dalit (PW-49). Further, as stated above, even though the incident takes place on 07/08.07.2003, the police only registered the FIR on 17.07.2003 i.e. after a delay of nine days, after political pressure and the news having caught the attention of Press and the Media.

58. PW-2, PW-3, PW-15, PW-49 have all spoken about going to the Virudhachalam police station but being driven out after being given casteist slurs by the policemen who were there.

59. The fact that A-14 and A-15 had knowledge of the incident, and that A-15 purposely conducted a wrong and misleading investigation, has been disclosed in the statements of PW-38 to PW-44 and PW-47 to PW-49, to the CBI, though they did not support the prosecution on this aspect in the Court. What they said before the Court is as follows:

i. PW-38 (Sundarapandiyan) served as Head Constable in Virudhachalam police station between 2002 and 2004. He deposed that he had heard of A-14 having visited the scene of crime upon receiving information regarding the incident. PW-38 further states that FIR No. 356 of 2003 was registered by A-14, and A-15 conducted the investigation.

ii. PW-39 (Ramamoorthy) also served as Head Constable in Virudhachalam police station at the time of the incident. He deposed that he was the one who submitted the evidence in the case, and that A-14 and A-15 were in-charge of the police station at the relevant time.

iii. PW-40 (Antonysamy) served as Sub-Inspector in the Special Branch when the incident dated 07/08.07.2003 had taken place. He was informed about the incident by one PW-47 (Rajendran), Head Constable in the Special Branch. PW-40 ordered PW-47 to visit the scene of crime. PW-47 told PW-40 that he had visited the scene of crime, that it was not known whether such an occurrence had taken place, and that he would inquire further. PW-40 asked as to why the FIR has not been lodged yet, to which PW-47 responded that nobody has come forward to file a complaint yet.

iv. PW-41 (Anwar Baig) served as Head Constable in Virudhachalam police station at the time of the incident. He denies any knowledge of the complaint being received on 08.07.2003 or FIR being registered on 17.07.2003, but admits that he prepared the Observation Mahazar, to which A-15 has attested his signatures.

v. PW-44 (Dhanapaul) was Sub-Inspector of Avinankudi police station at the time of the incident. He deposed that the DSP, Virudhachalam asked him to go to Virudhachalam police station on 17.07.2003. When PW-44 reached there at around 4 PM, A-14 and A-15 were on duty. A-15 asked PW-44 to assist A-14 with writing work. The FIR No. 356 of 2003 was written by PW-44, on which A-14 put his signatures.

vi. PW-47 (Rajendran) worked as Head Constable in the Special Branch when the incident occurred. While on duty, he overheard people saying that two persons had died by taking poison in Pudukoorapettai village. PW-47 gave this information to his superior PW-40, who asked PW-47 to look into the matter. When PW-47 went to Pudukoorapettai village and inquired, he claims that nobody gave him correct information. When PW-47 asked at the police station, he was told that no complaint had been filed.

vii. PW-48 (Harishankar), who was a Head Constable in the Virudhachalam police station when the double murders took place, has said in his deposition that he came to know 3-4 days after 08.07.2003 that upon receiving information about the incident, A-14 had gone to the spot but since nobody lodged a complaint, he returned and kept quiet.

60. It is true that PW-49 has not specifically said that A-14 and A-15 were the same police officers who refused to register the FIR based on her complaint, hurled casteist abuses at her, and sent her away on 08.07.2003. Also, though the police witnesses did not completely support the prosecution's case, but from their evidence, it is clear that A-14 and A-15 both had knowledge of the incident. Considering the proximity of the police station from the village, it is also highly unlikely that the police officers incharge of the police station would not have known about the incident.

Besides, the investigation done by the local police itself was motivated and downright dishonest, where the intention was to show that the crime was jointly committed by the Vanniyar and Dalit community, which is far from the truth. It puts the perpetrators and the victim together as accused. The investigation of CBI discloses quite another story which, by and large, has placed the pieces together, except for a few discrepancies here and there. The local police had also made PW-1, who was none other than the father of the deceased Murugesan, as one of the co-accused. This was a ruse.

61. In this regard, evidence given by PW-32 (Ashokan), who was the suspended Village Administrative Officer at the relevant point in time, assumes great significance. According to the investigation done by A-15, PW-32 was the person before whom A-1 had given an extra-judicial confession. According to the version of the local police, it was PW-32 who took A-1 to the police station and

on the basis of the extra-judicial confession given before PW-32 by A-1, the FIR was registered by the local police on 17.07.2003. However, the deposition of this witness in Court will be of some interest.

62. In his examination-in-chief, which was conducted on 18.09.2017, PW-32 states that during the relevant time he was a Village Administrative Officer, but under suspension. In the evening of 16.07.2003, he was asked by the Tahsildar to meet the Deputy Superintendent of Police, who further asked PW-32 to meet the inspector of Virudhachalam police station i.e. A-15. The next day i.e. 17.07.2003, PW-32 went to the police station where he met A-15.

PW-32 states that A-15 gave him two sheets of paper with something written on them already and asked PW-32 to write down the same contents on another sheet of paper. Initially, PW-32 refused to oblige by saying that he is under suspension but thereafter, the Revenue Officer directed PW-32 to comply. Finally, PW-32 agreed to do what was told to him. A-15 gave the sheets of paper with something written on them to PW-32 and whatever was written on those papers was copied by PW-32 on another piece of paper, which PW-32 was later asked to sign. This was the so called 'extra-judicial confession' of A-1, on the basis of which the FIR was registered. A-1 signed the same papers immediately thereafter.

63. Thus, it is clear from examination-in-chief of PW-32 that neither did A-1 make any extra-judicial confession before PW-32, nor was A-1 taken to the police station by PW-32 to make him surrender. Contrary to this, the version put forth by A-15 in the initial investigation was that, at some point in time the conscience of A-1 started nagging him, after he had killed his own daughter and thus he made an extra judicial confession before a government servant, who was an officer connected with the functioning of his village. The reality, however, is quite different. It was all planned and executed to perfection, since the registration of FIR became a necessity due to political and media pressure.

64. Immediately after his examination-in-chief, PW-32 was cross-examined on behalf of A-14 and A-15, but PW-32 stood by whatever he had deposed in his examination-in-chief. Four years after the cross-examination was over, PW-32 was recalled for cross-examination on 03.03.2021 on an application moved by A-14 & A-15. This time, PW-32 differs from his earlier examination-in-chief and cross-examination recorded on 18.09.2017, as he now states that he recorded the confession as made before him and gave it to the Police.

65. Similarly, examination-in-chief of PW-34, who was the Village Administrative Officer of Virudhachalam, was conducted on 18.09.2017 where he deposed that at 4:30 pm on 17.07.2003, he was summoned by A-15 to the police station. There, A-15 made PW-34 affix his signatures on several documents relating to the double murders. These included Mahazar, confessions

etc. which were shown to be signed at late night of 17.07.2003 and early morning of 18.07.2003 at different places.

66. A-15 was behind this devious and dishonest investigation from the very beginning, and he had falsely implicated the family members of Murugesan, who belonged to a Schedule Caste community of Tamil Nadu. There is conclusive evidence in this regard.

67. The purpose of an investigation, like the purpose of a trial, is to reach to the truth. The duty of an Investigating Officer is to lawfully collect evidence. In the present case, the Investigating Officer (A-15) not only covered evidence but fabricated his own. Instead of collecting evidence, he created evidence and tried to implicate the innocent and set the guilty loose. In order to fulfil his wicked design, he has deliberately and willfully violated the mandate of Sections 154 and 157(1) of CrPC as well as Section 23 and 24 of the Police Act, 1861.

68. Section 154(1) of CrPC provides that when an officer-in-charge of a police station receives any information regarding the commission of a cognizable offence, such information shall be reduced in writing and be read over to the informant. The relevant part of section 154(1) reads as follows:

"154. Information in cognizable cases.- (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf."

69. Reading of the above provision should not be misunderstood to mean that the police is empowered to register FIR only in cases where some informant comes forward and provides information regarding the commission of a cognizable offence to the police. Once the police gets information regarding the commission of a cognizable offence, whether it is through any informant/complainant or otherwise, police is empowered to register the case and proceed with the investigation. This becomes clear from the bare reading of Sections 156 and 157 of CrPC. Section 156(1) reads as under:

"156. Police officer's power to investigate cognizable case.-

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII."

Relevant portion of Section 157(1) reads as follows:

"157. Procedure for investigation.-

(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender."

(Emphasis Supplied)

The above provisions make it very clear that where an officer in- charge of a police station, from information received or otherwise, has reason to suspect that a cognizable offence has been committed, he shall forthwith send a report to a Magistrate and shall start the investigation. A Constitution Bench of this Court in *Lalita Kumari v. Govt. of U.P.* (2014) 2 SCC 1 made it absolutely clear that an FIR can be registered even if there is no formal informant. In fact, it is obligatory for police to register the FIR when they receive any information which is sufficient to suspect that some cognizable offence has been committed. This is exactly what was said by this Court:

"97. The Code contemplates two kinds of FIRs: the duly signed FIR under Section 154(1) is by the informant to the officer concerned at the police station. The second kind of FIR could be which is registered by the police itself on any information received or other than by way of an informant [Section 157(1)] and even this information has to be duly recorded and the copy should be sent to the Magistrate forthwith. The registration of FIR either on the basis of the information furnished by the informant under Section 154(1) of the Code or otherwise under Section 157(1) of the Code is obligatory."

It is not the case that *Lalita Kumari* (Supra) had made the registration of FIR obligatory for the first time; it was always there in the statute. Thus, even in the absence of a formal informant, the police is duty-bound to register the case whenever they receive any information regarding the commission of a cognizable offence. In the present case, as discussed earlier, there is no doubt that A-14 and A-15 had the information regarding the death of Murugesan and Kannagi on the day of the incident itself i.e. on 08.07.2003. However, they did not register the FIR, thereby acting in violation of the provisions of law.

Their defence that nobody came forward to lodge a complaint for registration of FIR cannot be accepted for two reasons. Firstly, when members from Murugesan's family went to the police station to register an FIR, they were rebuffed and were given caste-based abuses. Thus, their plea that nobody came forward to lodge a complaint is unsustainable in light of the facts of the case. Secondly, even if we assume for the sake of argument that nobody went to the police station to report the double murders, it was the duty of A- 14 and A-15 to register the FIR as it cannot be doubted that they had information regarding the crime. Hence, their defence is unacceptable in light of the law as well as the facts of the case, and has rightly been disbelieved by the High Court.

70. When public, political, and media pressure builds up, A-15 (nine days after the double murders had taken place), manufactures an extra-judicial confession of A-1 and registers the FIR against four Dalits (family members of Murugesan) and four Vanniyars. A-15 then went further and manufactured the confessions of the other accused. These facts are particularly glaring in light of the fact that A-15 knew about the incident right from the date of its occurrence i.e. 08.07.2003, but still took no action and made no effort whatsoever to uncover the truth.

71. We have examined the provisions of law and the facts of the case, particularly the role of A-15 in detail. Mr. Gopal Sankaranarayanan, the learned Senior Counsel for A-15 would argue that at worst, the case of A-15 can be treated on the same footing as that of A-14, who has been acquitted of charges under Section 3(2)(i) of the SC/ST Act and Section 218 of IPC though convicted under other charges. All the same, we see no reason how that can be done.

72. Sections 217 and 218 of IPC read as under:

"217. Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.-

Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

"218. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.-

Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a

manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

(Emphasis provided)

73. Here, we would also like to reproduce the provisions of SC/ST Act under which both the policemen (A-14 and A-15) were convicted by the Trial Court. The relevant portions of sections 3(2)(i) and 4 of SC/ST Act are as follows:

"3. Punishments for offences of atrocities.-

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;"

"4. Punishment for neglect of duties.-

(1) Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act and the rules made thereunder, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

(2) The duties of public servant referred to in sub-section (1) shall include-

(a) to read out to an informant the information given orally, and reduced to writing by the officer in charge of the police station, before taking the signature of the informant;

(b) to register a complaint or a First Information Report under this Act and other relevant provisions and to register it under appropriate sections of this Act;

(c) to furnish a copy of the information so recorded forthwith to the informant;

(d) to record the statement of the victims or witnesses;

(e) to conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay if any, in writing;

(f) to correctly prepare, frame and translate any document or electronic record;

(g) to perform any other duty specified in this Act or the rules made thereunder:"

(Emphasis provided)

74. Analyzing the above-quoted provisions of law in light of the facts of the case, the following position would emerge:

(a) A-14 (K.P Tamilmaran) and A-15 (M. Sellamuthu) both had committed the offences under Section 217 IPC and Section 4 of the SC/ST Act as they neglected their duties and disobeyed the law by not registering the FIR at the first instance with the intention to save the culprits.

(b) Now, coming to the role of A-15. Like A-14, A-15 too is guilty of offences under section 217 of the IPC and under section 4 of the SC/ST Act but, in addition to these wrongdoings, it is also borne out from the record that it was A-15 who was the main architect behind the FIR dated 17.07.2003, which falsely implicated the four members of Schedule Caste community. Further, it was A-15 who was in-charge of the investigation which led to the filing of the chargesheet against the innocent persons belonging to Dalit community.

There is no doubt that A-15 did this entire exercise to absolve culprits belonging to the Vanniyar community of their complicity in the crime, and he knowingly and deliberately falsely implicated some of the Dalits in an offence punishable with death. Evidence, as discussed earlier, makes it clear that A-15 manufactured the extra-judicial confessions and evidence and thereafter, filed the chargesheet against Dalits on the basis of that evidence. Hence, the High Court rightly upheld the conviction of A-15 under Sections 217, 218 of IPC and Sections 4, 3(2)(i) of the SC/ST Act and the sentence of life imprisonment. There is no doubt in our mind that A-15 is guilty of the offences as held both by the Trial Court as well as the High Court in appeal.

75. We have also looked into the aspect of victim compensation in this case. A crime is an act against the State. But a wicked and odious crime, as the one we have just dealt with, is the ugly reality of our deeply entrenched caste structure. Honour-killing, as these are called, must get a strong measure of punishment. We are also of the opinion that victim compensation here is warranted.

We thus award compensation of Rs. 5,00,000/- (Rupees Five Lakhs) to PW-1 (Samikannu-father of Murugesan) and PW-49 (Chinnapillai - step-mother of Murugesan) jointly, or to the nearest of their kins. This compensation is liable to be paid by the State of Tamil Nadu to the above-mentioned persons. We further clarify that this compensation would be in addition to the amount awarded or directed to be paid as compensation by the Sessions Court and High Court.

76. We see no reason to interfere with the impugned judgment of the Madras High Court, and these appeals are, accordingly, dismissed.

77. All those appellants, who are on bail, are directed to surrender within two weeks from today to undergo their remaining sentence.

78. Interim order(s), if any, stand(s) vacated. Interlocutory application(s), if any, stand(s) disposed of.

.....J. [Sudhanshu Dhulia]

.....J. [Prashant Kumar Mishra]

New Delhi.

April 28, 2025;

1. Insecticide with common name "Monocrotophos". Considered highly toxic by all routes of exposure. The ingestion of even 120 mg of Monocrotophos can be fatal.

2. **155. Impeaching credit of witness:** The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:

(1) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2) By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted...

3. false in one thing, false in everything.

4. PW-49 is the wife of PW-1 and step-mother of the deceased Murugesan

5. **162. Statements to police not to be signed: Use of statements in evidence.**

(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement of record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

IN THE SUPREME COURT OF INDIA

Consolidated Construction Consortium Ltd.

Vs.

Software Technology Parks of India

[Civil Appeal No. 5383 of 2024]

HEADNOTE –

- A.** Courts cannot go beyond the scope of Section 34 of the Arbitration & Conciliation Act, 1996 while deciding an application for setting aside of an award.
- B.** The role of the court under Section 34 is clearly demarcated. It is a restrictive jurisdiction and has to be invoked in a conservative manner. The reason is that arbitral autonomy must be respected and judicial interference should remain minimal otherwise it will defeat the very object of the Arbitration Act of 1996.
- C.** Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the arbitral tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.

JUDGMENT

Ujjal Bhuyan, J.

1. This appeal by special leave is directed against the judgment and order dated 08.08.2019 passed by the High Court of Judicature at Madras in O.S.A. No. 157 of 2019.

2. Be it stated that by the judgment and order dated 08.08.2019 ('impugned judgment' hereinafter), Division Bench of the High Court of Judicature at Madras (briefly 'the High Court' hereinafter) allowed the appeal of the respondent filed under Section 37 of the Arbitration and Conciliation Act, 1996 (briefly 'the 1996 Act' hereinafter) by setting aside the judgment and order dated 02.01.2019 passed by the learned Single Judge of the High Court in O.P. No. 433 of 2010 which was filed by the appellant under Section 34 of the 1996 Act setting aside the arbitral award dated 05.01.2010.

3. Relevant facts may be briefly noted.

4. Software Technology Parks of India i.e. the respondent following a tender process had awarded a contract to M/s Consolidated Construction Consortium Ltd. i.e. the appellant for construction of office building, incubation centre etc. of the respondent. As per the Letter of Intent dated 09.03.2006 issued by the respondent, the total cost of the project was Rs. 16,48,69,970.00. The scheduled date for completion of construction was 15.01.2007. Appellant could complete the construction only by 30.11.2007. There was thus a delay of about 10 months.

4.1. Appellant after handing over the project site to the respondent claimed a sum of Rs. 1,40,12,786.00 including retention money and interest thereon. However, because of the delay in completion, respondent levied and deducted liquidated damages to the tune of Rs. 82,43,499.00 by invoking clause 26 of the contract agreement entered into between the parties. Respondent also made other deductions. After such deductions, balance amount of Rs. 3,70,992.00 was paid to the appellant by the respondent.

4.2. Aggrieved appellant invoked the arbitration clause of the contract agreement and initiated arbitral proceedings challenging deduction of liquidated damages by the respondent and also lodged other claims. Respondent also lodged counter claims.

4.3. Learned arbitrator vide the award dated 10.05.2010 upheld the deduction of liquidated damages by the respondent. That apart, learned arbitrator dismissed the claims and counter claims of the parties. Learned arbitrator held that he did not find any of the claims or counter claims to have been established and, therefore, declared the award as nil against all the claims and counter claims.

5. Appellant filed a petition before the High Court under Section 34 of the 1996 Act to set aside the award which was registered as Original Petition (O.P.) No. 433 of 2010. A learned Single Judge of the High Court vide the judgment and order dated 02.01.2019 held that there was extension of the work period. Appellant had completed the work during the extended period of time. Therefore,

deduction of liquidated damages was not justified. Consequently, the arbitral award dated 10.05.2010 was set aside.

6. Aggrieved by the aforesaid judgment and order dated 02.01.2019, respondent preferred an appeal before the High Court under Section 37 of the 1996 Act which was registered as O.S.A. No. 157 of 2019. A Division Bench of the High Court vide the impugned judgment and order dated 08.08.2019 opined that learned Single Judge was not justified in setting aside the award. The award was set aside purely on assumptions and surmises. Grounds on which the award was set aside were beyond the scope of Section 34 of the 1996 Act. Accordingly, the judgment and order of the learned Single Judge dated 02.01.2019 was set aside, thereby allowing the appeal of the respondent.

7. Aggrieved thereby appellant had filed the related special leave petition on which notice was issued on 05.02.2021. When the matter was heard on 23.04.2024, leave was granted.

8. Learned counsel for the appellant submits that Division Bench of the High Court was not at all justified in exercising power under Section 37 of the 1996 Act by reversing the decision of the learned Single Judge passed under Section 34 of the 1996 Act. He submits that scope of interference under Section 37 is extremely limited and, therefore, the Division Bench committed a manifest error in setting aside the order passed under Section 34 of the 1996 Act. In the process, the Division Bench committed a further error by restoring the award which had upheld deduction of liquidated damages by the respondent.

8.1. Learned Single Judge had rightly exercised power within the broad parameters of Section 34 of the 1996 Act while setting aside the award in question. It is the Division Bench which acted like an appellate court beyond the scope of Section 37 of the 1996 Act while setting aside the order passed under Section 34 of the 1996 Act and restoring the award.

8.2. Learned counsel submits that the respondent had extended the time for completion of the contractual work. Appellant had completed the construction within the extended period. Therefore, there was no delay in the contractual performance. Extension of time and levy of liquidated damages cannot go hand-in-hand. In the circumstances, respondent was not justified in deducting liquidated damages from the contractual dues of the appellant.

8.3. He submits that the instant contract between the appellant and the respondent was a contract relating to construction. In such a contract, time is never of the essence. Such a contract is governed by the principles laid down in Sections 55, 73 and 74 of the Indian Contract Act, 1872. In any view of the matter, the employer would be entitled to liquidated damages to compensate for the delay

provided the delay had caused loss or damage to the employer. No such deduction can be made if the delay does not cause any loss or damage.

8.4. Division Bench had ignored the letter dated 26.09.2008 issued by the respondent to the appellant extending the time to complete the contract upto 30.11.2007. This letter of extension was written pursuant to the application of the appellant dated 14.12.2007 seeking such extension. Thus, appellant had completed the work within the extended time granted by the respondent. Therefore, there was no delay in executing the contract. Further, no loss ensued to the respondent which would justify any deduction on account of liquidated damages.

8.5. That being the position, there was no justification for invoking clause 26 of the contract agreement by the respondent.

8.6. Learned counsel submits that learned Single Judge had rightly noted that appellant could not complete the contract work within the initial time frame because of reasons which were beyond its control. When the respondent had extended the time frame, it was obvious that the delay could not be attributed to the appellant. Extension of time to complete the contract does not imply a delay in execution. No loss was suffered by the respondent.

8.7. Learned counsel submits that when the respondent recognized the difficulties faced by the appellant in executing the contract it extended the time limit for completion of the contract till 30.06.2007. When the appellant was still unable to complete the contract by 30.06.2007, respondent had allowed the appellant to carry on with the work and to complete the contract by 30.11.2007 which was accepted by the respondent, of course, reserving its right to levy liquidated damages. Learned counsel further submits that on the one hand respondent had allowed the appellant extended time to complete the construction work, but on the other hand levied liquidated damages on the appellant by invoking clause 26 of the contract agreement. However, no advance notice was issued to the appellant indicating any intention on the part of the respondent to levy liquidated damages.

8.8. Lastly, learned counsel submits that in any view of the matter, the impugned order is wholly unsustainable in law as well as on facts and, is, thus liable to be appropriately interfered with.

9. On the other hand, learned counsel for the respondent submits that liquidated damages were rightly levied by the respondent. Such liquidated damages are in conformity with Section 55 of the Indian Contract Act, 1872 (briefly 'the Contract Act' hereinafter). Respondent was presented with such a situation by the appellant that it had no other option but to grant extension of time on account of

appellant's admitted inability to complete the work within the stipulated time. In the review meeting held on 18.12.2006, just twenty eight days before the stipulated date for completion of the work i.e. 15.01.2007, appellant expressed its inability to complete the work within the stipulated date. Respondent was left with no option other than to fix a revised date for completion of the work and grant extension of time.

9.1. Pursuant to the review meeting dated 18.12.2006, respondent vide letter dated 12.01.2007 had granted the first extension of time for completion of the contract work upto 28.02.2007. However, appellant failed to complete the work within this extended period of time. As a result, respondent was compelled to grant further extensions of time to the appellant upto 30.06.2007 in order to have the contract work completed. This was because of appellant's continued failure to meet even the revised timelines despite repeated requests and warnings from the respondent and its architect.

9.2. Learned counsel for the respondent submits that in the review meeting held on 18.12.2006, appellant was unequivocally forewarned that grant of extension of time for completion of the contract work would be without prejudice to the right of the respondent to recover liquidated damages. Each time extension was granted it was made clear to the appellant that such extension of time was without prejudice to the right of the respondent to recover liquidated damages. Therefore, appellant had full prior notice of the respondent's intention to levy liquidated damages. In the circumstances, it is not open to the appellant to now contend that the respondent is not entitled to recover liquidated damages on the ground that time for performance of the contract was extended.

9.3. Learned counsel has refuted the contention of learned counsel for the appellant that time was not the essence of the contract. On the contrary, he asserts that time was very much of essence for performance of the contract. Because of admitted inability of the appellant to complete the contract work within time, respondent was compelled to grant multiple extensions of time but each time, appellant was forewarned that such extension of time was without prejudice to the right of the respondent to recover liquidated damages.

9.4. Learned counsel has also denied the contention of learned counsel for the appellant that respondent could not furnish or show any loss or damage suffered by it because of the delay in execution of the contract. He submits that the arbitral tribunal had minutely examined this aspect of the matter and after considering the evidence on record rejected such contention of the appellant. Arbitral tribunal held that liquidated damages were validly deducted; the quantum was fair and reasonable.

9.5. Learned counsel for the respondent, therefore, submits that the appellate court i.e. Division Bench of the High Court had rightly set aside the order of the learned Single Judge thereby restoring the award. Learned Single Judge had set aside the award in complete disregard to Section 34 of the 1996 Act. He submits that there is no merit in the appeal. Consequently, the appeal should be dismissed.

10. Submissions made by learned counsel for the parties have received the due consideration of the Court.

11. Let us first deal with the award. In this case, the arbitral tribunal comprised of a sole arbitrator Shri K. Srinivasan. He was appointed as the arbitrator on 05.01.2009. In the arbitral proceedings, as many as five claims were made on behalf of the appellant. On the other hand, the respondent made three counter claims. In so far the appellant is concerned, the major claim was relating to refund of Rs. 82,43,499.00 deducted by the respondent as liquidated damages. This claim was framed as issue No. 3 by the arbitral tribunal.

In so far respondent is concerned, it raised counter claims relating to reimbursement of rent paid by it for the period of delay in completion of the contract work as well as for loss of rent in the new complex due to delayed construction. As alluded to hereinabove, issue No. 3 pertains to claim of the appellant for refund of Rs. 82,43,499.00 deducted by the respondent as liquidated damages i.e. as compensation for the delay in execution of the contract. Both appellant and the respondent had submitted their relied upon documents and advanced their respective contentions. Arbitral tribunal had framed two questions:

(i) Whether the delay had occurred due to default on the part of the claimant(appellant)? and

(ii) Whether the respondent was entitled in terms of the contract to levy liquidated damages for the delay?

11.1. After going through the materials on record, arbitral tribunal held that respondent had produced documents to show that the delay in moving to the new premises had caused them direct financial loss in two ways:

(i) in having to continue to pay rent for ten and half months in the old premises; and

(ii) in having lost ten and half months in letting out portions of the new premises on rent.

11.2. Such a loss was on account of the breach of contract by the appellant. Respondent had established that the loss suffered by it indeed occurred due to

delay in handing over the new premises. Clause 26 of the contract agreement permitted the respondent to levy liquidated damages. It also provided as to how the quantum of liquidated damages should be arrived at. According to the arbitral tribunal, the quantum was at the rate of 0.5% per week of delay. Delay in this case was more than ten months. Bulk of the delay was for reasons within the control of the appellant.

The figure of Rs. 82,43,499.00 was correctly quantified and deducted as liquidated damages by the respondent. Therefore, the arbitral tribunal held that the liquidated damages were legally and contractually valid. It was reasonable compared to the loss occasioned to the respondent due to default by the appellant. Therefore, arbitral tribunal held as under: In view of all that has been stated above I conclude that recovery of LD was valid contractually and legally. It was levied by a competent authority and the levied amount was fair and reasonable. I therefore award Nil amount against this claim.

11.3. Thereafter, the arbitral tribunal rejected the other claims of the appellant as well as the counter claims of the respondent. Summary of the award dated 10.05.2010 reads as under: In sum therefore I do not find that any of the claims by the claimant or counter claims by the respondents have been established and the award is NIL against all the claims and counter-claims.

12. Clause 26 of the contract agreement deals with liquidated damages. Clause 26 reads thus:

26. Liquidated damages

If the contractor fails to complete the work by the date stated in the Appendix or within any extended time under clause 28 hereof the contractor shall pay or allow the employer to deduct the sum named in the Appendix as "Liquidated Damages" for the period during which the said works shall remain incomplete and the employer may deduct such damages from any money due or that may become due to the contractor.

12.1. Thus, what clause 26 says is that if the contractor fails to complete the work within the stipulated period or within the extended time as provided under clause 28 then the employer shall be entitled to deduct the sum named in the Appendix as liquidated damages for the period during which the contract work remained incomplete. The employer may deduct such liquidated damages from any money due or that may become due to the contractor.

12.2. In the Appendix, the time for completion was provided as 10 months from the 10th day of the written order to commence work or after the date on which the site was handed over to the contractor whichever was later. In so far determination of liquidated damages is concerned, it was mentioned in the

Appendix that the same would be calculated at the rate of Rs. 0.5 percent of the contract value per week subject to a maximum of 5 percent of the value of the contract.

13. Clause 27 provides for extension of time. Clause 27 reads as under:

27. Extension of time

If the contractor shall desire an extension of time for completion of the work on the grounds of his having been unavoidably hindered (a) by force majeure or (b) by reason of any exceptional inclement weather or (c) reason of any proceedings taken or threatened by or dispute with adjoining or neighbouring employers or public authorities arising otherwise than through the contractor's own defaults or (d) by the work or delays of other contractors or tradesmen engaged or nominated by the employer or the architect and not referred to in the Schedule of Quantities and/or specifications or (e) by strikes or lockout affecting any of the building trades or (f) by reason of delays in the supply of materials stipulated to be supplied by the employer he shall apply in writing to the architect/employer within 15 days of such hindrance on account of which he desires such extension as aforesaid and the architect/employer, if in his opinion reasonable grounds have been shown therefor, may make a fair and reasonable extension of time for completion of the contract works, but the contractor shall nevertheless constantly use his endeavours to prevent delay and shall do all that may reasonably be required of him to proceed with the work expeditiously provided.

(a) that the contractor shall have no claim other than extension of time for the delay in completion of the work due to such hindrance and nothing else and

(b) that the contractor shall suspend the works whenever called upon to do so in writing by the architect/employer and shall be allowed reasonable extension of time for completion of work due to such suspension of work and nothing else.

13.1. What clause 27 provides for is that if the contractor wants an extension of time for completion of the work on the ground that the work has been unavoidably hindered:

(i) by force majeure; or

(ii) by reason of any exceptional inclement weather; or

(iii) by reason of any proceedings taken or dispute etc. with neighbours otherwise than the contractor's own default; or

(iv) due to the work or delay of other contractors or tradesmen engaged or nominated by the employer or the architect; or

(v) by strike or lock out affecting any of the building trades; or

(vi) by reason of delay in supply of materials stipulated to be supplied by the employer; or

(vii) if the contractor wanted extension of time, he was required to apply to the employer/architect for such extension within the period specified and if the employer/architect was of the opinion that reasonable grounds were shown, it would make a fair and reasonable extension of time for completion of the contract work.

14. Since, there is a reference to clause 28 in clause 26, we may as well consider clause 28. It deals with consequence of failure of the contractor to comply with the instructions of the architect or the employer. Clause 28 reads thus:

28. Failure of contractor to comply with Architect's/Employer's Instructions

If the contractor after receipt of written notice from the architect/employer requiring compliance within ten days fails to comply with such further drawings and/or architect/employer's instructions the employer may employ and pay other persons to execute any such work whatsoever that may be necessary to give effect thereto, and all costs incurred in connection therewith shall be recoverable from the contractor by the employer on the certificate of the architect as a debt or may be deducted by him from any money due to or become due to the contractor.

15. From a conjoint analysis of clauses 26, 27 and 28 it is evident that if the contractor fails to complete the work within the stipulated period or within the extended time as may be provided, he would be liable to pay liquidated damages which may be deducted by the employer from any due to be paid by the employer to the contractor. How the liquidated damages is to be determined is provided in the Appendix as noted above. If the contract work is hindered beyond the control of the contractor such as the examples given in clause 27, the contractor may seek extension of time and if the same is found to be reasonable, the employer may make a fair and reasonable extension of time. On a combined reading of the above clauses, a plausible view may be taken that clause 26 is not controlled by clause 27.

16. What the arbitrator noted in this case is that on a number of occasions, appellant had sought for time. On each occasion respondent was compelled to allow the appellant to carry on with the work beyond the extended time period by granting further extension, reserving its right to levy liquidated damages. It has come on record that in the review meeting held on 18.12.2006, respondent had put the appellant to notice that grant of extension of time for completion of the contract work would be without prejudice to the right of the respondent to recover liquidated damages. Though the first extended time limit was till

28.02.2007, further time had to be granted by the respondent on a number of occasions thereafter till 30.06.2007, on each occasion reserving the right to levy liquidated damages.

17. At this stage we may mention that appellant had continued execution of the work beyond 30.06.2007 and completed the same only on 30.11.2007 though the last extended period had expired on 30.06.2007. It was only after completion of the contract work that the appellant wrote letter dated 14.12.2007 to the respondent seeking extension of time. Respondent issued letter dated 26.09.2008 granting extension of time. So it was an ex post facto approval on the part of the respondent. Thus, appellant had continued with the contract work even after the extended period had expired on 30.06.2007. Be it stated that all throughout respondent had put the appellant to notice that notwithstanding extension of time it reserved the right to levy liquidated damages.

18. Section 55 of the Indian Contract Act says that when a party to a contract promises to do a certain thing within a specified time but fails to do so, the contract or so much of it as has not been performed, becomes voidable at the option of the promisee if the intention of the parties was that time should be of the essence of the contract. If time is not the essence of the contract, the contract does not become voidable by the failure to do such thing on or before the specified time but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Further, if in case of a contract voidable on account of the promisor's failure to perform his promise within the time agreed and the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance he gives notice to the promisor of his intention to do so.

19. Sections 73 and 74 deal with consequences of breach of contract. Heading of Section 73 is compensation for loss or damage caused by breach of contract. When a contract is broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it.

On the other hand, Section 74 deals with compensation for breach of contract where penalty is stipulated for. When a contract is broken, if a sum is mentioned in the contract as the amount to be paid in case of such breach or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled whether or not actually damage or loss is proved to have been

caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or the penalty stipulated for.

20. A conjoint reading of Sections 55, 73 and 74 would indicate that in a contract whether time is of the essence or not, if the contractor fails to execute the contract within the specified time, the contract becomes voidable at the option of the promisee and the promisee would be entitled to compensation from the promisor for any loss occasioned to him by such failure. However, in case of a contract where time is of the essence, the contract becomes voidable on account of the contractor's failure to execute the contract within the agreed time.

The promisee cannot claim compensation for any loss occasioned by such breach of the contract unless he gives notice to the promisor of his intention to claim compensation. This is made more specific in Section 73. Section 74 contemplates a situation where penalty is provided for and quantified as compensation for breach of contract. In such a case, the party complaining of the breach is entitled to compensation whether or not actual damage or loss is proved to have been caused thereby but such compensation shall not exceed the quantum of penalty stipulated.

21. Before we deal with the order of the learned Single Judge dated 02.01.2019 passed under Section 34 of the 1996 Act, it would be apposite to advert to Section 34 of the 1996 Act which is as follows:

34. Application for setting aside arbitral award-

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the court only if-

(a) the party making the application [establishes on the basis of the record of the arbitral tribunal that]-

(i) a party was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this part; or

(b) the court finds that-

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1.-For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.-For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

[(2-A) An arbitral award arising out of arbitration other than international commercial arbitration, may also be set aside by the court, if the court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in subsection (5) is served upon the other party.]

22. Sub-section (1) of Section 34 provides that an application may be made to the competent court for setting aside an arbitral award. This is the only remedy available for setting aside an arbitral award. The conditions for setting aside an arbitral award are mentioned in sub-sections (2) and (2A). Sub-section (2) provides for situations such as the agreed party was under some incapacity or the arbitration agreement is not valid under the law or the aggrieved party did not receive proper notice regarding appointment of arbitrator or of the arbitral proceedings which prevented it from presenting its case or the arbitral award deals with a dispute not contemplated by or not falling within the terms of arbitration or the composition of the arbitral tribunal or the procedure adopted in arbitration were not in accordance with the agreement of the parties or the subject matter of dispute is not capable of settlement by arbitration or the arbitral award is in conflict within the public policy of India.

In terms of sub-section (2A), an arbitral award may also be set aside on the ground of patent illegality appearing on the face of the award. Sub-section (3) provides for the time limit for filing of an application for setting aside arbitral award. Therefore, the grounds on which an arbitral award can be set aside are clearly mentioned in Sections 34(2) and 34(2A) of the 1996 Act. An arbitral award cannot be set aside on a ground which is beyond the grounds mentioned in sub-sections (2) and (2A) of Section 34.

23. Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited

grounds i.e. as those contained in sub-sections (2) and (2A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral tribunal.

If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the arbitral tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.

24. Therefore, the role of the court under Section 34 of the 1996 Act is clearly demarcated. It is a restrictive jurisdiction and has to be invoked in a conservative manner. The reason is that arbitral autonomy must be respected and judicial interference should remain minimal otherwise it will defeat the very object of the 1996 Act.

25. Keeping the above in view, let us now deal with the order of the learned Single Judge dated 02.01.2019 passed under Section 34 of the 1996 Act.

26. In the aforesaid order, learned Single Judge noted that the contract work was required to be executed within a period of 10 months. Appellant could not complete the work within the contract period due to land slides and rains. Ultimately, appellant could complete the work on 30.11.2007 by seeking extension of time which was granted by the respondent. There is no complaint about the construction. Learned Single Judge also noted that there were rains and land slides during the contract period which is not in dispute. Thereafter, learned Single Judge observed as under: If the building had been erected and there were landslides, it would affect the building constructed and there would not only have been loss of money, but also loss of lives and that the 1st respondent should thank the stars that no untoward event took place.

27. Learned Single Judge also observed that clause 26 of the contract agreement could not be read in isolation without reference to clause 27. The fact that appellant was allowed to carry on the contract work and to subsequently complete the same cannot be denied. Once there is extension of time, there cannot be a narrow interpretation to clause 26. Purpose of extension of time was only for completion of work.

Extension of time and levy of liquidated damages cannot go hand in hand. Contention of the respondent would have been acceptable had there been no extension in time or the work remained incomplete even after the extended period. In such an event, respondent would have been justified to levy and recover liquidated damages. Once the appellant had completed the work during the extended period of time, claim of liquidated damages by the respondent could not be accepted. Therefore, the arbitral award dated 10.05.2010 was set aside.

28. We are afraid learned Single Judge had clearly gone beyond the grounds provided in Section 34 of the 1996 Act to set aside the arbitral award. Learned Single Judge exceeded the jurisdiction under Section 34 of the 1996 Act. There was no justification for setting aside the arbitral award by taking a different view. View taken by the arbitral tribunal is certainly a possible and plausible view.

A different interpretation of clause 26 other than the one taken by the arbitral tribunal is possible but that will not bring the challenge to the arbitral award within the four corners of Section 34. In any view of the matter, mere setting aside of the arbitral award did not confer any benefit to the appellant. In the circumstances, the Division Bench was justified in reversing the order of the learned Single Judge under Section 37 of the 1996 Act.

29. That being the position, we do not find any merit in this appeal. Consequently, the appeal is dismissed. However, there shall be no order as to cost.

.....J. [Abhay S. Oka]

.....J. [Ujjal Bhuyan]

New Delhi;

April 28, 2025.

IN THE SUPREME COURT OF INDIA

**Gayatri Balasamy
Vs.
M/S ISG Novasoft Technologies Limited**

**Civil Appeal Nos. of 2025
(Arising out of S.L.P.(C) Nos.15336-15337 of 2021)**

**With
Civil Appeal No. of 2025
(Arising out of S.L.P.(C) No.21301 of 2024)**

**Civil Appeal No. of 2025
(Arising out of S.L.P.(C) No.17941 of 2019)**

**Civil Appeal No. of 2025
(Arising out of S.L.P.(C) No.7973 of 2022)**

**Civil Appeal Nos. of 2025
(Arising out of S.L.P.(C) Nos.4961-4962 of 2024)**

**Civil Appeal No. of 2025
(Arising out of S.L.P.(C) No. of 2025
@ S.L.P.(C) Diary No.7789 of 2024)**

**Civil Appeal Nos. of 2025
(Arising out of S.L.P.(C) Nos.18656-18663 of 2024)**

Civil Appeal No. 8183 of 2016

Civil Appeal No. 8184 of 2016

HEADNOTE – Courts can modify arbitral awards in certain circumstances under Sec. 34 or Sec. 37 of Arbitration and Conciliation Act, 2025. Courts have a limited power under Section 34 or 37 to modify arbitral awards. This limited power can be exercised in the following circumstances:-

1. When the award is severable by separating the invalid portion from the valid portion of the award.
2. To correct any clerical, computation or typographical errors which appear erroneous on the face of the record.
3. To modify post-award interest in some circumstances.

4. The special powers of the Supreme Court under Article 142 of the Constitution can be applied to modify awards. But this power must be exercised with great caution within the limits of the Constitution.

Justice Viswanathan dissents

The Courts exercising powers under Section 34 and the Courts hearing appeals therefrom under Section 37 have no power to modify an award. Power to modify is not a lesser power than the power to set aside as the two operate in separate spheres. The inherent power under Section 151 CPC cannot be used to modify awards, as it is against the express provision of Section 34. Similarly, there is no scope to invoke the doctrine of implied powers to imply the power to modify the award. Article 142 of the Constitution cannot be exercised to modify an award, as it is well settled that Article 142 cannot be used to go by the substantive statutory provisions

JUDGMENT

Sanjiv Khanna, CJI

1. A three-Judge Bench of this Court, vide order dated 20th February 2024, directed that the Special Leave Petitions in *Gayatri Balasamy v. ISG Novasoft Technologies Limited*,¹ be placed before the Chief Justice of India for an appropriate order. The matter was to be examined to determine the need to refer the following questions of law to a larger Bench:

“1. Whether the powers of the Court under Sections 34 and 37 of the Arbitration and Conciliation Act 1996 will include the power to modify an arbitral award?

2. If the power to modify the award is available, whether such power can be exercised only where the award is severable, and a part thereof can be modified?

3. Whether the power to set aside an award under Section 34 of the Act, being a larger power, will include the power to modify an arbitral award and if so, to what extent?

4. Whether the power to modify an award can be read into the power to set aside an award under Section 34 of the Act?

5. Whether the judgment of this Court in *Project Director NHAI vs. M. Hakeem*,² followed in *Larsen Air Conditioning and Refrigeration Company vs. Union of India*,³ and *SV Samudram vs. State of Karnataka*,⁴ lay down the correct law, as other benches of two Judges (in *Vedanta*

Limited vs. Shenzden Shandong Nuclear Power Construction Company Limited, 5 Oriental Structural Engineers Pvt. Ltd. vs. State of Kerala, 6 and M.P. Power Generation Co. Ltd. vs. Ansaldo Energia Spa) 7 and three Judges (in J.C. Budhraj vs. Chairman, Orissa Mining Corporation Ltd., 8 Tata Hydroelectric Power Supply Co. Ltd. vs. Union of India, 9 and Shakti Nath vs. Alpha Tiger Cyprus Investment No.3 Ltd.10) of this Court have either modified or accepted modification of the arbitral awards under consideration?”

2. Accordingly, this Bench of five-Judges has been constituted to decide the questions referred.

3. The fulcrum of the legal controversy rests on the following question(s): Are Indian courts jurisdictionally empowered to modify an arbitral award? If so, to what extent? The controversy arises because the Arbitration and Conciliation Act, 1996, 11 does not expressly empower courts to modify or vary an arbitral award. Section 34 of the 1996 Act only confers upon courts the power to set aside an award. Nevertheless, this Court, on several instances, has been compelled to modify arbitral awards, seeking to minimize protracted litigation and foster the ends of justice. In contrast, some judgments have posited that Indian courts cannot modify awards, due to the narrowly defined scope of Section 34. Therefore, divergent and contrasting judicial opinions exist on this question.

4. **Annexure A** to this judgment reproduces Section 34, and other pertinent provisions of the 1996 Act – namely Sections 5, 31, 33, 37, 43 and 48. Annexure B provides a compilation of prevailing stances adopted by foreign jurisdictions vis-à-vis the question of modification.

5. Before addressing the arguments raised, it would be useful to capture the divergence of judicial opinions on the question of modification. These conflicting judgments provide context to the legal controversy and the arguments presented.

A. JUDICIAL DIVERGENCE ON MODIFICATION POWERS

6. In *McDermott International Inc. v. Burn Standard Co. Ltd. and Others*, 12 this Court explained the difference between judicial interference permitted by the 1996 Act vis-à-vis the Arbitration and Conciliation Act, 1940¹³. The 1996 Act limits the supervisory role of the court to specific grounds under Section 34, while the 1940 Act gave courts broader powers under Sections 30 and 33. The Court clarified that under Section 34, the court does not act as an appellate authority for factual findings, evidence, or questions of law dealt with by the arbitral tribunal. At the same time, the 1996 Act mandates that arbitrators issue a reasoned award, which was not a requirement under the 1940 Act.

7. Further, the judgment clarifies the role of arbitrators in determining claims and counterclaims. The court cannot correct the arbitrator's mistakes, whether factual or legal. Rather, its role is confined to setting aside the award, leaving the parties the option to initiate fresh arbitration proceedings if they wish. However, when it came to the rate of interest, the Court invoked its power under Article 142 of the Constitution¹⁴ to vary the award, reducing the interest from 10% per annum (as awarded by the tribunal) to 7.5% per annum. It felt compelled to do so as there was a significant lapse of time. Two earlier decisions were relied upon: *Pure Helium India (P) Limited v. Oil & Natural Gas Commission*, ¹⁵ where the rate of interest was reduced from 18% per annum to 6% per annum, and *Mukand Ltd. v. Hindustan Petroleum Corpn. Ltd.*, ¹⁶ where the interest rate was lowered from 11% per annum to 7.5% per annum.

8. In *Vedanta Limited v. Shenzhen Shandong Nuclear Power Construction Company Limited*, ¹⁷ this Court, in the context of an international award, highlighted the need to consider the differing impact of interest rates when the parties operate in different currencies. The rate of interest had to be aligned with the applicable currency of each party. Accordingly, the Court held that applying a uniform interest rate for both the INR and Euro components was not justified. While maintaining the interest rate at 9% per annum for the INR component, the interest on the Euro component was modified to the London Interbank Offered Rate (LIBOR) rate plus 3 percentage points. Furthermore, the Court deleted the interest rate of 15% per annum, which was applicable if the awarded sum was not paid within 120 days. Significantly, this judgment did not reference the Court's power under Article 142 of the Constitution.

9. In *Oil and Natural Gas Corporation Limited v. Western GECO International Limited*, ¹⁸ a three Judge Bench of this Court observed that when an arbitral tribunal, upon considering the facts presented before it, fails to draw an inference that ought to have been drawn or, conversely, draws an inference that is manifestly untenable, resulting in a gross miscarriage of justice, such an award becomes amenable to challenge. In such circumstances, the award may be set aside or modified, depending on whether the offending part of the award is severable or not.

10. Earlier, a two-Judges Bench of this Court in *Numaligarh Refinery Ltd. v. Daelim Industrial Co. Ltd.*, ¹⁹ held that courts should ordinarily refrain from substituting their interpretation for that of the arbitrator. However, where the parties, with full knowledge, have consented to refer the matter to arbitration, the court may intervene and modify the award when it is demonstrably and reasonably justified. For example, when an arbitrator acts without jurisdiction or adopts an interpretation that is contrary to established law, the court has the authority to interfere and set the matter right.

11. In an earlier decision of this Court in *Tata Hydro-Electric Power Supply Co. Ltd. and Others v. Union of India*, 20 this Court exercised its power to modify the effective date from which the awarded interest would apply. However, similar to *Numaligarh Refinery Ltd. (supra)*, this decision did not specifically address the restricted grounds of Section 34.

12. In a catena of judgments of this Court, it has been consistently held that the arbitral tribunal is the master of evidence. The scope of judicial intervention under Section 34 is confined to the limited grounds expressly provided therein.²¹ The Court does not possess the power to correct errors of fact, reconsider costs, or engage in a review of the merits of the arbitral award.

13. In *Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India (NHAI)*, 22 a two-judge bench of this Court ruled that interference based on public policy violations under Section 34(2)(b)(ii) is limited to the fundamental policy of Indian law. The court cannot interfere merely because the arbitrator lacked a “judicial approach”.²³ Albeit in the said case, an issue arose which went beyond the narrow scope of Section 34. The fundamental principle of justice was stated to be violated due to a unilateral change or addition to the contract by the arbitral tribunal. The Court emphasized that such changes, made without the affected party’s consent, cannot be allowed. As a result, the majority award was set aside, along with the judgments of the Single Judge and the Division Bench of the High Court that had upheld the award. To ensure full justice, this Court, using its power under Article 142 of the Constitution, upheld the minority award and the interest it stipulated.

14. In *Oriental Structural Engineers Private Limited v. State of Kerala*, 24 this Court upheld the award for being in consonance with the contract but intervened to modify the interest rate. It was observed that the principles laid down in *Secretary, Irrigation Department, Government of Orissa and Others v. G.C. Roy*, 25 for determining the interest rate would be equally applicable to the 1996 Act. In fact, Section 31(7)(a) of the 1996 Act, incorporates this principle. Simple interest at the rate of 8% per annum was directed to be paid on the sum left unpaid.

15. In *Project Director, National Highways No. 45 E and 220 National Highways Authority of India v. M. Hakeem and Another*, 26 a two-judge bench of this Court held that Section 34 allows arbitral awards to be set aside only on the limited grounds specified in sub-sections (2) and (3). When a right is limited, its enforceability is coterminous with its limited nature, i.e., it can only be enforced in line with those limitations. As a result, the award can either be set aside or remanded to the arbitral tribunal. Section 34(4) facilitates such remand by allowing the court to adjourn the proceedings, and hence providing the arbitral

tribunal a chance to eliminate the grounds for setting it aside. Here again, the tribunal's opinion is key in determining whether the grounds for setting aside have been resolved.

16. The Court also noted that Section 34 is modelled on the UNCITRAL Model Law on International Commercial Arbitration, 1985,²⁷ which does not allow courts to modify awards. Unlike the broader powers available under the 1940 Act, the court's powers under the 1996 Act are narrower. The Court cited previous judgments of this Court and various High Courts, emphasizing that allowing modification under Section 34 would go against the legal framework, as only the legislature has the power to change the law. Any expansion of Section 34's powers to include modification would require a legislative amendment.

B. ARGUMENTS RAISED

I. In Favour of Modification

17. First, it is contended that the judgment in *M. Hakeem (supra)* warrants reconsideration, as it conflicts with several decisions rendered by Benches of two and three Judges of this Court, in which awards were modified and varied. This Court has also upheld the modification of awards by the High Courts or District Courts on other occasions. Second, it is claimed that the Model Law, based on the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958²⁸, permits a broader scope of judicial intervention. Several signatory countries to the Model Law have enacted provisions for domestic awards that permit modification and/or variation (Annexure B), in addition to allowing for the setting aside of awards. This international perspective, it is argued, reflects a broader understanding of the court's powers in arbitrations. Lastly, the principle that a greater power includes a lesser power is invoked. Since Section 34 allows for the setting aside of an award, it is argued that this power inherently includes the ability to modify the award, as modification is seen as a lesser form of intervention than annulment.

18. Reference is made to *Ahmedabad St. Xavier College Society and Another v. State of Gujarat and Another*, ²⁹ where a nine-Judge Bench of this Court applied the maxim "*omne majus continet in se minus*" – the greater contains the lesser. Applying this maxim, it is contended that the power to set aside will include power to modify or partially set aside an award. It is also submitted that the power to modify and set aside an award can be exercised when the award is in conflict with public policy in terms of Section 34(2)(b)(ii) or to the extent it is vitiated by patent illegality in terms of Section 34(2A) of the 1996 Act. This approach aligns with the jurisprudence of other jurisdictions such as the United Kingdom, Australia, Singapore, and other countries (Annexure B), where similar powers are vested in the courts.

19. Three additional and ancillary arguments were raised. The first argument was that the expression, 'recourse', used in Section 34, is broad in scope, and it can include any action to enforce a right. Thus, the recourse to set aside an award includes within its ambit the recourse to modify or vary it. The second argument relates to the public law aspect of land acquisition under the National Highways Act, 1956. As this Act mandates arbitration on public law issues, it is contended that commercial considerations can neither be factored in nor applied. Further, the court, while examining a petition under Section 34, has the power to enhance compensation for acquired land. Lastly, it was contended that the power to grant, reduce, or increase interest should be read into Section 34, without requiring the parties to go through a fresh arbitration process. The granting of interest does not necessitate an elaborate inquiry that would justify the need for re-arbitration.

II. Against Modification

20. The learned counsel opposing the court's power of modification argue that the Model Law was the result of a collective effort by several countries to establish a uniform and cohesive legal framework. During discussions, it was decided that courts should not have the power to modify awards. If courts had such power, it could result in a situation where a court order or decree replaces the arbitral award, which in arbitration jurisprudence is unacceptable. It may carry international repercussions when awards are sought to be enforced under foreign conventions.

21. For example, under the New York Convention, only arbitral awards are recognized and enforceable, not court decrees/orders that modify those awards. A court decree cannot substitute an arbitral award, especially when the award is examined under the limited jurisdiction of Section 34. Section 36 treats awards as enforceable in the same way as court decrees. However, unless Indian law legislatively empowers courts to modify awards, this power cannot be assumed from the power to set aside an award under Section 34. While some countries have granted courts the specific power to modify or vary an award under their domestic laws, Indian law does not permit the same.

22. It is further submitted that the maxim *omne majus continet in se minus* – the greater contains the lesser – should not be applied in the present case. The power to set aside an award is a *sui generis* power, which is intrinsically different from the modification power. Further, when an award is set aside, it results in the annulment of the award. Annulment means that the award no longer exists. Something that does not exist cannot be modified or altered. Similarly, it is submitted that the arbitral tribunal after rendering an award, becomes *functus officio*. Thus, the exercise of any modification, would lead to the courts adopting

appellate powers. Without appellate powers, which the court does not possess, an award cannot be modified. Therefore, assuming modification powers would be contrary to both the express language and the intent behind Section 34 of the 1996 Act. 23. Lastly, it is submitted that the doctrine of merger does not apply to court modifications of an arbitral award. The nature and scope of the power of a court, being distinct from an arbitral tribunal, the modifications will not merge with the arbitral award. In simpler words, any modification or variation made by the court to the arbitral award would not be subsumed into the arbitral award. For instance, if the court modifies the rate of interest decided by a tribunal, the original award will not be deemed to have been amended to reflect this new interest rate. This could cause issues at the enforcement stage, as the New York Convention allows only the enforcement of an arbitral award, not a court's judgment/order.

C. ANALYSIS

24. Given this background, we have to determine whether, and under what circumstances, the courts have the power to modify or vary arbitral awards. 25. We recognize that the legal controversy carries significant implications. The arguments canvassed symbolize the longstanding conflict between equity and justice, on the one hand, and the fetters imposed by the court's jurisdictional limits, on the other. Therefore, in addressing the questions referred, it is crucial to adopt a balanced approach. While we may favour an equitable and pragmatic view, our interpretation must not be at odds with the express or implied legislative intent underlying the 1996 Act. The question therefore is – to what extent can we weave the principles of equity and justice while not offending the jurisdictional fabric of Section 34? 26. We begin by examining the scope and ambit of the power of 'recourse' under Section 34 of the 1996 Act.

I. Contours of Section 34, 1996 Act

27. Section 5 of the 1996 Act limits judicial intervention in an arbitral award to what is authorized by Part I of the Act. Section 34(1) stipulates that 'recourse' to a court against an arbitral award may be made only by an application for setting aside the award in accordance with Section 34(2) and 34(3). 28. Section 34(2)(a) enumerates specific grounds on which an award can be set aside. These include – the incapacity of a party, invalidity of an arbitration agreement in law, improper notice for appointment of an arbitrator or arbitral proceedings, denying the opportunity to a party to present their case, the award being beyond the scope of submission to arbitration, and the composition of the arbitral tribunal or the arbitral procedure not being by the agreement of the parties in certain circumstances. The proviso to Section 34(2)(a)(iv) outlines the concept of "severability of awards". This has been addressed separately in Part II of our Analysis.

29. Section 34(2)(b) stipulates that an arbitral award may be set aside when the subject matter of the dispute cannot be settled by arbitration per the applicable law or if the arbitral award conflicts with the public policy of India. Explanation I clarifies that an award can conflict with public policy of India only if (i) the award is induced or affected by fraud, corruption or is in violation of Section 7531 or Section 8132 of the 1996 Act; (ii) when it is in contravention with the fundamental policy of Indian law; 33 or (iii) when it conflicts with the most basic notions of morality or justice. Explanation 2 mandates that no review on the merits shall be undertaken when determining a contravention of the fundamental policy of Indian law.

30. Section 34(2-A) stipulates that an award may be set aside when it is vitiated by patent illegality appearing on the face of the award. The proviso clarifies that such determination shall not be made solely because there is an erroneous application of law or through reappreciation of evidence. Section 34(3) provides timelines which needs to be adhered to while filing an application under Section 34. Section 34(4) stipulates the court's power of remanding an award to the arbitral tribunal. We have addressed this remand power in Part VI of our Analysis. Section 34(5) outlines notice requirements, while Section 34(6) mandates the expeditious disposal of Section 34 applications, setting a hard outer limit of one year from the date of service of notice on the other party under Section 34(5). 31. The next question that arises is whether the power to set aside an award includes the power to partially set it aside.

II. Severability of Awards

32. In the present controversy, the proviso to Section 34(2)(a)(iv) is particularly relevant. It states that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the arbitral award which contains decisions on matters non-submitted may be set aside. The proviso, therefore, permits courts to sever the non-arbitrable portions of an award from arbitrable ones. This serves a two-fold purpose. First, it aligns with Section 16 of the 1996 Act, which affirms the principle of kompetenzkompetenz — that is, the arbitrators' competence to determine their own jurisdiction. Secondly, it enables the court to sever and preserve the “valid” part(s) of the award while setting aside the “invalid” ones. 34 Indeed, before us, none of the parties have argued that the court is not empowered to undertake such a segregation.

33. We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the “invalid” portion of an arbitral award from the “valid” portion, while remaining within the narrow confines of Section 34, is inherent in the court's jurisdiction when setting aside an award. 34. To this extent, the doctrine of omne majus continet in se minus—the greater

power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified. 35. However, we must add a caveat that not all awards can be severed or segregated into separate silos. Partial setting aside may not be feasible when the “valid” and “invalid” portions are legally and practically inseparable. In simpler words, the “valid” and “invalid” portions must not be inter-dependent or intrinsically intertwined. If they are, the award cannot be set aside in part.

36. The Privy Council, in *Pratap Chamaria v. Durga Prasad Chamaria*, 35 addressed this issue with the following pertinent observations:

“...If, however, the pronouncement of the arbitrators is such that matters beyond the scope of the suit are inextricably bound up with matters falling within the purview of the litigation, in that case, the court would be unable to give effect to the award because of the difficulty that it cannot determine to what extent the decision of the subject-matter of the litigation has been affected and coloured by the decision of the arbitrators in regard to matters beyond the ambit of the suit....”

Thus, the power of partial setting aside should be exercised only when the valid and invalid parts of the award can be clearly segregated—particularly in relation to liability and quantum and without any correlation between valid and invalid parts.

37. We would now proceed to examine, the permissibility and scope of the court’s modification powers, within the parameters of Section 34 of the 1996 Act. In doing so, we will distinguish the court’s power of modification from: (i) the court’s power of setting aside an award; (ii) the arbitrator’s power under Section 33 to correct, reinterpret, and/or issue an additional award; and (iii) the power of the court to remand the award to the arbitrator under Section 34(4).

III. Difference between setting aside and modification

38. This distinction lies at the heart of many arguments canvassed before us. The parties opposing the recognition a power of modification of the courts have strenuously contended that modification and setting aside are distinct and sui generis powers. While modification involves altering specific parts of an award, setting aside does not alter the award but results in its annulment. Their primary concern is that recognizing a power of modification may invite judicial

interference with the merits of the dispute—something arguably inconsistent with the framework of the 1996 Act.

39. We agree with this argument, but only to a limited extent. It is true that modification and setting aside have different consequences: the former alters the award, while the latter annuls it. 36 However, we do not concur with the view that recognizing any modification power will inevitably lead to an examination of the merits of the dispute. It will completely depend on the extent of the modification powers recognised by us. In the following part of our Analysis, we outline the contours of this limited power and explain why, in our view, recognizing it will ultimately yield more just outcomes.

IV. A Limited Power of Modification Can Be Located in Section 34

40. A core principium of arbitration, an Alternative Dispute Resolution³⁷ mechanism, is to provide a quicker and cost-effective alternative to courtroom litigation. While this suggests minimal judicial interference, the role of domestic courts remains crucial, as they function in a supportive capacity to facilitate and expedite the resolution of disputes. Therefore, it follows that judicial intervention is legitimate and necessary when it furthers the ends of justice, including the resolution of disputes.

41. To deny courts the authority to modify an award—particularly when such a denial would impose significant hardships, escalate costs, and lead to unnecessary delays—would defeat the *raison d'être* of arbitration. This concern is particularly pronounced in India, where applications under Section 34 and appeals under Section 37 often take years to resolve. 42. Given this background, if we were to decide that courts can only set aside and not modify awards, then the parties would be compelled to undergo an extra round of arbitration, adding to the previous four stages: the initial arbitration, Section 34 (setting aside proceedings), Section 37 (appeal proceedings), and Article 136 (SLP proceedings). In effect, this interpretation would force the parties into a new arbitration process merely to affirm a decision that could easily be arrived at by the court. This would render the arbitration process more cumbersome than even traditional litigation.

43. Equally, Section 34 limits recourse to courts to an application for setting aside the award. However, Section 34 does not restrict the range of reliefs that the court can grant, while remaining within the contours of the statute. A different relief can be fashioned as long as it does not violate the guardrails of the power provided under Section 34. In other words, the power cannot contradict the essence or language of Section 34. The court would not exercise appellate power, as envisaged by Order XLI of the Code of Civil Procedure, 1908³⁸.

44. We are of the opinion that modification represents a more limited, nuanced power in comparison to the annulment of an award, as the latter entails a more severe consequence of the award being voided in toto. Read in this manner, the limited and restricted power of severing an award implies a power of the court to vary or modify the award. It will be wrong to argue that silence in the 1996 Act, as projected, should be read as a complete prohibition.

45. We are thus of the opinion that the Section 34 court can apply the doctrine of severability and modify a portion of the award while retaining the rest. This is subject to parts of the award being separable, legally and practically, as stipulated in Part II of our Analysis.

46. Mustill and Boyd have observed that an order varying an award is not equivalent to an appellate process.³⁹ The authors suggest that a modification order would only be appropriate where the modification, including any adjustment of costs, follows inevitably from the tribunal's determination of a question of law.⁴⁰ This approach would be beneficial, as it would reduce costs and delays. The courts need not engage in any fact-finding exercise. By acknowledging the Court's power to modify awards, the judiciary is not rewriting the statute. We hold that the power of judicial review under Section 34, and the setting aside of an award, should be read as inherently including a limited power to modify the award within the confines of Section 34.

V. Court can modify the award despite Sections 33 and 34(4)

47. Section 33 of the 1996 Act (Annexure A) empowers an arbitrator, upon request, to correct and/or re-interpret the arbitral award, on limited grounds. This includes the correction of computational, clerical or typographical errors, as well as giving interpretation on a specific point or a part of the award, when mutually agreed upon by the parties. Section 33(3) enables the tribunal to suo moto correct any errors within thirty days of delivering the award. Section 33(4) grants wider powers. It permits the arbitral tribunal, upon compliance with specified manner of request, to make an additional award on claims presented before the arbitral proceedings but omitted from the arbitral award.

48. Section 33(7) states that Section 31 (Annexure A) shall apply where correction, interpretation or any addition is made to the arbitral award. Section 31 deals with form and content requirements for arbitral awards. Consequently, an order passed by the arbitral tribunal under Section 33 amounts to an arbitral award. Under Section 34(3), where a request is made under Section 33, the limitation period for filing an application to set aside the award commences from the date on which the arbitral tribunal disposes of the Section 33 request.

49. Notwithstanding Section 33, we affirm that a court reviewing an award under Section 34 possesses the authority to rectify computational, clerical, or typographical errors, as well as other manifest errors, provided that such modification does not necessitate a merits-based evaluation. There are certain powers inherent to the court, even when not explicitly granted by the legislature. The scope of these inherent powers depends on the nature of the provision, whether it pertains to appellate, reference, or limited jurisdiction as in the case of Section 34. The powers are intrinsically connected as they are part and parcel of the jurisdiction exercised by the court.

50. In *Grindlays Bank Ltd. v. Central Government Industrial Tribunal and Others*,⁴¹ this Court has held that every tribunal or court is endowed with certain ancillary or incidental powers which are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In that case, the simple question was whether an *ex parte* award passed on merits, when sought to be set aside by an application showing sufficient cause, amounts to seeking a review on merits of the dispute. The Court held that a procedural review differs from a review on merits of the dispute. The former is a power inherent in every court or tribunal and inadvertent errors committed by another tribunal can be corrected by the court/tribunal. This would not amount to a review on merits. The reasoning distinguishing between procedural and merits review is reproduced below:

“The expression “review” is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the court in *Patel Narshi Thakershi* case held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inheres in every court or Tribunal.”

51. Reference may also be made to the power of recall, which every court possesses, as recognized by this Court in *Budhia Swain and Others v. Gopinath Deb and Others*⁴². The availability of this power enables the court to address various situations efficiently, rather than remanding the matter to the arbitral tribunal under Section 34(4). Lastly, one may also refer to the power of granting interim relief if the circumstances so warrant.

52. The doctrine of implied power is to only effectuate and advance the object of the legislation, i.e., the 1996 Act and to avoid the hardship. It would, therefore,

be wrong to say that the view expressed by us falls foul of express provisions of the 1996 Act.

53. Under Section 152 of the Code,⁴³ a court executing a decree has the power to correct clerical or arithmetic mistakes in judgments, orders, or decrees arising from any accidental slips or omissions. This Court, in *Century Textiles Industries Limited v. Deepak Jain and Another*,⁴⁴ held that clerical or arithmetical errors may be corrected by the executing court, however, the court must take the decree according to its tenor and cannot go behind the decree.

54. In the same vein as these judgments, we hold that inadvertent errors, including typographical and clerical errors can be modified by the court in an application under Section 34. However, such a power must not be conflated with the appellate jurisdiction of a higher court or the power to review a judgment of a lower court. The key distinction between Section 33 and Section 34 lies in the fact that, under Section 34, the court must have no uncertainty or doubt when modifying an award. If the modification is debatable or a doubt arises regarding its appropriateness, i.e., if the error is not apparent on the face of the record, the court will be left unable to proceed, its hands bound by the uncertainty. In such instances, it would be more appropriate for the party to seek recourse under Section 33 before the tribunal or under Section 34(4).

VI. To Modify or to Remit? Addressing the court's quandary

55. As elucidated above, if a fog of uncertainty obscures the exercise of modification powers, the courts must not modify the award. Instead, they should avail their remedial power and remand the award to the tribunal under Section 34(4). Under the sub-section, either party—whether the one challenging the award under Section 34 or the one defending against such a challenge—may request the court to adjourn the proceedings for a specified period. If the court deems it appropriate, it may grant such an adjournment, allowing the arbitral tribunal to resume proceedings or take necessary corrective measures to eliminate the grounds for setting aside the award. Thus, Section 34(4) provides a second opportunity for a party to seek recourse through arbitral channel.

56. However, the power of remand permits the court only to send the award to the tribunal for reconsideration of specific aspects. It is not an open-ended process; rather, it is a limited power, confined to limited circumstances and issues identified by the court. Upon remand, the arbitral tribunal may proceed in a manner warranted by the situation – including recording additional evidence, affording a party an opportunity to present its case if previously denied, or taking any other corrective measures necessary to cure the defect. In contrast, the exercise of modification powers does not allow for such flexibility. Courts must act with certainty when modifying an award – like a sculptor working with a

chisel, needing precision and exactitude. Therefore, the argument that remand powers make modification unnecessary is misconceived. They are distinct powers and are to be exercised differently.

57. Section 34(4), derived from the Model Law, is discretionary in nature. This is evident from the use of the word “may” in the provision. The Court may invoke this power when it identifies a defect in the award that could lead to its setting aside. In such cases, the court may seek to prevent this outcome by granting the arbitral tribunal an opportunity to rectify the defect.

58. While it is not appropriate to establish rigid parameters or a straitjacket formula for the exercise of this power, it is clear that Section 34(4) does not authorize the arbitral tribunal to rewrite the award on merits or to set it aside. Rather, it serves as a curative mechanism available to the tribunal when permitted by the court. The primary objective is to preserve the award if the identified defect can be cured, thereby avoiding the need to set aside the award. Accordingly, a court may not grant a remand when the defect in the award is inherently irreparable. A key consideration is the proportionality between the harm caused by the defect and the means available to remedy it.

59. While exercising this power, the court must also remain mindful that the arbitral tribunal has already rendered its decision. If the award suffers from serious acts of omission, commission, substantial injustice, or patent illegality, the same may not be remedied through an order of remand. Clearly, there cannot be a lack of confidence in the tribunals’ ability to come to a fair and balanced decision when an order of remit is passed.

60. Thus, an order of remand should not be passed when such order would place the arbitral tribunal in an invidious or embarrassing position. Additionally, remand may be inappropriate when it does not serve the interests of the parties, particularly in time-sensitive matters or where it would lead to undue costs and inefficiencies. Once an order of remand is granted, the arbitral tribunal has the authority to vary, correct, review, add to, or modify the award. Notably, under Section 34(4), the tribunal’s powers, though confined, remain nonetheless substantial. This stands in contrast to the court’s narrow role under the rest of Section 34.

61. This Court, in *Kinnari Mullick and Another v. Ghanshyam Das Damani*,⁴⁵ referred to and laid down the preconditions for exercising the power of remand under Section 34(4). It held that the court cannot exercise the power of remand suo motu in the absence of a written request by one of the parties. Secondly, once an application under Section 34(1) has been decided and the award set aside, the court becomes functus officio and cannot thereafter remand the matter to the

arbitral tribunal. Consequently, the power under Section 34(4) cannot be invoked after the court has disposed of the Section 34(1) application.

62. We are unable to accept the view taken in *Kinnari Mullick* (supra), which insists that an application or request under Section 34(4) must be made by a party in writing. The request may be oral. Nevertheless, there should be a request which is recorded by the court. We are also unable to agree that the request must be exercised before the application under Section 34(1) is decided. Section 37 (Annexure A) permits an appeal against any order setting aside or refusing to set aside an arbitral award under Section 34. To this extent, the appellate jurisdiction under Section 37 is coterminous with, and as broad as, the jurisdiction of the court deciding objections under Section 34. Hence, the contention that the tribunal becomes *functus officio* after the award is set aside is misplaced. The Section 37 court still possesses the power of remand stipulated in Section 34(4). Of course, the appellate court, while exercising power under Section 37, should be mindful when the award has been upheld by the Section 34 court. But the Section 37 court still possesses the jurisdiction to remand the matter to the arbitral tribunal.

63. Our reasoning does not breach the principle of party autonomy.⁴⁶ Neither does it confer appellate powers on the courts. Instead, it adheres strictly to the parameters stipulated in Sections 34 and 37 of the 1996 Act. The power of the appellate court in civil proceedings under Order XLI of the Code, is as broad as that of a trial court, both in terms of facts and law. Contrastingly, the court's authority under Sections 34 and 37 of the 1996 Act is limited by the silhouette of Section 34.

64. In *Dyna Technologies Private Limited v. Crompton Greaves Limited*,⁴⁷ this Court emphasized that the issuance of a reasoned award is not a mere formality under the 1996 Act. For an award to be termed “reasoned”, it must meet three essential yardsticks: it must be proper, intelligible, and adequate. The purpose behind Section 34(4) is clear: it allows for an award to become enforceable after granting the tribunal an opportunity to cure any defects. This power is exercisable when the arbitral tribunal has failed to give any reasoning or the award exhibits gaps in reasoning and these defects can be cured, thereby preventing unnecessary challenges. The underlying intent is to provide an effective, expeditious forum for addressing curable defects, which Section 34(4) facilitates.

65. In *I-Pay Clearing Services Private Limited v. ICICI Bank Limited*,⁴⁸ this Court clarified that Section 34(4) does not grant the authority to review or reconsider previous findings or conclusions. As discussed earlier in this judgment, the scope of the power under Section 34(4) is not to be restricted to a rigid, straitjacket formula. Rather, it depends on the specific facts and circumstances of each case. Being a discretionary power, it is to be exercised by

the Court judiciously, keeping in mind the grounds raised in the application under Section 34(1). The Court should be prima facie satisfied that the wrong and illegality in the award are curable. While doing so, the Court need not record the final finding on the contentious issue at hand; however, not every request for such relief is warranted. The discretion must be exercised with caution, and only when it is evident that an adjournment will allow the arbitral tribunal to resolve the issues and remove the grounds for setting aside the award. However, Section 34(4) is an enabling provision—it does not compel the tribunal to take corrective action, leaving it free to either amend or refuse to amend the award.

VII. Doctrine of Merger and the New York Convention

66. The reliance placed on doctrine of merger, coupled with the argument that court orders partially setting aside or modifying an award would render the amended award unenforceable under the New York Convention, is unfounded and must be rejected as misconceived. We are of the view that, once Section 34 is reinterpreted to include a limited power to modify awards, this authority will not affect the international commercial arbitration regime or the enforcement of foreign awards.

67. Section 48 of the 1996 Act (Annexure A), which is similarly worded as Article V of the New York Convention, delineates situations when the enforcement of a foreign award may be refused. Section 48(1)(e) states the award may not be enforced when it has not become binding on the parties or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made. In simpler words, the award must become “binding on the parties” in terms of the law of the seat before enforcement. Sub-clause (e) therefore recognizes that, for enforcement, the domestic law of the country where the award is made shall prevail and have supremacy. Thus, this Court’s interpretation, reading modification powers into Section 34, would not be at loggerheads with the New York Convention. The Convention requires the enforcement court to consider whether an award has become binding in terms of the law of the seat.

68. In any case, the New York Convention, as explained by this Court in *Brace Transport Corporation of Monrovia, Bermuda v. Orient Middle East Lines Limited, Saudi Arabia and Others*,⁴⁹ speaks of “recognition and enforcement” of an award. An award may be recognized without being enforced; but if it is enforced, then it is necessarily recognized. Recognition may act as a shield against re-agitation of issues which the award deals with. A party successful in arbitration, may seek and rely upon recognition, if proceedings are brought against him on issues already dealt with by an award. A defensive shield is then erected on the award.

69. Based on the above discussion, the argument that several countries like Singapore, Kenya, and the United Kingdom (Annexure B) – though originally following the Model Law – now allow courts to modify an award in limited cases, while the 1996 Act does not, is only linguistically correct. However, it is not convincing jurisprudentially or in principle. The limited power under Section 34 allows the court to vary or modify the award. The effect thereof is that the award would be read as modified by the judgment/order.

VIII. NHA I Act – Expansive Modification of Arbitral Awards is Impermissible

70. It has been argued that Section 34 should be expansively interpreted to permit modification of awards under the NHA I Act. In particular, it is suggested that courts should be allowed to modify the quantum of compensation awarded, as the Act involves statutory arbitration. This argument is, however, untenable. The jurisdiction conferred under Section 34 does not distinguish between statutory and non-statutory arbitration in terms of the scope of courts' power of review. Hence, this argument stands rejected.

71. We refrain from expressing any opinion on the validity of the provisions under the NHA I Act, which is presently under judicial consideration in a separate writ petition. Neither do we adjudicate upon whether or in what manner awards issued by statutory authorities may be challenged.

IX. Post-Award Interest

72. The next question that arises is: do courts possess the power to declare or modify interest, especially post award interest? In respect of pendente lite interest, Section 31(7)(a) (Annexure A), states that unless otherwise agreed by the parties, the arbitral tribunal may include in its sum for the award, interest, at such rate it deems reasonable on whole or part of the money for whole or part of the period on which the cause of action arose and the date on which the award is made. In respect of post-award interest, Section 31(7)(b) (Annexure A) states that unless an award provides for interest on a sum directed to be paid by it, the sum will carry an interest at a 2% higher rate than the current rate of interest prevalent on the date of the award, from the date of the award till the date of payment. The explanation defines the expression 'current rate of interest'.

73. There can be instances of violation of Section 31(7)(a), and the pendente lite interest awarded may be contrary to the contractual provision. We are of the opinion that, in such cases, the court while examining objections under Section 34 of the 1996 Act will have two options. First is to set aside the rate of interest or second, recourse may be had to the powers of remand under Section 34(4).

74. For the post award interest in terms of Section 31(7)(b), the courts will retain the power to modify the interest where the facts justify such modification. This is why the standard rate stipulated in clause (b) applies when the award itself does not specify the applicable post award interest. There can be a situation where the party to be paid money is at fault and is guilty of delay which may require a modification in the rate of interest. In the absence of grant of post award interest in the award, the court also possesses the power to grant post award interest. Clearly, as per the legislative mandate, it is not the sole prerogative of the arbitrator.

75. Compare Section 31 of the 1996 Act with Section 31 of the Model Law. While both sections are titled similarly – “Form and Contents of Award” – only the 1996 Act addresses interest in Section 31(7). The Model Law does not provide standards governing the determination of interest rates. Thus, Section 31(7) is a unique creation of the Indian legislature. It was not borrowed from the Model Law. Specifically, under Section 31(7)(b), the legislature has established a standard rate of interest to guide the arbitrator’s discretion when it comes to determining the post-award interest rate. While the arbitrator retains his flexibility based on facts and circumstances of the case, the standard set by the legislature must weigh in on their consideration. Further, as there is a standard prescribed by the legislature, the post-award interest awarded can be scrutinized by courts against the standards prescribed.

76. Our reasoning is bolstered when considering the practical aspects. Arbitral tribunals, when determining post-award interest, cannot foresee future issues that may arise. Post award interest is inherently future-oriented and depends on facts and circumstances that unfold after the award is issued. Since the future is unpredictable and unknown to the arbitrator at the time of the award, it would be unreasonable to suggest that the arbitrator, as a soothsayer, could have anticipated or predicted future events with certainty. Therefore, it is appropriate for the Section 34 court to have the authority to intervene and modify the post-award interest if the facts and circumstances justify such a change.

77. Inherent in the discussion above, is the court's power to both increase or decrease the post-award interest rate. It would be incorrect to state that the court's power to interfere with this interest rate is limited solely to decreasing the interest rate. Situations may arise where the rate should be increased due to delays or obstructions in the execution of the award. Interest rates may also fluctuate over time.

78. However, the court, while exercising this power, must be cautious and mindful not to overstep its role by altering the interest rate unless there are compelling and well-founded reasons to do so. In exercising this power, the court is not acting in an appellate capacity, but rather under limited authority. For

instance, the 1996 Act stipulates a standard post-award interest rate. When the statute itself benchmarks a standard, unless there are special and specific reasons, the rate of interest stipulated by the statute should be applied.

79. Nevertheless, this limited power is significant, as it can help avoid further rounds of litigation. Without it, the court may be forced to set aside the entire award or order a fresh round of arbitration because of an erroneous interest rate rather than simply adjusting this rate.

X. Post-Award Settlements

80. We are also of the opinion that the parties are entitled to enter into an agreement or settlement even after an award is pronounced. Such a settlement should be in accordance with the provisions of Order XXIII of the Code. The law of the land does not bar the parties from entering into a post award or post decree settlement. The only legal requirement is that such settlement must be verifiable and in accordance with law i.e., the settlement is not a result of undue influence, force, fraud, coercion, etc.

XI. Limitation Period – Section 34

81. This brings us to Section 43(4) (Annexure A) of the 1996 Act. It clarifies the legal position re limitation and setting aside. For context, once an award is set aside, it becomes null and void, but the original dispute may still require resolution. The 1996 Act, vide Section 43(4), enables the parties to initiate fresh arbitration or court proceedings in relation to the dispute. However, the question that arises is: how do we calculate the limitation period within which the fresh arbitration or court proceedings are to be commenced? Section 43(4) stipulates that the period between the commencement of arbitration and the Court's order setting aside the award is excluded for the purposes of calculating the limitation period under the Limitation Act, 1963. In essence, the time during which the award is in force is not counted. We are also cognizant that there could be a situation that, on setting aside of the award, the entire dispute gets resolved and decided. However, we need not go into this question. What is relevant is that Section 43(4) provides liberty for the parties to invoke either arbitration or court proceedings, as applicable, following the annulment of the award.

XII. Supreme Court's Power to Do Complete Justice

82. As far as the applicability of Article 142 of the Constitution is concerned, this power is to be exercised by this Court with great care and caution. Article 142 enables the Court to do complete justice in any cause or matter pending before it. The exercise of this power has to be in consonance with the fundamental

principles and objectives behind the 1996 Act and not in derogation or in suppression thereof.

83. In *Shilpa Sailesh v. Varun Sreenivasan*,⁵⁰ a Constitution Bench of this Court summarized the scope of its power under Article 142 of the Constitution as follows:

“19. Given the aforesaid background and judgments of this Court, the plenary and conscientious power conferred on this Court under Article 142(1) of the Constitution of India, seemingly unhindered, is tempered or bounded by restraint, which must be exercised based on fundamental considerations of general and specific public policy. Fundamental general conditions of public policy refer to the fundamental rights, secularism, federalism, and other basic features of the Constitution of India. Specific public policy should be understood as some express pre-eminent prohibition in any substantive law, and not stipulations and requirements to a particular statutory scheme. It should not contravene a fundamental and non-derogable principle at the core of the statute. Even in the strictest sense, it was never doubted or debated that this Court is empowered under Article 142(1) of the Constitution of India to do “complete justice” without being bound by the relevant provisions of procedure, if it is satisfied that the departure from the said procedure is necessary to do “complete justice” between the parties.”

84. While exercising power under Article 142, this Court must be conscious of the aforesaid dictum. In our opinion, the power should not be exercised where the effect of the order passed by the court would be to rewrite the award or modify the award on merits. However, the power can be exercised where it is required and necessary to bring the litigation or dispute to an end. Not only would this end protracted litigation, but it would also save parties’ money and time.

CONCLUSIONS

85. Accordingly, the questions of law referred to by Gayatri Balasamy (supra) are answered by stating that the Court has a limited power under Sections 34 and 37 of the 1996 Act to modify the arbitral award. This limited power may be exercised under the following circumstances:

- I. when the award is severable, by severing the “invalid” portion from the “valid” portion of the award, as held in Part II of our Analysis.
- II. by correcting any clerical, computational or typographical errors which appear erroneous on the face of the record, as held in Part IV and V of our Analysis;
- III. post award interest may be modified in some circumstances as held in Part IX of our Analysis; and/or

IV. Article 142 of the Constitution applies, albeit, the power must be exercised with great care and caution and within the limits of the constitutional power as outlined in Part XII of our Analysis.

.....CJI. (SANJIV KHANNA)

.....J. (B.R. GAVAI)

.....J. (SANJAY KUMAR)

.....J. (AUGUSTINE GEORGE MASIH)

NEW DELHI;

APRIL 30, 2025

Note – Minority judgment of Justice K. V. Viswanathan can be seen on the official website of Hon'ble Supreme Court

1 2024 SCC OnLine SC 1681.

2 (2021) 9 SCC 1.

3 (2023) 15 SCC 472.

4 (2024) 3 SCC 623.

5 (2019) 11 SCC 465.

6 (2021) 6 SCC 150.

7 (2018) 16 SCC 661

8 (2008) 2 SCC 444.

9 (2003) 4 SCC 172.

10 (2020) 11 SCC 685.

11 Hereinafter referred to as, “1996 Act”.

12 (2006) 11 SCC 181.

13 Hereinafter referred to as, “1940 Act”.

14 **“142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.—** (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the

attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.”

15 (2003) 8 SCC 593

16 (2006) 9 SCC 383

17 (2019) 11 SCC 465

18 (2014) 9 SCC 263.

19 (2007) 8 SCC 466.

20 (2003) 4 SCC 172.

21 See Maharashtra State Electricity Distribution Company Limited v. Datar Switchgear Limited and Others, (2018) 3 SCC 133; Parsa Kente Collieries Limited v. Rajasthan Rajya Vidyut Utpadan Nigam Limited, (2019) 7 SCC 236; and M.P. Power Generation Co. Ltd. v. ANSALDO Energia SpA, (2018) 16 SCC 661.

22 (2019) 15 SCC 131.

23 For domestic awards made in India, an additional ground of interference is available – patent illegality appearing on the face of the award – in terms of Section 34(2A) of the 1996 Act

24 (2021) 6 SCC 150.

25 (1992) 1 SCC 508.

26 (2021) 9 SCC 1.

27 Hereinafter referred to as, “Model Law”.

28 Hereinafter referred to as, “New York Convention”

29 (1974) 1 SCC 717.

30 Hereinafter referred to as, “NHAI Act”.

31 **“75. Confidentiality.**— Notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.”

32 **“81. Admissibility of evidence in other proceedings.**— The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,—

(a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;

(b) admissions made by the other party in the course of the conciliation proceedings;

(c) proposals made by the conciliator;

(d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.”

33 In Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India (NHAI), (2019) 15 SCC 131 the scope of the public policy ground for setting aside awards was narrowed and confined to violations of the fundamental policy of Indian law.

34 The “validity” and “invalidity”, as used here, does not refer to legal validity or merits examination, but validity in terms of the proviso to Section 34(2)(a)(iv) of the 1996 Act.

35 AIR 1925 PC 293.

36 The words used in the statute must be interpreted contextually, taking into account the purpose, scope, and background of the provision. Many words and expressions have both narrow and broad meanings and thereby open to multiple interpretations. Legal interpretation should align with the object and purpose of the legislation. Therefore, we may not strictly apply a semantic differentiation while interpreting the words "modification" or "setting aside". Instead, a holistic and purposive interpretation of these words will be consistent with the intent behind the provision and the 1996 Act. Linguistically and even jurisprudentially, a distinction can be drawn between the expressions – modification, partial setting aside, and setting aside of an arbitral award in its entirety. However, we must note that the practical effect of partially setting aside an award is the modification of the award.

37 Hereinafter referred to as, “ADR”.

38 Hereinafter referred to as, “Code”.

39 Sir Michael J. Mustill & Stewart C Boyd QC, Commercial Arbitration, p. 617 (2nd ed. 2001).

40 Ibid.

41 1980 Supp SCC 420

42 (1999) 4 SCC 396.

43 **“152. Amendment of judgments, decrees or orders.—** Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.”

44 (2009) 5 SCC 634.

45 (2018) 11 SCC 328.

46 Rather, it acknowledges that the parties opting for arbitration also consent to be governed by the applicable statute governing arbitration—in this case, the 1996 Act. Further, principle of party autonomy should not be extended to an extreme to urge that the party misunderstood the law and consequently the consent is invalid. While it is true that a mistake of law may vitiate consent in certain contexts, the interpretation here restricts the court's role to that of limited judicial scrutiny in terms of the 1996 Act.

47 (2019) 20 SCC 1.

48 (2022) 3 SCC 121.

49 1995 Supp (2) SCC 280

50 (2023) 14 SCC 231.

2. Role of Artificial Intelligence in Indian Courts

INTRODUCTION

Artificial Intelligence (AI) has so far marked its presence in the age of rapidly developing technological inventions and developments in a very conscious manner. It has already shown its value in numerous domains, such as medicine by administering treatment during surgeries, logistics in the form of self-driving cars, advertising by tracking consumer purchasing patterns and more¹. Therefore, it will be beneficial to use Artificial Intelligence (AI) in courts to ensure a long-term and efficient justice system. Machines with Artificial Intelligence (AI) are able to reform the ways in which civil or criminal proceedings will take place.

It will assist judges and lawyers by reducing the time taken to perform various tasks at different stages of a trial. India is currently at a pivotal point in the creation of data privacy laws, which will profoundly affect how AI can and will function in the nation. Electronic mail, video conferencing, and many other electronic communication tools are very powerful for exchanging important information between locations and promoting better decision-making. And these are added to legal and other public systems in addition to business groups.

Moreover, Indian government, nowadays, is also pushing for digitalization as a means of advancing the nation's development and promoting 'digital India'². At the same time, people in India are becoming accustomed to receiving better quality digital services from the government, as most of them work for commercial organizations. Furthermore, this implies that finding more intelligent ways to operate in all fields, such as public services, including the administration of justice, is necessary. The introduction of Artificial Intelligence into the judicial administration would reveal more information, improve the efficiency of the legal system, and relieve the officials of some of their workload.

2.MEANING OF ARTIFICIAL INTELLIGENCE

The concept of AI persisted as long back as the 1950s. The term Artificial Intelligence was founded by John McCarthy in 1956 who was an American computer scientist. John McCarthy defined Artificial Intelligence as "the science and engineering of making intelligent machines"³. Following other definitions can be considered to understand the meaning of Artificial Intelligence:

Artificial intelligence is the ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings. The term is

¹ Ghanghash MS. Artificial Intelligence in Administration of Justice in India: Challenges and Opportunities, 2022

² Tiwari RK, Singh A. Digitalization-The New Era of Indian Judiciary, 2022

³ Rajaraman V. John McCarthy—Father of artificial intelligence. Resonance 2014;19:198-207

frequently applied to the project of developing systems endowed with the intellectual processes characteristic of humans, such as the ability to reason, discover meaning, generalize, or learn from experience.¹

Artificial Intelligence is the theory and development of computer systems able to perform tasks normally requiring human intelligence, such as visual perception, speech recognition, decision-making, and translation between languages.²

Artificial Intelligence is a branch of computer science dealing with the simulation of intelligent behavior in computers³.

Artificial intelligence is a type of computer technology which is concerned with making machines work in an intelligent way, like the way the human mind works⁴. In brief, Artificial Intelligence (AI) is a fast-growing area of computer science. The term Artificial Intelligence (AI) refers to the development of computer systems that can perform tasks that normally require human intelligence. These tasks include reasoning, understanding natural language, problem solving, learning, visual perception and speech recognition. The primary objective of Artificial Intelligence (AI) is to create machines or systems that can replicate human intelligence, including the ability to analyze data, make decisions, adapt to new information, and carry out some autonomous tasks. Artificial intelligence (AI) comprises several subfields, such as natural language processing, machine learning, computer vision and expert systems.

3. OBJECTIVES OF THE PAPER

- To examine the need of Artificial Intelligence in Indian courts.
- To assess the recent growth of Artificial Intelligence in the Indian legal field.
- To study the role of Artificial Intelligence in courts.
- To identify the challenges associated with implementation of Artificial Intelligence in Indian courts.

4. WHY DO WE NEED ARTIFICIAL INTELLIGENCE (AI) IN THE INDIAN COURTS

In every nation, the judiciary is very crucial to the administration of justice. However, when it comes to the Indian legal system, the situation is appalling

¹ Copeland J. Artificial intelligence: A philosophical introduction. John Wiley & Sons, 1993

² Artificial Intelligence, available at: <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095426960> (last visited on November 10, 2023).

³ Artificial Intelligence, available at: <https://www.merriamwebster.com/dictionary/artificial%20intelligence> (last visited on November 10, 2023)

⁴ Collins H. Artificial intelligence: against humanity's surrender to computers. John Wiley & Sons, 2018

because due to country's large population there is a constant rise in institution of cases which has increased the burden on our judicial system. Because of shortage of judges, millions of cases are still pending in all the Indian courts, from the lowest courts to the highest courts and various measures are being taken to address this issue, such as advocating for Alternative Dispute Resolution (ADR) procedure and eliminating unnecessary laws, but it is still unknown that how to use the recently discovered field of artificial intelligence to solve this problem¹. The Indian court system exhibits a low level of technological adoption, with all work being completed by hand which ultimately leads to inefficient and delayed justice delivery. Therefore, in addition to traditional solutions, creative thinking is required to bring back the efficacy and efficiency of the justice delivery system and ensure its sustainability. The use of Artificial Intelligence in courts is a great solution to bring down the pendency of cases and also to ensure speedy justice delivery system.

5. EXAMPLES OF RECENT GROWTH OF ARTIFICIAL INTELLIGENCE IN INDIAN LEGAL SYSTEM

1. Supreme Court Vidhik Anuvaad Software (SUVAS)

An official application based on Artificial Intelligence (AI) have been released by the Supreme Court of India to translate legal documents and orders written in English into nine vernacular languages. In terms of Artificial Intelligence, this is the first action our judiciary has taken.²

2. Supreme Court Portal for Assistance in Court's Efficiency (SUPACE)

It is also recently launched by Supreme Court of India as a tool that collects relevant facts and laws and makes them available to a judge. It will yield outcomes customized to the specific requirement of the case and the way the judge thinks³.

3. The Official Multilingual Mobile Application of the Supreme Court of India

With the help of the National Informatics Centre, our nation's highest court has launched an app that will enable the citizens to authentically access cases,

¹ Jain P. Artificial Intelligence for sustainable and effective justice delivery in India. OIDA International Journal of Sustainable Development, 2018;11(06):63- 70

² Harshul Gupta, "Scope of Artificial Intelligence as a Judge in Judicial Sector", Indian Journal of Law, Polity and Administration

³ AI PORTAL SUPACE, available at: <https://www.drishtiias.com/daily-news-analysis/aiportal-supace> (last visited on November 11, 2023)

judgements, important circulars, display boards and a plethora of other crucial information with just a single click¹.

4. E-courts

One of most significant advancements brought about by the judicial reforms is the availability of all pertinent information about court orders and judgements online for free. The establishment of an E-Court will result in quick disposal of cases, ease of record maintenance, reliability of the evidence recorded and to bring more transparency in the functioning of courts².

5. An artificial intelligence system created at iitkharagpur to read court orders

An AI-assisted technology that can read court orders and judgements has been developed by IIT Kharagpur researchers. It also uses machine learning to identify laws that are being violated³.

6. Kira Systems by Cyril Amarchand Mangaldas

By collaboration with Canadian AI helper Kira Systems, Indian company Cyril Amarchand Mangaldas is now using AI for contract analysis and review⁴.

HOW ARTIFICIAL INTELLIGENCE CAN BE HELPFUL FOR THE COURTS

Artificial Intelligence (AI) has the potential to benefit judges in many ways by improving the general judicial process, efficiency and accuracy, and overall effectiveness. Here are some ways that judges can benefit from Artificial Intelligence (AI):

1. Legal Research and Analysis: AI systems can quickly analyze vast databases of legal precedents, statutes, and case laws to provide judges with relevant information.⁵ This can significantly speed up the legal research process, ensuring

¹ Harshul Gupta, "Scope of Artificial Intelligence as a Judge in Judicial Sector", Indian Journal of Law, Polity and Administration

² Prakash R, Mohanty T, Gupta R, Jain V. ICT in Indian court challenges & solution. International Journal of Internet Computing, 2011;(1):2231-6965

³ Harshul Gupta, "Scope of Artificial Intelligence as a Judge in Judicial Sector", Indian Journal of Law, Polity and Administration

⁴ Jain P. Artificial Intelligence for sustainable and effective justice delivery in India. OIDA International Journal of Sustainable Development, 2018;11(06):63- 70

⁵ Sharma B. Impact of Artificial Intelligence on the Legal Industry: Advantages, Challenges, and Ethical Implications, 2023

that judges have access to comprehensive and upto-date information when making decisions¹.

2. Accelerating the delivery of justice: In India, it is observed that the adjudication of a criminal as well as civil trial often takes years. Ultimately, this leads to ineffective and delayed justice delivery. This can be minimized, and by handling more cases at a faster pace, more cases can be handled, and justice can be served to citizens more quickly.² This gives citizens a better experience as they spend less time waiting for decisions that will have a significant impact on their lives and businesses.

3. Predictive Analytics: By examining past case data, AI systems are able to forecast possible case outcomes. One of the biggest problems faced by the judiciary is the volume of cases that are still pending and the lack of judges to decide on those motions. Therefore, to resolve these issues, courts may utilize predictive analytics to show the likely outcomes to the parties involved in a dispute and persuade them to reach an out-of-court settlement³. This will save the court's time as well as assist the parties to avoid the long and complicated trial procedures.

4. Document Review: By highlighting important details and finding relevant information, AI-powered technologies can help with the review of legal documents. This makes it easier for judges to quickly understand the key facts of a case and concentrate on the important points at the time of hearings.⁴

5. Case Management: Judges can better arrange and prioritize their caseload by using AI to expedite case management procedures. Automated systems can help with scheduling, monitoring due dates, and improving workflow management more efficiently.⁵

6. Artificial Intelligence (AI) via Natural Language Processing (NLP): NLP technologies facilitate computer comprehension and interpretation of human language. Judges can use Natural Language Processing (NLP) to help with tasks such as summarizing case documents, analyzing legal arguments, and extracting relevant information from spoken or written statements. For instance, ROSS

¹ Kabir MS, Alam MN. The Role of AI Technology for Legal Research and Decision Making. Title of the Journal, 2023

² Srivastava SK. AI for Improving Justice Delivery: International Scenario, Potential Applications & Way Forward for India. Informatica, 2023, 47(5).

³ Jain P. Artificial Intelligence for sustainable and effective justice delivery in India. OIDA International Journal of Sustainable Development, 2018;11(06):63- 70

⁴ Xu Z. Human Judges in the era of artificial intelligence: challenges and opportunities. Applied Artificial Intelligence, 2022;36(1):2013652

⁵ Coglianese C, Dor LMB. AI in Adjudication and Administration. Brook. L. Rev., 2020;86:791

Intelligence is an AI- driven legal research tool that leverages Natural Language Processing (NLP) to comprehend inquiries in natural language and deliver relevant legal information¹.

7. Remote Proceedings and Virtual Courts: Artificial Intelligence (AI) technologies enable secure video conferencing, real-time transcription, and language translation, among other features that make virtual courtrooms and remote proceedings run more smoothly. This is especially important when it comes to circumstances requiring remote hearings².

8. Decision Support Systems: Artificial Intelligence (AI) systems have the potential to serve as decision support tools by providing judges with relevant information, precedents, and legal analyses to aid in their decision-making process³. However, it is crucial to stress that Artificial Intelligence (AI) is only an auxiliary tool and that the final decision rests with the judge in all matters.

Challenges

The application of Artificial Intelligence in the legal system brings with it both opportunities and challenges. Although Artificial Intelligence (AI) has the potential to improve efficiency and decision-making, there are several challenges that need to be overcome. Following are the challenges associated with implementing Artificial Intelligence (AI) in courts:

1. Concerns about Bias and Fairness: AI systems may unintentionally reinforce or even worsen biases found in past legal data, raising questions about fairness and bias. AI algorithms may generate biased results, resulting in unfair or discriminatory decisions and violation of fundamental rights⁴.

2. Absence of Transparency: Many AI algorithms function as “black boxes”, making it difficult for humans to understand how they make decisions. Concerns regarding accountability may arise from AI system’s lack of transparency. The absence of openness may have a direct impact on litigants and can cause trouble for judges⁵.

¹ Kabir MS, Alam MN. The Role of AI Technology for Legal Research and Decision Making. Title of the Journal, 2023

² Zalnieriute M, Bell F. Technology and the judicial role. The Judge, the Judiciary and the Court: Individual, Collegial and Institutional Judicial Dynamics in Australia (Cambridge University Press, 2021), 2020

³ Vijipriya RA. "Critical Study on Artificial Intelligence (AI) in Indian Legal Sectors." Shanlax International Journal of Arts, Science and Humanities, 2022;9(4):58- 64

⁴ Rocha C, Carvalho J. Artificial Intelligence in the Judiciary: Uses and Threats. EGOV-CeDEM-ePart 2022, 183

⁵ Themeli E, Philipsen S. AI as the Court: Assessing AI Deployment in Civil Cases. E. Themeli and S. Philipsen, AI as the Court: Assessing AI Deployment in Civil Cases, in K. Benyekhlef (ed), AI and Law. A Critical Overview, Éditions Thémis, 2021, 213-232

3. Information Security and Privacy Risks: It is extremely difficult to ensure the security and privacy of sensitive legal data, especially since malicious actors may be able to take advantage of holes in AI systems.

4. High Resource Requirements and Costs: Development, implementation and maintenance of AI systems can be expensive. For AI solutions to be widely and fairly adopted within the legal system, their affordability and scalability need to be carefully evaluated.

5. Technical Limitations and Errors: Artificial Intelligence (AI) systems are not perfect and are susceptible to mistakes. It is possible that the AI system will not be aware of legal changes or will interpret legal statutes incorrectly. Moreover, an Artificial Intelligence (AI) system may experience bugs or glitches that lead to inaccurate decisions or predictions, just like any other technology.

6. Acceptance by Judges: The integration of Artificial Intelligence (AI) in legal proceedings is also influenced by judges' acceptance or rejection of it. Judges who use AI technology these days tend to be younger judges. The senior judges believe that AI technology will not assist judges in handling cases, so they are unwilling to accept it. Some judges think that it is emotionally inappropriate to give cold robots control over litigation cases that require social interaction. Instead of relying on AI technology to make decisions for them automatically, they would much rather spend a significant amount of time making their own decisions.¹

ARTIFICIAL INTELLIGENCE IN LEGAL PRACTICE MORAL GUIDELINES²

1. Fundamental Rights: Prioritize fundamental rights when designing and implementing AI services and tools, ensuring compatibility with key principles like privacy, equal treatment, and the right to a fair trial. This means that the development and deployment of AI technologies should align with and safeguard these fundamental rights throughout the entire process.

2. Equal Treatment: Promote equal treatment by preventing discrimination among individuals and groups in the use of algorithms. The data employed by the algorithm can be a source of bias, and the algorithm itself may inadvertently embed prejudices. It is crucial to address both data and algorithmic biases to ensure fair and unbiased outcomes.

¹ Mingsung C, Shuling L. June. Research on the application of artificial intelligence technology in the field of Justice. In Journal of Physics: Conference Series (Vol 1570, No. 1, p. 012047). IOP Publishing, 2020:1570 (1): 012047

² Reiling AD. Courts and artificial intelligence. In IJCA, 2020, 11(1).

3. Data Security: Ensure data security in the processing of judicial decisions and data by employing certified sources and unalterable data. Implement multidisciplinary-designed models within a secure technological environment to enhance the overall robustness of the system.

4. Transparency: Data processing methods must be clear and understandable, with provisions for external audits. Legal precedent now mandates transparency. Users of algorithms are obligated to publicly disclose their choices, data, and assumptions in a comprehensive, timely, and appropriate manner, ensuring accessibility to third parties. This thorough and timely disclosure allows for an assessment of the decisions, data, reasoning, and assumptions, thereby ensuring robust legal protection and enabling judicial review by the courts.

CONCLUSION

In conclusion, the integration of Artificial Intelligence (AI) in courts, particularly to address the issue of pendency of cases, is becoming increasingly necessary in modern legal frameworks. Artificial Intelligence has the potential to improve overall efficiency, decrease backlogs, and speed up legal procedures. Although e-courts have already been established by the Indian Government, but to handle the volume of case we are currently handling, their reach needs to be further increased. With better case and court room management capabilities, electronic courts offer a more effective and time saving platform for delivering justice. Enhanced case management, data-driven insights for decision-making, and expedited document review are some of the advantages of using Artificial Intelligence in courts. However, issues like biases, data privacy, and the requirement for transparency must be properly handled. To ensure a just, efficient, and technologically sophisticated judicial system that satisfies the demands of our changing legal landscape, it is imperative to strike a balance between utilizing AI's potential benefits and minimizing its drawbacks.

Artificial Intelligence in various domains and its possible application in the legal system would benefit judges and attorneys, who are regarded as pivotal pillars of justice delivery system. Naturally, no technology, no matter how advanced, could ever take the place of a human judge¹. However, they could support judges in the decision-making process and ensure that the process of dealing with a large volume of cases does not compromise justice, which could ultimately help to reduce the average duration of a trial. Saving time would inevitably mean better efficiency in disposing of cases, which would ultimately help to reduce the backlog of cases pending in the legal system. Upon completion of this, the admirable goal of guaranteeing the public efficient and long-lasting justice will be accomplished.

¹ Sharma M. India's courts and artificial intelligence: A future outlook. LeXonomica, 2023;15(1):99-120

3. Study Material-G.K.

MUGHAL AND SURI PERIOD (1526-1857)

The Mughal Empire were descendants of two great lineages of rulers.

Babur: founder of the Mughal Empire in India was related to Timur from his father's side and to Chengiz Khan through his mother.

Babur succeeded his father as the ruler of Farghana (Uzbekistan), but soon lost his kingdom.

Financial difficulties, apprehension of the Uzbek attack on Kabul and invitation of Rana Sanga to invade India forced Babur to look towards India.

List of Mughal Empire in India (1526-1857)

BABUR (1526-1530 AD)

First Battle of Panipat (1526) – Babur decisively defeated Ibrahim Lodhi. It Replaced the Lodhi and established the Mughal Empire in India.

Reasons for Babur's victory: Alternatively resting one wing of Army, Services of two ottoman master gunners – Ustad Ali & Mustafa, Use of Gunpowder, scientific use of cavalry & artillery tactics – Tulughma and the araba, effective use of Cannons.

Battle of Khanwa (1527) – Babur defeated Rana Sangha and assumed title of Ghazi

Battle of Chanderi (1528) – Medini Rai was defeated and with this resistance across Rajputana was completely shattered.

Battle of Ghagra (1529) – Babur defeated Mahmud Lodhi who aspired to the throne of Delhi.

Significance of Babur's Advent into India

- Babur Introduced Char-Bags and symmetrically laid out gardens.
- Built mosques at Panipat and Sambhat in Rohilkhand.
- Babur wrote Tuzuk-I-Baburi (Babarnama) & Masnavi.
- Kabul and Gandhar became integral parts of the Mughal Empire.
- Security from External invasions for almost 200 yrs.
- Babur popularized gunpowder, cavalry and artillery in India. (Gunpowder used earlier in India, but Babur popularized its use).
- Strengthened India's foreign trade.
- Babur introduced a new mode of warfare in India.
- Defeating Sangha & Lodi he smashed the balance of power and laid the foundation for all India Mughal Empire.
- He had assumed the title of Padshah.

HUMAYUN (1530-40 & 1555-56)

- Humayun succeeded Babur in 1530.
- He had to deal with the rapid growth of power of the Afghans & and Bahadur shah of Gujrat.
- At the battle of Chausa (1539) & battle of Kanauj (1540) Sher Shah defeated Humayun and forced him to flee India.
- For sometimes he took shelter at the Iranian king. In 1555, following the breakup of Suri Empire he recaptured Delhi but died next year.
- Humayun built a new city at Delhi which he named “Dinpanah”.
- Mosques: Jamali mosque and mosque of Isa Khan at Delhi.
- His widow **Amida Benu Begum built Humayun’s tomb (UNESCO site).**
- Humayun’s sister, Gul Badan Begum, wrote “Humayun-Nama”.
- The foundation for the Mughal painting was laid by Humayun when he was staying in Persia.
- He brought with him two painters – Mir Sayyid Ali and Abdal Samad to India, who became famous during Akbar’s reign.

SHER SHAH SURI (1540-45)

- Founder of Sur dynasty and second Afghan Empire (after Lodhi).
- Sher Shah’s rule lasted for five years.

Administration

- Purana Qila (Old Fort) and its mosque, Mausoleum at Sasaram were constructed during this period.
- Malik Muhammad Jayasi wrote the famous Hindi work “Padmavat” during his reign.
- He continued the central administration developed during the Sultanate period.
- Imp officials –
- Diwan –i- Wizarat / Wazir – Revenue and Finance.
- Diwan-i-Ariz – in charge of the Army.
- Diwan-i-Risalat- Foreign Minister.
- Diwan-i-Insha- Minister for Communications.
- Barid – Intelligence
- Sher Shah’s empire was divided into “sarkars”.
- Chief Shiqdar (law and order) & Chief Munsif (judge)à Incharge of the administration in each sarkar.
- Each sarkar was divided into several parganas. Shiqdar (military officer), Amin (land revenue), Fotedar (treasurer), Karkuns (accountants) were in charge of the administration of each pargana.

- Mauza (village) was the lowest level of administration.
- There were also many administrative units called iqtas.
- The land revenue was well organized & revenue officers were called Amils and Qanungo were the officials incharge of maintaining revenue records.
- Land survey was carefully done. He introduced a schedule of crop rates (ray).
- Improved land revenue by adopting zabti-i-har-sal (land assessment every year).
- All cultivable lands were classified into three classes – good, middle and bad. The state's share was one third of the average produce and it was paid in cash or crop. Land was measured using Sikandari gaz (32 points).
- Introduced Patta (amount each peasant had to pay) and Qabuliyat (deed of agreement).
- Introduced new silver coins called “Dam” and they were in circulation till 1835.
- He built the Shahi (Royal) road from the Indus Valley to the Sonar Valley in Bengal. This road was renamed the Grand Trunk (GT) road during the British period, connecting Calcutta and Peshawar.
- He also built Sarais (lodging) which also served as post office. Many sarais developed into market towns.
- Every Sarai was under the control of a Shahana (custodian).
- He followed the branding of horses from Alauddin Khalji and maintained his personal royal force called Khassa Kail.

AKBAR (1556-1605)

- He succeeded the throne after his father Humayun's death.
- In 1556, in the **second battle of Panipat**, he defeated Hemu (Sur's wazir).
- Between 1556-60, Akbar ruled under Bairam Khan's regency. Bairam became the Wakil of the kingdom with the title of Khan-i-Khanam.
- Battle of Haldighati (1576)- Akbar defeated Rana Pratap following most of the Rajput rulers accepted Akbar's suzerainty.
- Akbar defeated Gujarat ruler Muzaffar Shah. To commemorate this victory, he built Buland Darwaza at Fatehpur Sikri.
- Akbar gradually enlarged the Mughal Empire to include much of the Indian subcontinent.

ADMINISTRATION	➤ The Mughal Empire was divided into subas (provinces), governed by a subadar who carried out both political and military functions. Each subha had officials – diwan, bakshi, sadr, qazi etc. ➤ There was another division of the Mughal Empire –

	Jagir (allotted to nobles & members of royal family), Khalisa (tract reserved for royal exchequer), Inam (given to religious leaders, half of it was uncultivated).
LOCAL GOVT	➤ Fauzdar – Charge of law & order & Amalguzar – land assessment and revenue collection were chief officers of Sarkar.
LAND REVENUE ADMINISTRATION	➤ With the help of Raja Todar Mal, Akbar experimented on the land revenue administration; it was the Zabti or Bandobast system. ➤ Dahsala System – The revenue was fixed on the average yield of land measured on the basis of previous ten years. It was an improved version of Zabti. ➤ Battai/Gholla-Bakshi system – Produce divided between state & peasants in fixed proportion. Peasants were given a choice between Battai & Dahsala. ➤ Nasdaq/kankut – revenue on the basis of what peasants had been paying in the past. ➤ Categorization of land – Polaj (cultivated every year), Parati (once in two years), Chachar (once in three or four years) and Banjar (once in five or more years). ➤ Payment of revenue was made generally in cash. ➤ Qanungos were hereditary holders of land and Karoris were officers appointed all over North India. They had the responsibility of collecting dams (rupees).
MANSABDARI SYSTEM	➤ Akbar introduced the Mansabdari system in his administration. Under this system every officer was assigned a rank (mansab). ➤ The word “Mansabdar” used for all but it had 3 scale gradation – 1. Mansabdar – (500 zat / below it) 2. Amir (between – 500-2500 zat) 3. Amir-i-Umda – (above 2500 zat) ➤ The ranks were divided into two – zat and sawar. ➤ Zat fixed the personal status & salary of a person. ➤ Sawar rank indicated the number of sawars had to

	be maintained by person. Every sawar had to maintain at least two horses. ➤ The mansab rank was not hereditary & mansabdar were paid by assigning jagir.
RELIGIOUS POLICY	➤ Abolished jizya, pilgrimage and forcible conversion of prisoners of wars. ➤ He built ibadat khana (House of Worship) at Fatehpur sikri for religious discussion. ➤ Akbar was convinced that religious bigots over emphasize ritual and dogma. ➤ Thus, he advocated the idea of sulh-i kul or “universal peace” idea of tolerance which did not discriminate between the people of different religions. ➤ Abul Fazl helped Akbar in framing a vision of governance around this idea of sulh-i kul. This principle of governance was followed by Jahangir and Shah Jahan as well. ➤ In 1582, he promulgated a new religion called “Din-e-Ilahi” or Divine Faith. It believes in one God. It contained good points of all religions. It had only fifteen followers including Birbal. Akbar did not compel anyone to his new faith. ➤ Jharoka Darshan was introduced by Akbar with the objective of broadening the acceptance of imperial authority as part of popular faith.
COINAGE	➤ Introduced gold coins called asharafi (mohurs). ➤ He also began dating his coins as per a new ‘Illahi era’, which replaced the earlier Hijri era. ➤ Akbar introduced the practice of inscribing Persian poetry praising the ruler on coins.
AKBAR’S NAVRATNAS	1. Abul Fazl à wrote Ain-i-Akbari and “Akbar Nama”. 2. Abdul Rahim Khan-I-Khana à Great poet, Translated Baburnama into Turki 3. Birbal à Was a Hindu advisor and main commander (mukhya senapati) of the army in the court. Akbar gave him the title ‘Raja Birbal’. 4. Mirza Aziz Koka à also known as Kotaltash, was the foster brother of Akbar built by Mirza Aziz Koka as a mausoleum for himself, at the time of Jahangir’s reign 5. Faizi à Translated Lilavati into Persian & under his supervision Mahabharata was translated into Persian

	language. 6. Raja Man Singh à was a mansabdar. 7. Raja Todar Mal à Finance Minister. Akbar bestowed on him the title of Diwan-i-Ashraf. 8. Fakir Azio-Din à one of the Chief advisors of Akbar 9. Tansen à Musician, Hindu of Gwalior. He served to King Ramachandra, who gave him the title of “Tansen”. Akbar gave him the title of “Mian”.
ART	➤ Haznama, consisting of 1200 paintings, belonged to his reign. ➤ The European style of painting was introduced by Portuguese priests in his court. ➤ Jaswant & Daswan were famous painters in his court. ➤ Persian poets in his court: Abu Fazl and his brother Abul Faizi, Tarikh Alfi, Utbi and Nazir. ➤ Hindi poets in his court: Tulsidas- wrote “Ramcharitmanas”. ➤ Akbar commissioned the translation of many Sanskrit works into Persian. A Maktab Khana or translation bureau was also established at Fatehpur Sikri for this purpose. ➤ The Razmnama is the Persian translation of the Mahabharata. ➤ The Akbar period was popularly known as ‘the renaissance of Persian literature’.
ARCHITECTURE	➤ Palace-cum- fort complex at Fatehpur Sikri (City of Victory): Many buildings in Gujarati and Bengali styles are found in this complex. The Gujarathi style was probably built for his Rajput wives. ➤ Akbar built Diwan -i-am (hall of public audience), Diwan-i-Khas (private hall). ➤ The most magnificent building in it is the Jama Masjid and the gateway to it called Buland Darwaza or the Lofty Gate, Shaik Saleem chisti dargah. ➤ Other important buildings at Fatepur Sikri are Jodha Bai’s palace and Panch Mahal with five storeys. ➤ During Akbar’s reign, Humayun’s tomb was built in Delhi and it had a massive dome of marble. It may be considered the precursor of the Taj Mahal. ➤ Akbar’s tomb at Sikandra near Agra was

	completed by Jahangir. ➤ He built Agra Fort in red sandstone and also Jahangiri Mahal in it according to Hindu design.

JAHANGIR (1605-1627)

- When Akbar died, Prince Salim succeeded with the title Jahangir (Conqueror of World) in 1605.
- His son Khusrau revolted but was defeated and imprisoned and his supporter Guru Arjun, the fifth Sikh Guru, was beheaded.
- British Visited Machilipatnam during his reign. Captain Hawkins and Thomas Roe visited his court. Thomas Roe got the Farman for setting up an English factory at Surat. Farman was sealed by Shah Jahan.
- His wife Nurjaha had influence over the state affairs.
- Jahangir erected Zanjir-i-adal at Agra fort for the seekers of royal justice
- Mahtab Khan was his military general & had revolted against him
- Autobiography: Tuzuk-i- Jahangiri in Persian
- Faced tough fight of Malik Amber in his expeditions to Ahmednagar
- Introduction of the “du-aspah-sih-aspah” system. It was modified to Mansabdari. Nobles were allowed to maintain a large number of troops without raising their zat ranks.

SHAHJAHAN (1628-1658)

- Succeeded Jahangir and ascended the throne in 1628.
- Three years after accession, his beloved wife Mumtaz Mahal died in 1631.
- In the north-west, the campaign to seize Balkh from the Uzbeks was unsuccessful and Qandahar was lost to the Safavids.
- His Deccan policy was more successful. He defeated the forces of Ahmadnagar and annexed it. Both Bijapur and Golconda signed a treaty with the emperor.
- The court, army and household moved from Agra to the newly completed imperial capital, Shahjahanabad. It was a new addition to the old residential city of Delhi, with the Red Fort, the Jama Masjid, Chandni Chowk
- Salutation: Under Shah Jahan it was chahar taslim and zaminbos (kissing the ground).
- During his reign a war of succession among his sons broke out.
- Battle of Dharmat, Battle of Samugarh, Battle of Khajwa, and Battle of Deorai took place & Finally Aurangzeb emerged victorious.
- His court historian Abdul Hameed Lohiri wrote “Badshahnama”.

Architecture

- Built Taj Mahal in 1632-33 to perpetuate memories of his wife, Mumtaz Mahal.
- Moti Masjid (entirely of white marble), Sheesh Mahal and Musamman Burj at Agra.
- Red Fort with its Rang Mahal, Diwan-i-Am and Diwan-i-Khas at Delhi.
- Jama Masjid in Delhi (red stone), Shalimar Bagh in Lahore and city of Shahjahanabad.
- The pietra dura method was used on a large scale in the Taj Mahal by Shah Jahan.

AURANGZEB (1658-1707)

- Masir – The Alamgiri book written by Mustaid Khan throws light on Aurangzeb's rule.
- He assumed the title Alamgir, World Conqueror. He was also called **Zinda Pir**.
- During his reign, the Mughal Empire reached its greatest extent, ruling over nearly the entire Indian subcontinent.
- He annexed Bijapur (1686) & Golkonda (1687) and extended the Mughal Empire further south.
- He faced a tough fight from Shivaji Maharaj – Maratha king who had carved out an independent state.
- Discontinued Official departments of history.
- He issued **Zawabit-i- Alamgir (decrees of Aurangzeb)** and appointed Muhtasibs to enforce moral codes given under it.
- Drinking was prohibited & cultivation and use of bhang and other drugs were banned.
- Although he was **proficient in playing Veena**, Aurangzeb forbade music in the court.
- He **discontinued the practice of Jarokha darshan**.
- He also discontinued the celebration of Dasara & Navroz and royal astronomers and astrologers were also dismissed from service.
- Aurangzeb built Bibi Ka Maqbara (replica of Taj) at Aurangabad, Moti Masjid (Near Red fort, Delhi).
- Initially Aurangzeb banned the construction of new Hindu temples and repair of old temples. Then he began a policy of destroying Hindu temples.
- In 1679, he reimposed Jizya and pilgrim tax.
- He was also not tolerant of other Muslim sects. The celebration of Muharram was stopped.
- He executed the **ninth Sikh Guru Tej Bahadur**.

- It had also resulted in the rebellions of the Jats of Mathura and the Satnamis of Mewar. Therefore, Aurangzeb was held responsible for the decline of the Mughal Empire.
- In the Mansabdari System he created additional rank Mashrut (conditional), Added one deduction called Khurak-i-dawwab towards meeting the cost for feed of animals.
- Aurangzeb appointed Rajputs to high positions, and under him the Marathas accounted for a sizable number within the body of officers.
- **Miraz Mohammad Qasim wrote “Alamgirnama”.**
- His religious policy was responsible for turning the Rajputs, the Marathas and Sikhs into the enemies of the Mughal Empire.

LATER MUGHALS AND DECLINE OF MUGHAL EMPIRE

A war of succession broke out among the sons when the Mughal Empire's father Aurangzeb died in 1701. Muazzam emerged victorious after defeating Muhammad Azam Shah in the Battle of Jajau, marking a crucial chapter in the history of the Mughal Empire.

SUCCESSORS OF AURANGZEB

Important Rulers	Important Events
Muazzam (Bahadur Shah I) (1707-1712)	More tolerant towards Hindu. Never abolished Jizya but didn't collect the tax strictly. Granted Marathas Sardeshmukhi of Deccan, but failed to grant Chauth. Mughal Empire historians like Khafi khan gave him the title of Shah-i-Bekhabar.
Jahandar Shah (1712-1713)	• Introduced Ijarah (Revenue Farming) • Became emperor with help of Zulfikhar Khan (later became PM) • Tried to establish friendly relations with Maratha and Rajputs and hence abolished Jizya, granted Sardeshmukhi and Chauth of Deccan to Shahu and accorded title of Mirza Raja Sawai to Jai Singh of Ambar and title of Maharaja to Ajit Singh.
Farruk Siyar (1713-1719)	• Abolished Jizya completely • Puppet of Sayyed Brothers – Abdula Khan & Hussain Ali (known as kingmakers) • Policy of religious tolerance – abolished Jizya & pilgrimage tax. • Gave Farman to the British in 1717. • Dethroned by Sayyed Brothers

Rafi-ud-Darajat	• Ruled for the shortest period of time among the Mughal Empire.
Muhammad Shah Rangeela (1719-1748)	• Autonomous states emerged under his reign 1. Nizam-ul-Mulkà Deccan 2. Saadat Khanà Awadh 3. Murshid Quli Khanà Bengal, Bihar and Orissa • Nadir Shah invaded India and looted Delhi. He also took away the famous Kohinoor Diamond. • Became king with help of Sayyed Brothers later he killed them with help of Nizam-ul-Mulk. • Nadir Shah was defeated in the Battle of Karnal. • Ahmad Shah Abdali also raided Delhi for the first time during his reign.
Ahmad Shah (1748-1754)	• Mohd. Shah Rangeela's only son. • Was incompetent ruler. left the state affairs in the hands of Udham Bai. She was given the title of Qibla-i-Alam.
Alamgir II (1754-1759)	• Battle of Plassey (1757) was fought during his reign
Shah Alam II/Aligauhar (1759-1806)	• Third Battle of Panipat fought between Marathas and Ahmad Shah Abdali during his reign. • Participated in the Battle of Buxar (1764) along with Mir Qasim and Shuja-ud-Daula against the British East India Company. Was defeated and was forced to sign the Treaty of Allahabad (1765) under which Diwani of Bengal was granted to Company. • Diwani of Bengal, Bihar and Orissa. • Became pensioner of the English
Akbar II	• Gave Ram Mohan Roy the title of "Raja". • Introduced Hindu-Muslim unity festival Phool Walon ki Sair.
Bahadur Shah II (1837-1857)	• Last Mughal Emperor • Was an Urdu Poet using Zafar as his pen name. • Participated in the revolt of 1857 after which he was deported to Rangoon and died.

REASONS FOR DECLINE OF THE MUGHAL EMPIRE

- Lack of stability after Aurangzeb greatly affected the Mughal Empire.
- Most of the emperors of the Mughal Empire became puppets in the hands of powerful Nobles who often ran administration on their behalf.
- Weak military and political administration as exposed by Nadir Shah and Ahmad Abdali's invasion, further contributing to the decline of the Mughal Empire.

- Emergence of autonomous states and hence weakening of central power within the Mughal Empire.
- Orthodox policy of Aurangzeb: His attitude towards Marathas, Rajputs and Jats made them his enemy. His religious policies alienated the Hindus, further destabilizing the Mughal Empire.

4. Study Material-Language

Active and Passive Voice

The term ‘voice’ is a term that is used to denote the form of the verb which shows if the subject in a given sentence is the doer or receiver of the action. The voice of a verb describes the relationship between the action and the participants (subject or object) in a sentence.

The Two Voices in the English Language

There are two voices in the English language and they are as follows:

- Active Voice
- Passive Voice

Let us look into the two voices a little in detail with the help of the meaning and definition given below.

What is the Active Voice? – Meaning and Definition

The active voice, in a sentence, denotes that the noun or pronoun that acts as the subject in the sentence is the doer of the action. In other words, the subject performs the action or acts upon the verb.

According to the Oxford Learner’s Dictionary, the active voice is defined as “the form of a verb in which the subject is the person or thing that performs the action”, and according to the Collins Dictionary, the active voice is defined as “a voice of verbs used to indicate that the subject of a sentence is performing the action or causing the event or process described by the verb.”

What is the Passive Voice? – Meaning and Definition

The passive voice, on the other hand, represents that the subject is one acted upon by the action or verb in the sentence. It can also be said that the passive voice indicates that the subject in the sentence is no longer active but passive.

According to the Oxford Learner’s Dictionary, the passive voice is defined as “the form of a verb used when the subject is affected by the action of the verb”, and according to the Collins Dictionary, the passive voice is “formed using ‘be’ and the past participle of a verb. The subject of a passive clause does not perform the action expressed by the verb but is affected by it.”

Using the Active Voice and the Passive Voice – Points to Remember

There are a few points that you have to bear in mind when using the active voice and the passive voice. In the English language, the active voice is used generally as they give the information in a direct and clear manner. Make sure you do not use the passive voice just because you think it sounds better. Use it only if it is

necessary. Remember that the active voice has the subject doing the action and the passive voice has the subject receiving the action. If you want to communicate your thoughts and ideas clearly and effectively, especially in a professional setup, it would be best to use the active voice.

A pro tip for you to master the active voice and the passive voice is to know the structure and formula by which they work.

Active Voice – Subject + Verb + Object

Passive Voice – Object + Verb + Subject

Difference between the Active Voice and the Passive Voice

Analysing the difference between the active voice and the passive voice is what will help you in a much better way to learn how to use the two voices effectively. Take a look at the following table to know how they differ.

Active Voice	Passive Voice
Denotes that the subject is performing the action.	Denotes that the subject is acted upon by the verb or action in the sentence.
The active voice does not require a linking verb to make sense.	The passive voice uses a linking verb followed by the past participle of the main verb.
The active voice focuses on the doer of the action.	The passive voice comes in handy when the doer of the action is undetermined.
Has a direct, clear and strong tone.	Has an indirect, weak and subtle tone.
Examples: I decorated the hall. Devi gave Shanthi a gift.	Examples: The hall was decorated by me. Shanthi was given a gift by Devi.

Rules to be Followed When Converting the Active Voice to the Passive Voice

When converting the active voice into the passive voice or vice versa, there are changes in the tenses and pronouns used in the sentences.

The table given below shows you how the tenses change when converting the active voice to the passive voice and vice versa.

Conversion Rules for Active Voice and Passive Voice					
Tense	Voice	Simple Tense	Continuous Tense	Perfect Tense	Perfect Continuous Tense
Present	Active	Brendon plays cricket.	Brendon is playing cricket.	Brendon has played cricket.	Brendon has been playing cricket.

	Passive	Cricket is played by Brendon.	Cricket is being played by Brendon.	Cricket has been played by Brendon.	No Passive
Past	Active	Brendon played cricket.	Brendon was playing cricket.	Brendon had played cricket.	Brendon had been playing cricket.
	Passive	Cricket was played by Brendon.	Cricket was being played by Brendon.	Cricket had been played by Brendon.	No Passive
Future	Active	Brendon will play cricket.	Brendon will be playing cricket.	Brendon will have played cricket.	Brendon will have been playing cricket.
	Passive	Cricket will be played by Brendon.	No Passive	Cricket will have been played by Brendon.	No Passive

Change of Pronouns	
Active Voice	Passive Voice
I	Me
We	Us
He	Him
She	Her
They	Them
It	It

There are a few other points that you have to know so that you can use the two voices effectively. They are as follows:

- When converting a sentence in the active voice to the passive voice, the first thing that you have to do is interchange the subject and the object.
- The next part of speech you have to focus on is the verb. When converting the active voice into the passive voice, you just have to convert the main verb into its past participle or its third form. The third form of the main verb is the past participle form of the verb.
- When you are changing the tense of the main verb, make sure you use an auxiliary verb which maintains the tense the sentence represents.

- Always use the preposition, ‘by’ before the subject in a passive sentence.
- If there are any adverbs used in the sentence with the active voice, be sure to include it in the passive voice as well. Do not just drop it when you convert a sentence in the active voice to the passive voice or vice-versa.

Examples of the Active and Passive Voice

Given below are a few examples of how to convert the active voice into the passive voice.

Active Voice – Twinkle likes adventure stories.

Passive Voice – Adventure stories are liked by Twinkle.

Active Voice – Latha is learning French this year.

Passive Voice – French is being learnt by Latha this year.

Active Voice – Kurt has brought macaroons.

Passive Voice – Macaroons have been brought by Kurt.

Active Voice – Sidharth played cricket.

Passive Voice – Cricket was played by Sidharth.

Active Voice – They were making invitation cards.

Passive Voice – Invitation cards were being made by them.

Active Voice – Becky had packed the bags.

Passive Voice – The bags had been packed by Becky.

Active Voice – Mira will buy the refreshments for the party.

Passive Voice – The refreshments for the party will be bought by Mira.

Active Voice – Sanjay will have given the forms to all the participants.

Passive Voice – The forms will have been given to all the participants by Sanjay.

Check your understanding of the Active Voice and the Passive Voice

Now that you have seen a number of examples and learnt how the conversion is done, try converting the following sentences as directed.

1. Varun is helping Reshmi. (Change into passive voice)
2. A gift was given to Manassa by me. (Change into active voice)
3. Santana will sing *All My Life* at the Nationals. (Change into active voice)
4. A mouse was being chased by my cat. (Change into active voice)

5. Naveen loves Praveena. (Change into passive voice)
6. The decorations for the annual day will be done by Emma. (Change into active voice)
7. J. K. Rowling wrote the Harry Potter novels. (Change into passive voice)
8. Ms. Holly will teach Spanish this year. (Change into passive voice)
9. Mike was hit by Nick. (Change into active voice)
10. Naslen is being scolded by his mom. (Change into active voice)

Check out if you did the conversion right from the answers given below.

1. Reshmi ***is being helped by*** Varun.
2. I ***gave*** Manassa a gift.
3. *All My Life* ***will be sung by*** Santana at the Nationals.
4. My cat ***was chasing*** a mouse.
5. Praveena ***is loved by*** Naveen.
6. Emma ***will do*** the decorations for the annual day.
7. The Harry Potter novels ***were written by*** J. K. Rowling.
8. Spanish ***will be taught by*** Ms. Holly this year.
9. Nick ***hit*** Mike.
10. Naslen's mom ***is scolding*** him.

5. Current Affairs

APRIL 2025

1. HAL signs Rs. 62,700 crore deal with the Ministry of Defence to supply light combat helicopters.
2. PM Modi laid the foundation stone of Madhav Eye Hospital Premium Center in Nagpur, Maharashtra.
3. India's No. 1 women's squash player Anahat Singh wins the Indian Open title.
4. Nihal Sarin wins the 2025 Tashkent Open Agzamov Memorial title.
5. Haryana tops Khelo India Para Games 2025 with 34 gold medals.
6. India-Russia Naval Exercise INDRA 2025 to be held off Chennai from March 28 to April 2.
7. IFS officer Nidhi Tewari appointed as Private Secretary to PM Modi.
8. Punjab & Sind Bank wins 'Top Improvers' Award in EASE 6.0 Reforms Index for Service Excellence.
9. PM Modi announces 'Yoga for One Earth, One Health' as the theme for International Yoga Day 2025.
10. India ranks 3rd in the Hurun Global Rich List 2025 with 284 billionaires and Rs. 98 trillion total wealth.
11. The 6th BIMSTEC Summit will convene in Bangkok on April 4, focusing on trade, security, and regional cooperation.
12. Exercise Tiger Triumph 2024, a Tri-Service India-US Humanitarian Assistance and Disaster Relief (HADR) exercise, began in Visakhapatnam on April 1, 2025.
13. Miami Open Champion: Teenager Jacob Menchi defeated Novak Djokovic in the finals.
14. The Hero Asia Cup Hockey 2025 will be held in Rajgir, Bihar from August 29 to September 7, at the newly constructed Rajgir Hockey Stadium.
15. Indian hockey icon Vandana Katariya announces her retirement after an illustrious 15-year career.
16. The Indian Air Force will participate in the multinational air exercise INIOCHOS-25 in Greece.
17. Shirley Botchwey becomes the first African woman to assume office as Commonwealth Secretary-General.
18. SpaceX launches a private astronaut crew in the Fram2 polar-orbiting mission.
19. The Telangana government launches its first free fine rice scheme through ration shops.

20. The Punjab government plans to develop the Jhajjar-Bachauli Wildlife Sanctuary as the state's first leopard safari destination.
21. The Supreme Court condemned the Uttar Pradesh government and Prayagraj Development Authority for "inhuman and illegal" demolitions in Prayagraj, ordering ₹10 lakh compensation to affected homeowners.
22. Former President Donald Trump warned Iran of severe consequences, including potential bombing, if it rejects the U.S.-proposed nuclear deal.
23. The WHO classified Myanmar's earthquake as a top-level emergency, seeking \$8 million for urgent medical aid and disease prevention.
24. A massive fire, presumably due to a burst gas pipe, erupted near Kuala Lumpur, Malaysia, injuring over 100 people and damaging at least 49 houses.
25. China's Foreign Minister expressed optimism about U.S. and Russian efforts to normalize relations, viewing them as encouraging developments.
26. India's imposition of a 100% tariff on U.S. agricultural products has prompted the White House to call for reciprocal measures before the April 2 deadline.
27. In Myanmar, a 7.7-magnitude earthquake has left over 2,700 dead, with survivors facing dire shortages of food, water, and shelter amid ongoing civil strife.
28. India's World Boxing Cup campaign began on a disappointing note as Lakshya Chahar lost in the opening bout.
29. Seasoned women's hockey forward Vandana Katariya announced her retirement from international play, ending a distinguished career.
30. NHAI increased toll rates by 4-5% on highways across India.
31. Donald Trump announces a 26% 'concessional reciprocal tariff' on India.
32. Aryna Sabalenka won her first Miami Open title by defeating Jessica Pegula, securing her 19th career title and a \$1.1 million prize.
33. Indian equestrian Niharika Singhania won gold at the Ezelhof CSI Lier competition in Belgium.
34. Sivasubramanian Ramann appointed as PFRDA Chairperson, replacing Deepak Mohanty, for a five-year tenure.
35. The government appointed Poonam Gupta as the Deputy Governor of RBI on April 1, 2025.
36. J&K CM Omar Abdullah launched the zero-ticket travel initiative for women, allowing free travel in smart city e-buses and J&K RTC buses.
37. Andhra Pradesh CM Nara Chandrababu Naidu launched the 'Zero Poverty - P4' initiative under Golden 2047 Vision on Ugadi, aiming for a poverty-free state by 2029.
38. Uttar Pradesh government, through Invest UP, is developing a database of industrial authorities for transparent land allocation and industrial development tracking.
39. Madhya Pradesh Cabinet clears PPP-based Mukhyamantri Sugam Parivahan Sewa.

40. Parliament has passed the Waqf (Amendment) Bill 2025 after approval from the Rajya Sabha.
41. In Haridwar, Uttarakhand, the sale of meat has been completely banned within the city limits.
42. Russia launches Perm, its first nuclear-powered submarine armed with Zircon hypersonic missile.
43. Hungary has announced its withdrawal from the International Criminal Court (ICC).
44. Kotak Mahindra AMC has launched the Kotak Energy Opportunities Fund, an open-ended equity scheme focused on the energy sector.
45. Reliance Industries has entered the e-sports business through a joint venture with BLAST.
46. NPCI has appointed Sohini Rajola as the Executive Director of Development.
47. Nikhil Singhal, founder of Vigor Media Worldwide, received the Uttar Pradesh Anmol Ratan Award for excellence in public relations and strategic communication.
48. Veteran actor Manoj Kumar, popularly known as 'Bharat Kumar' for his patriotic films, passed away at the age of 87 in Mumbai.
49. Delhi government's free bus travel scheme is only for women residing in the national capital.
50. Union Cabinet approves Vibrant Villages Programme-II with an outlay of ₹6,839 crore to develop border villages.
51. Indian Railways and DMRC signed an MoU for the implementation of an automated wheel profile measurement system.
52. Hitesh became the first Indian boxer to reach the Boxing World Cup 2025 Finals by defeating France's Makan Traore 5-0 in the 70kg semi-final.
53. DRDO and Indian Army successfully conducted four flight tests of the MRSAM (Army version) on April 3–4, 2025, at Dr. APJ Abdul Kalam Island, Odisha.
54. Senior IPS officer Seema Agarwal has been appointed as the DGP/Director of Fire and Rescue Services.
55. Assam Governor Lakshman Prasad Acharya presented the Highest State Civilian Awards 2024 in Guwahati.
56. Indian Air Force pilot Shubhanshu Shukla will become the second Indian to fly to space on the AX-4 mission in May 2025.
57. The Beti Bachao Beti Padhao scheme increased the sex ratio at birth from 918 (2014–15) to 930 (2023–24).
58. Rajasthan ranked first in the farmer registry by creating a unique identity for each farmer.
59. India ranked 10th globally in private investment in Artificial Intelligence in 2023, with \$1.4 billion invested.

60. The Ministry of Statistics and Programme Implementation (MOSPI) launched a revamped Microdata Portal with advanced features and centralized access to national survey and census data.
61. Prime Minister Narendra Modi inaugurated the New Pamban Bridge in Tamil Nadu on Ram Navami, easing access for pilgrims to Rameswaram.
62. Rudranksh Balasaheb Patil won gold in the men's 10m air rifle at the ISSF World Cup 2025 in Buenos Aires, marking his second individual ISSF gold.
63. An Indian Navy warship in the central Arabian Sea provided urgent medical aid to a Pakistani crew member on a fishing vessel near the Oman coast.
64. On April 5, 2025, Defence Minister Rajnath Singh flagged off INS Sunayna as an Indian Ocean Ship (IOS) from Karwar to promote safety and development in the region.
65. The Supreme Court collegium has recommended the appointment of Justice Arun Palli as the Chief Justice of the Jammu & Kashmir and Ladakh High Court.
66. Prime Minister Narendra Modi has been honoured with Sri Lanka's highest civilian award, the 'Mitra Vibhushan'.
67. Sudarsan Pattnaik becomes the first Indian to win the prestigious Fred Darrington Sand Art Award.
68. World Health Day 2025 was celebrated on April 7 to raise awareness and inspire people towards a healthier lifestyle.
69. The Central and Delhi governments have signed an MoU to implement Ayushman Bharat, offering health coverage of ₹10 lakh per family.
70. India unanimously elected to UN's ISAR for the 2025–2027 term, highlighting its rising influence in global financial reporting standards.
71. Max Verstappen clinched his first win of the 2025 F1 season with a fourth consecutive victory at the Japanese Grand Prix in Suzuka.
72. Virat Kohli becomes the first Indian to score 13,000 runs in T20 cricket, marking a major milestone in his illustrious career.
73. Equitas Small Finance Bank appointed Balaji Nuthalapadi as Executive Director – Technology and Operations, effective 29 March 2025.
74. President Droupadi Murmu and Portugal's President Marcelo Rebelo de Sousa released postage stamps marking 50 years of India-Portugal diplomatic ties.
75. Bengal's 'Nolen Gurer Sandesh' and 6 other products received the Geographical Indication (GI) tag for their unique identity.
76. Haryana declared Tighrana and Mitathal in Bhiwani as protected archaeological sites linked to the 4,400-year-old Sindhu-Saraswati civilisation.
77. Haryana CM Nayab Singh Saini doubled the reservation for Agniveers in state police jobs from 10% to 20%.

78. On April 7, 2025, Tamil Nadu CM MK Stalin announced ₹216.73 crore livelihood schemes and ₹360 crore deep sea fishing harbours for fishermen near the Gulf of Mannar.
79. On April 7, 2025, Punjab launched ₹2,000 crore infrastructure projects to transform 20,000 government schools under the Punjab Education Revolution.
80. The Government of India has launched a ₹22,919 crore scheme to boost electronics component manufacturing and achieve self-reliance in the electronics supply chain.
81. On April 7, 2025, the Supreme Courts of India and Nepal signed an MoU to enhance judicial cooperation.
82. Vijayveer Sidhu became the first Indian to win gold in the men's 25m rapid fire pistol event at the ISSF World Cup in Buenos Aires.
83. Cabinet Committee on Security approves \$7 billion deal to procure 26 Rafale Marine jets from France for Indian Navy.
84. Dr. Mohan Rajan has been elected Vice President of the All India Ophthalmological Society (AIOS), representing over 29,000 ophthalmologists.
85. MSRDC received the SKOCH 2025 Award for successfully implementing the Hindu Hridayasamrat Balasaheb Thackeray Maharashtra Samruddhi Mahamarg project.
86. Renowned German filmmaker Werner Herzog will receive the honorary Golden Lion for Lifetime Achievement at the 82nd Venice Film Festival.
87. Skyroot Aerospace successfully tested the Kalam-100 engine, which will power the third stage of the Vikram-1 rocket.
88. Telangana Governor Dr. Jishnu Dev Varma inaugurated the renovated Tribal Museum in Bhadrachalam to promote tribal cultural heritage.
89. India's first national-level Panchayat Advancement Index (PAI) has been developed by the Ministry of Panchayati Raj to evaluate the progress of 2.5 lakh Gram Panchayats across 17 SDGs.
90. Union Minister Jitendra Singh launched India's first 'Himalayan High-Altitude Atmospheric & Climate Centre' at Nathatop to boost weather forecasting and climate research in the Himalayas.
91. The Cabinet has approved doubling of the 104 km Tirupati-Pakala-Katpadi rail line at a cost of ₹1,332 crore.
92. India has ended the trans-shipment facility for Bangladesh due to heavy congestion at its airports and ports.
93. RBI has lowered the GDP growth forecast for FY25-26 from 6.7% to 6.5%.
94. As per the PLFS 2024 report, the rural unemployment rate has slightly declined from 4.3% to 4.2%.
95. The Department of Financial Services merged 26 RRBs in 10 states and 1 UT under the "One State, One RRB" policy in the fourth phase of consolidation.

96. Suruchi Inder Singh from Haryana won gold in the women's 10m air pistol event at the ISSF World Cup 2025 in Argentina with a score of 244.6.
97. Rajesh Unni, founder of Synergy Marine Group, received India's highest maritime honor — the National Maritime Varuna Award 2025.
98. Banu Mushtaq's Heart Lamp became the first Kannada book shortlisted for the International Booker Prize on April 8, 2025.
99. World Homeopathy Day 2025 is observed on April 10 with the theme "Homoeopathy in India: Tradition, Trust, and Tomorrow".
100. The Central Government has hiked material cost under the PM POSHAN Scheme by 9.5%, benefiting over 11 crore school children from next month.
101. Mauritius becomes the first African and fourth global country to sign a Country Partnership Framework (CPF) with the International Solar Alliance (ISA).
102. Cricket will feature in the T20 format at the Los Angeles 2028 Olympics, with six teams each in men's and women's categories.
103. President Droupadi Murmu was honoured with the "Key to the City of Lisbon" and made an Honorary Citizen of Lisbon.
104. Five teams, including students, professionals, and entrepreneurs, were declared winners in the Wave Extended Reality Creator Hackathon.
105. Colossal Biosciences scientists have successfully birthed three wolf pups with traits of the extinct dire wolf, lost to extinction 13,000 years ago.
106. The 8th Session of the India-Russia Working Group on Priority Investment Projects was held in New Delhi.
107. The 13th Ministerial India-UK Economic and Financial Dialogue (EFD) was held in London.
108. India's merchandise and services exports reached a record \$820 billion in FY 2024–25, a 6% rise from the previous year despite global challenges.
109. The 9th Global Technology Summit (GTS) 2025 will be held in New Delhi from April 10–12 with the theme "Sambhavna," focusing on inclusive growth and global tech cooperation.
110. IEPFA and IPPB signed an MoA to launch Phase 2 of "Niveshak Didi" for enhancing financial literacy among rural women.
111. India added a record 29.52 GW of renewable energy in FY 2024–25, taking the total to 220.10 GW by March 31, 2025.
112. IIM Ahmedabad signed an MoU with the UAE government to set up its first overseas campus in Dubai.
113. Karnataka government signed a Letter of Intent with Chile to promote international innovation collaboration.
114. India and Russia have approved six strategic projects to strengthen bilateral investment cooperation.
115. Japan has built the world's first 3D-printed train station in Arida City, completed in just six hours.

116. India will provide \$990,000 to support a project for improving the livelihoods of persons with disabilities in Sierra Leone under the India-UN Development Partnership Fund.
117. Piramal Finance has partnered with ICICI Bank to enhance loan access for low- and middle-income borrowers in rural and semi-urban areas.
118. The United Kingdom has emerged as the only valid bidder to host the FIFA Women's World Cup 2035, with a joint bid from England, Northern Ireland, Scotland, and Wales.
119. UP Police's "Investigation, Prosecution, and Conviction Portal" received the national-level SKOCH Award in the "Police and Security" category.
120. The government launched a dedicated 'Global Tariff and Trade Helpdesk' to support stakeholders facing trade-related challenges.
121. Razorpay partnered with NBSL and Axis Bank to launch the Turbo UPI plugin on the BHIM Vega platform.
122. Sourav Ganguly has been re-appointed as the chairperson of the ICC Men's Cricket Committee, a position he first held in 2021.
123. Dr. Ambrish Mithal received the 2025 CSA Medal of Achievement from the International Osteoporosis Foundation for his work in osteoporosis research.
124. The Apricot Blossom Festival 2025, also known as Chuli Mendok, began with a vibrant inauguration in Sanjak village, Kargil, celebrating Ladakh's cultural heritage and tourism potential.
125. Meghalaya's indigenous textile 'Ryndia' has received the GI tag for its organic, handwoven, and naturally dyed fabric.
126. Assam inaugurated Northeast India's first robotic surgery facility at the State Cancer Institute, Guwahati Medical College, to improve cancer care in the region.
127. The Punjab government has banned the sale of hybrid rice seeds due to high prices and higher breakage during milling, resulting in lower prices for farmers.
128. Madhya Pradesh has declared 258.64 sq km of forest in Sagar district as the Dr. B.R. Ambedkar Wildlife Sanctuary ahead of Ambedkar's 134th birth anniversary.
129. Maharashtra govt and Russia's ROSATOM signed an MoU to develop thorium-based Small Modular Reactors (SMRs) under the 'Make in Maharashtra' initiative.
130. Two militants were caught in Manipur with ₹21 lakh and weapons.
131. PM Modi launched several projects in Haryana to honor Dr. B.R. Ambedkar and inaugurated the Hisar-Ayodhya flight, laying the foundation stone for a new terminal.
132. China imposed visa limits on US officials over the Tibet issue.
133. BlackRock invested \$750 million in Adani's private bond issue.
134. Juspay became India's first unicorn of 2025 with a \$1 billion valuation.
135. Meta will face a major antitrust trial in the US.

136. Dhiraj Bommadevara clinches individual Bronze for India, and the men's archery team took silver.
137. DC captain Axar Patel was fined ₹12 lakh for a slow over-rate in IPL, while Mumbai Indians beat Delhi Capitals and RCB crushed Royals by 9 wickets.
138. President Murmu, Vice-President Dhankhar, and PM Modi paid floral tributes to Dr. B.R. Ambedkar on his 135th birth anniversary.
139. Tamil Nadu's 61-day fishing ban began on April 15.
140. Fugitive diamond trader Mehul Choksi was arrested in Belgium in connection with the PNB loan fraud case.
141. Harvard University faces a \$2.2 billion federal funding freeze over allegations of insufficient action against anti-Semitism.
142. Ruling and opposition parties urged the government to address Saudi Arabia's cancellation of 52,000 Hajj slots for Indian pilgrims.
143. India's total exports rose 5.5% from last year, reaching \$820.93 billion in FY25.
144. Asian markets saw a positive trend as trade tensions eased after US import duty decision; Japan's Nikkei 225 rose 2.2%, led by semiconductor stocks.
145. China's exports jumped 12.4% in March, exceeding analysts' expectations amid rising US-China trade tensions.
146. Crisil projects a 6.5% GDP growth for India in FY26, driven by RBI rate cuts, tax relief, and easing inflation.
147. Magnus Carlsen clinched the Freestyle Chess Grand Slam 2025 title in Paris, defeating Hikaru Nakamura.
148. India announced a 14-member squad for the BWF Sudirman Cup 2025, including stars like PV Sindhu, Lakshya Sen, and HS Prannoy.
149. AICTE formed a committee to promote AI integration in various academic streams like BBA, BCA, and electrical engineering.
150. The 6th edition of the India-Uzbekistan joint military exercise "DUSTLIK-VI" begins at Aundh military base.
151. Justice B. R. Gavai is set to become the 52nd Chief Justice of India, succeeding Justice Sanjiv Khanna
152. Daniel Noboa wins the presidential election in Ecuador, earning a full 4-year term.
153. The Ministry of Labour & Employment signed an MoU with Swiggy in New Delhi for worker welfare and support.
154. Morgan Stanley has revised India's GDP growth forecast for FY26 to 6.1% and cut the Sensex target due to global uncertainties.
155. Credit growth in India's banking sector is expected to reach 12–13% in FY26 due to favorable policies and low interest rates.
156. SEBI has banned Gensol Engineering Ltd and its promoters over charges of fund misuse and price manipulation.
157. China halts deliveries of US-made Boeing jets, intensifying trade tensions between the two nations

158. Indian shooters Inder Singh Suruchi and Saurabh Chaudhary secured gold in the mixed team shooting event.
159. Blue Origin has successfully launched an all-female crew in space, setting a milestone in space exploration.
160. Supreme Court grants Centre more time on Waqf Act petitions; no appointments till next hearing.
161. International Big Cat Alliance to establish its headquarters in India.
162. Israel's Defence Minister confirms Gaza annexation; troops to remain in Lebanon, Syria.
163. Time's 2025 Influential People list excludes Indians; includes Trump, Musk, Starmer.
164. US Fed Chief warns Trump's tariff policy may trigger inflation and economic slowdown.
165. WTO forecasts global trade decline in 2025–26 due to US-China tensions.
166. India's smartphone exports reach an all-time high, led by the PLI scheme.
167. Nishchay Throws 19.59m to Bag Silver in Shot Put at Asian U-18 Athletics Championship.
168. Bhagavad Gita and Natyashastra added to UNESCO's Memory of the World Register.
169. Maharashtra makes Hindi compulsory as a third language for Classes 1 to 5 under NEP 2020.
170. PM Modi to visit Saudi Arabia on April 22–23 for strengthening ties.
171. Pakistan announced tighter controls on Afghan refugees during Deputy PM's Kabul visit.
172. IAF takes part in Desert Flag-10 multinational exercise in UAE.
173. SBI Card and Tata Digital launched Tata Neu SBI Card with reward benefits.
174. India's pharmaceutical exports exceeded \$30 billion in FY 2024-25.
175. Mirabai Chanu appointed Chairperson of IWLF Athletes' Commission.
176. Santosh Kumar appointed Deputy CFO; Arun Khurana relieved.
177. US Supreme Court stayed deportation of Venezuelan detainees under Alien Enemies Act.
178. India's first satellite Aryabhata marked 50 years since its launch in 1975.
179. Chennai launched the first AC EMU train service in South India.
180. The SSC will implement Aadhaar-based biometric authentication for recruitment exams starting May 2025.
181. Union Minister Jitendra Singh praised the 2023 batch of IAS officer trainees, highlighting a record 41% women representation, with 74 women officers.
182. Hundreds protested in Kathmandu, demanding the restoration of the monarchy and declaration of Nepal as a Hindu state.
183. Centre imposes 12% safeguard duty to protect Indian steel industry.
184. Gold prices soared to a record \$3,385.08 per ounce, driven by global growth concerns and a weaker dollar.

185. Kriish Tyagi won the ITF junior tennis tournament semifinal in Kuala Lumpur.
186. Former SC judge Dinesh Maheshwari appointed as chairperson of the 23rd Law Commission.
187. Ananya Panday becomes the first Indian brand ambassador for luxury French label Chanel.
188. Pope Francis, leader of 1.4 billion Catholics, dies at 88 on Easter; to be buried in Santa Maria Maggiore Basilica.
189. ISRO's SpaDEX mission achieves second satellite docking, marking a major milestone in space technology.
190. Air India to acquire Boeing planes originally meant for Chinese carriers.
191. LG Electronics pauses IPO plans for Indian unit due to lower expected valuation.
192. Minors aged 10+ can now open and operate bank accounts independently: RBI.
193. Poonawalla Fincorp and MobiKwik partner to offer instant personal loans via ZIP EMI.
194. Rohit, Kohli retain top BCCI contract; Iyer and Kishan return to contract list.
195. Jasprit Bumrah and Smriti Mandhana named world's top cricketers in Wisden 2025.
196. Simranpreet Kaur wins silver in 25m pistol at ISSF World Cup.
197. 26 killed in Pahalgam terror attack during tourist visit.
198. India declares state mourning for Pope Francis with flags at half-mast.
199. Earth Day celebrated globally; 'Save Earth Conclave' inaugurated by Amit Shah.
200. Ministry of Electronics and IT launches a Coffee Table Book promoting circular economy.
201. Pakistan suspends 1972 Simla Agreement in retaliation to India's response on terror attack.
202. PM Modi launches development projects in Madhubani, Bihar, and presents Panchayat Awards.
203. Health Minister J.P. Nadda launches National MR Elimination Campaign 2025-26.
204. India and Saudi Arabia agree to collaborate in crude oil supply and refining sectors.
205. India halts visa services for Pakistani citizens after Pahalgam terror attack.
206. Bank of Baroda announces ESG policy and sets target to become net-zero by 2057.
207. Madhya Pradesh-based NBFC Finodaya Capital secures \$2.5 million from White VC and others.
208. RBI cancels the licence of Ajantha Urban Co-operative Bank, Aurangabad due to insufficient capital and earnings.

209. AIIMS Raipur becomes first among new AIIMS to successfully conduct a Swap Kidney Transplant.
210. Pakistan shuts airspace and halts trade with India post-Pahalgam attack.
211. Sports certificates now available via DigiLocker: Launched by Union Minister Mandaviya.
212. UNESCO adds 16 new Global Geoparks, bringing total to 229 across 50 countries.
213. US imposes fresh sanctions on Iran's energy sector amid nuclear talk uncertainty.
214. BHIM app introduces UPI Circle feature with partial delegation.
215. World Bank revises India's 2025-26 GDP growth forecast to 6.3%.
216. Klaus Schwab resigns as WEF Chairman after five decades; interim chair appointed.
217. World Immunization Week (April 24–30) promotes vaccine awareness to protect all age groups.
218. Pakistan terms diversion of Indus waters as 'act of war', threatens Simla Agreement abeyance.
219. Tamil Nadu bans raw egg-based mayonnaise for a year due to health risks.
220. Due to poor financials, RBI revokes licence of Jalandhar-based bank.
221. The NBFC gets listed on National Stock Exchange from April 17, 2025.
222. India transported over 145 million tonnes via waterways in 2024-25, a major boost for green logistics.
223. US VP J.D. Vance finalizes trade terms with India, aiming to double bilateral trade to \$500 billion.
224. India's private sector activity surged in April due to strong foreign orders and domestic demand.
225. USD 4 million prize pool makes it India's most lucrative golf event.
226. The largest-ever allocation for India's Ministry of Youth Affairs and Sports.
227. Three teens from Indore create electricity-free mini fridge using salt cooling tech.
228. Three astronauts sent to China's space station aboard Shenzhou-20 spacecraft.
229. 34.55 lakh tourists visited Kashmir in 2024 — highest ever.
230. India's extreme poverty dropped sharply from 16% to 2.3% in a decade, lifting 171 million people above poverty line.
231. Iran offered to mediate between India and Pakistan amidst rising tensions after the Pahalgam attack.
232. India participated in 11th BRICS Labour & Employment Ministers' Meeting 2025 held under Brazil's presidency.
233. Pakistani troops fired at Indian posts along the Line of Control, heightening tensions after the Pahalgam civilian killings.
234. India's direct tax collection grew by 13.57% in FY25 but slightly missed the revised target.

235. UDAN scheme completed 8 years, making air travel affordable for common citizens and boosting connectivity.
236. The 2nd Asian Yogasana Championships started in New Delhi to promote Yogasana globally.
237. SRFTI's film "A Doll Made Up of Clay" selected for Cannes 2025, marking a historic entry for Indian cinema.
238. Former ISRO chief Dr. K. Kasturirangan, pioneer of Chandrayaan-1, passed away at 84 in Bengaluru.
239. DRDO successfully tested scramjet engine for 1,000 seconds, advancing hypersonic technology in India.
240. Cheetah Nirva gives birth to five cubs at Kuno, raising India's cheetah count to 31.
241. PM Modi distributes over 51,000 appointment letters at 15th Rozgar Mela across 47 locations.
242. India and Bhutan hold the 6th Joint Group of Customs Meeting in Thimphu on April 24–25, 2025.
243. Start-up 'Sarvam' to build India's first AI large language model under ₹10,370 crore IndiaAI Mission.
244. India signs agreement with France for 26 Rafale-Marine aircraft for Navy.
245. Indian companies send goods worth ₹85,000 crore annually to Pakistan via Dubai, Singapore, bypassing restrictions.
246. India's household debt rises to 23.9% of GDP in FY25, signaling post-pandemic financial stress.
247. President Droupadi Murmu confers Padma Awards to 71 achievers, including Shekhar Kapur and R. Ashwin.
248. Karnataka-based humanitarian Madhusudan Sai receives Fiji's highest civilian award.
249. Delhi launches Rs. 10 lakh free health cover under Ayushman Vay Vandana for citizens aged 70+.
250. Mark Carney elected as Prime Minister of Canada.
251. The Central Government on April 30, 2025 decided to increase the fair and remunerative price (FRP) of sugarcane by 4.41% to Rs. 355 per quintal for the upcoming 2025-26 season beginning October, 2025.
252. Cabinet Committee on Political Affairs has decided on April 30, 2025 that Caste enumeration should be included in the forthcoming census.
253. Cabinet approves Rs. 22,864 Crore Shillong-Silchar Greenfield High-Speed Corridor, Four-Lane Highway to boost Assam-Meghalaya connectivity

6. Pahalgam Terror Attack

Introduction

- On 22 April 2025, a brutal terror attack in Pahalgam, Jammu and Kashmir, led to the death of at least 26 civilians, sending shockwaves across the nation.
- Unique and unprecedented was the shutdown call by Kashmiris themselves — marking the first time in 35 years that a bandh was observed against a terror act.
- Political parties across the Union Territory and India condemned the incident, emphasizing collective grief and national solidarity.

Domestic Response: Uniting Against Terrorism

- **People's Reaction:** The nationwide expression of grief and outrage symbolized the will to stand against terrorism.
- **Political Consensus:** An all-party meeting, convened by the government, saw opposition parties backing the government's anti-terror initiatives.
- **Civil Society's Stand:** NGOs, student bodies, and social organizations called for peace and emphasized maintaining communal harmony.
- **Concern:** Isolated incidents of harassment against Kashmiri students and traders were reported, necessitating strong condemnation to prevent communal polarization.

Diplomatic and Strategic Measures

- **Indus Waters Treaty (IWT) Suspension:** The move signals India's intent to leverage existing agreements to exert pressure on Pakistan.
- **Border Closures:** The shutting down of the Wagah-Attari crossing cuts off a key point of people-to-people and trade exchanges.
- **Downgrading Diplomatic Ties:** A standard yet severe diplomatic tool to express displeasure and isolate Pakistan.
- **Visa Restrictions:** Sending a clear message while safeguarding internal security.
- **Pakistan's Reaction:** Suspension of the 1972 Shimla Agreement adds another layer of complexity but also shows Islamabad's desperation.

Security and Intelligence Aspects

- **Lapses Highlighted:** Despite heightened alerts, the attack was successful — pointing towards possible gaps in local intelligence and counter-terror mechanisms.
- **Operational Challenges:** Ensuring the capture of the terrorists involved is crucial to unraveling deeper conspiracies and preventing future attacks.

- **Need for Reforms:** Calls for better coordination between intelligence, military, and law enforcement agencies are growing louder.

Social Media and Hate Speech Concerns

- **Unchecked Narratives:** Social media platforms saw an explosion of divisive rhetoric, misinformation, and jingoism post-attack.
- **Demands from Political Leaders:** Stronger government action to monitor and control hate campaigns without infringing on freedom of speech.
- **Risks:** If unchecked, communal tensions could be exacerbated, playing into the hands of terrorists seeking to divide society.

The Role of Individuals: Stories of Bravery

- **Adil Hussain Shah's Sacrifice:** A Kashmiri pony ride operator, Adil Hussain Shah, sacrificed his life while trying to protect tourists — a poignant reminder that terrorism spares no one and that Kashmiris themselves are victims and heroes in this fight.
- **Counter-Narrative:** Such acts should be amplified to break the false binary of Kashmiris versus the rest of India.

Way Forward

- **Strategic Patience:** long-term strategic isolation of Pakistan through international forums must be prioritized.
- **National Unity:** Political, religious, and community leaders must actively work to prevent communal polarization.
- **Strengthening Intelligence:** Local intelligence gathering must be sharpened through community engagement and modern technology.
- **Reforming Social Media Regulations:** A balance must be struck between free speech and controlling incendiary content.
- **Support for Kashmiris:** Special measures to ensure that Kashmiri students, professionals, and citizens feel safe and protected across the country.
- **International Mobilization:** Building global consensus on Pakistan's culpability and increasing pressure through economic and political channels.

Conclusion

- **The Pahalgam attack is not just a security incident; it is a test of India's democratic resilience, its social fabric, and its strategic acumen.**
- The need of the hour is unity without communal bias, strength without jingoism, and justice without haste.

7. Indus Water Treaty, 1960

Indus Water Treaty, signed in 1960, divides the Indus River system between India and Pakistan. Pakistan controls the Western rivers (Indus, Jhelum, Chenab), while India controls the Eastern rivers (Ravi, Beas, Sutlej). The treaty includes a Permanent Indus Commission and a three-tier dispute resolution mechanism.

Recently, India suspended the treaty following the Pahalgam attack on 22 April 2025, affecting Pakistan's vital water supply for agriculture and urban areas. This suspension has granted India greater control over the Western rivers, enabling increased hydropower generation and improved flood management. The shift in water dynamics has heightened tensions and reshaped regional geopolitics, further impacting Indo-Pakistani relations.

Indus Water Treaty Overview

Indus Water Treaty is a landmark water-sharing agreement between India and Pakistan, established to govern the use of water from the Indus River system. Signed in Karachi in 1960 and mediated by the World Bank, the treaty allocates the usage of six rivers—three to India and three to Pakistan—ensuring equitable distribution for agricultural, domestic, and industrial purposes.

Indus Water Treaty River Distribution

Indus Water Treaty River Distribution is done to ensure a fair division of river water and ensure peaceful cooperation among the neighbors. The Indus Water Treaty ensures a sustainable water division between India and Pakistan by allocating the **Western Rivers (Indus, Jhelum, Chenab) to Pakistan and the Eastern Rivers (Ravi, Beas, Sutlej) to India.**

Indus Water Treaty History

The History of the Indus Water Treaty goes back to the time of India's Independence when the boundary line between Pakistan and India was being drawn. The details are mentioned below:

- **Drawing of Boundaries:** During the time of India's independence, the boundary line between Pakistan and India was drawn across the Indus Basin, leaving Pakistan as the lower riparian.
- **Beginning of conflict:** Post partition, two crucial irrigation head works in Madhopur and Ferozepur, which were dependent on Punjab's irrigation canal supplies, were left in the Indian Territory, leading to a dispute over water usage.

- **Mediation by World Bank:** The negotiations with the International Bank for Reconstruction and Development (World Bank) led to the signing of the Indus Waters Treaty in 1960.
- **Signing of Treaty:** The treaty was signed by Mohammad Ayub Khan of Pakistan, Jawaharlal Nehru, and W.A.B. Iliff of the World Bank and is effective from April 1, 1960.

Indus Water Treaty Key Features

Indus Water Treaty, which was signed in 1960, was brokered by the World Bank. It has several important provisions to ensure continued peaceful sharing of the Indus River System among the neighbors.

The important features of the treaty are:

- **Water-Sharing:** Under Indus Water Treaty Pakistan was granted the western rivers Indus, Chenab, and Jhelum for unrestricted use, while India was granted the eastern rivers Ravi, Beas, and Sutlej for unrestricted use.
- **Permanent Indus Commission:** The Treaty required to set up a Permanent Indus Commission, mandated to meet annually. It acts as a mechanism for cooperation and information exchange between the two countries regarding their use of the rivers. It consists of a Commissioner from each country.
- **Dispute Resolution Mechanism:** The Indus Water Treaty provides for a three-tier dispute resolution mechanism. This structure ensures that disputes over the Indus waters are addressed in a graduated manner, with efforts focused first on cooperation and technical expertise before moving to formal arbitration.
 - **Level 1:** “Questions” are handled by the Permanent Indus Commission;
 - **Level 2:** “Differences” are to be resolved by a Neutral Expert (appointed by the World Bank)
 - **Level 3:** “Disputes” are referred to an ad hoc arbitral tribunal called the “Court of Arbitration.”
- **Exchange of Data:** Both parties must indulge in the Monthly exchange of data on river water usage.
- **Future Co-operation:** Both countries must cooperate to set up hydrologic observation stations and undertake new drainage work to preserve the rivers.

Indus Water Treaty Timeline

The **Indus Waters Treaty**, regulates water-sharing between India and Pakistan. Over the years, water usage has become increasingly linked to national security and geopolitical tensions.

- **2013:** A Court of Arbitration rules that India must maintain minimum flows from the **Kishanganga Dam (a Jhelum tributary)** and cannot draw down its reservoir below a certain level, safeguarding Pakistan's downstream rights.
- **2016:** After the Uri attack, India suspends Indus Commission meetings and pledges to maximize its share under the treaty, marking the first direct linkage between water policy and security.
- **2019:** In response to the Pulwama attack, India reiterates full utilization of eastern rivers. Although legal, the move highlights growing politicization of the treaty.
- **2022:** Due to stalled dispute resolution, the World Bank appoints both a Neutral Expert and a Court of Arbitration, reflecting deep procedural disagreement.
- **2023:** India invokes Article XII(3) to propose treaty modifications, citing climate change, national development, and Pakistan's alleged obstruction. Pakistan rejects the proposal.
- **2024:** India issues formal notice to amend the treaty, calling it outdated and biased toward Pakistan. No agreement is reached.

Indus Water Treaty Dispute

In recent years, India and Pakistan have been in disagreement over the design of the Kishenganga and Ratle hydroelectric power plants on the Jhelum and Chenab Rivers, respectively. The dispute revolves around the issue of whether the plants' technical design violates the Indus Water Treaty, which designates the Jhelum and Chenab Rivers as the "Western Rivers" for Pakistan's unrestricted use. India is allowed to construct hydroelectric facilities on these rivers, subject to design specifications as provided in the treaty.

Indus Water Treaty Legal Framework

Indus Waters Treaty (IWT) is a permanent agreement with no exit clause or enforcement mechanism. Amid rising tensions, its limitations leave Pakistan with no peaceful or legal recourse if India chooses to suspend or revoke the treaty.

- **No Exit Clause in the treaty:** The Indus Waters Treaty (IWT) does not permit unilateral termination by either India or Pakistan. It is a perpetual agreement with no expiration date. Any amendment or revision requires mutual consent between the two nations.

- **Dispute Resolution Mechanism:** Article IX, along with Annexures F and G, outlines a three-tiered dispute resolution process:
 - Initial resolution via the Permanent Indus Commission (PIC)
 - Escalation to a Neutral Experts
 - Final arbitration through a designated Court of Arbitrators
- **No Peaceful Mechanism for Enforcement:** If India revokes the treaty, it essentially steps outside its legal framework. The dispute resolution mechanism becomes irrelevant, as it only applies within the bounds of the treaty.
 - There is no provision in the IWT to enforce or revive the treaty after suspension.
 - Pakistan cannot approach the International Court of Justice (ICJ) due to India's reservation under the ICJ statute.
 - As a result, no peaceful or legal pathway remains for Pakistan to compel treaty compliance from India.

Indus Water Treaty After Pahalgam Attack

The suspension of the Indus Waters Treaty by India, following the Pahalgam terror attack, marks a turning point in regional water diplomacy. It poses severe challenges for Pakistan's water-dependent agriculture and urban supply, while granting India enhanced control over western rivers, hydropower potential, and flood management, altering regional water dynamics significantly.

Indus Water Treaty Suspension Implication for Pakistan

India has taken a series of strong measures following the Pahalgam terror attack, including suspending the Indus Waters Treaty, 1960. The treaty's suspension would have serious consequences for Pakistan.

- **Water Dependency:** Pakistan receives nearly 80% of Indus water flow, crucial for agriculture, irrigation, and drinking water in Punjab and Sindh.
- **Urban Water Supply:** Major cities like Karachi, Lahore, and Multan depend directly on these rivers for daily water needs.
- **Agricultural Economy:** Agriculture contributes 23% to GDP and supports 68% of the rural population, relying on 93% of water for irrigation.
- **Irrigation Backbone:** The Indus basin delivers around 154.3 million acre-feet of water annually, essential for food security and farming.
- **Economic Impact:** Disruption in water flow can lower crop production, increase food scarcity, and strain rural economies.
- **Existing Water Crisis:** Pakistan already struggles with groundwater depletion, soil salinity, and weak water storage infrastructure.

- **Limited Storage:** Reservoirs like Mangla and Tarbela together hold only 14.4 million acre-feet—just 10% of the annual allocation.
- **Loss of Security:** Treaty suspension removes guaranteed water supply, worsening water management challenges and national vulnerability.

Indus Water Treaty Suspension Implications for India

The implications for India following changes in the Indus Waters Treaty are significant. India now enjoys greater control over the western rivers—Jhelum, Chenab, and Indus—enabling increased flexibility in water usage, hydropower generation, and flood control. These developments mark a shift in regional water-sharing dynamics, reducing Pakistan's oversight and potentially impacting bilateral relations.

- **Increased Control Over Western Rivers:** Greater flexibility in the use of water from the Jhelum, Chenab, and Indus rivers.
- **Hydropower Generation:** Potential for increased hydroelectric power generation without treaty-imposed design and operational limitations.
- **Flood Control and Water Storage:** Ability to undertake flood control measures and mitigate floods in the Kashmir Valley. No restriction on storage in reservoirs on western rivers, particularly the Jhelum.
- **Non-Obligation to Share Flood Data:** India may stop sharing flood data with Pakistan, affecting Pakistan's flood preparedness, particularly during the monsoon season.
- **Suspension of Site Visits:** India can deny access to Pakistani officials seeking to inspect Indian hydro projects, which were earlier mandated under the treaty's provisions.
- **Limited Immediate Impact:** Despite these expanded powers, the short-term impact is minimal because India currently lacks adequate infrastructure to halt or divert river flows effectively.

Conclusion

The waters of the Indus, once a symbol of cooperation, now stand at the heart of an emerging conflict where *'blood and water cannot flow together,'* as Prime Minister Narendra Modi stated, highlighting the complexities of the evolving Indo-Pakistani relationship. The suspension of the Indus Water Treaty signals a strategic shift in India's posture, linking water diplomacy to national security imperatives. What was once a framework for peace is now being re-evaluated in light of persistent cross-border terrorism, marking a turning point in regional geopolitics.

8. Shimla Agreement, 1972

Introduction

The **Indo-Pak War of 1971** significantly affected the political history of the region with the emergence of Bangladesh as an independent nation. **Marked by the largest military surrender since World War II**, the war concluded on **December 16, 1971**, with the capitulation of over **93,000 Pakistani troops in Dhaka, then part of East Pakistan**. This conflict, its resolution, and the subsequent **Shimla Agreement 1972**, Prime Minister Indira Gandhi announced a **unilateral ceasefire, signaling India's intent to restore peace in the region**.

Shimla Agreement 1972

Shimla Agreement 1972 was signed on **2nd July 1972** in Shimla, Himachal Pradesh which marked a significant diplomatic turning point in the aftermath of the **Indo-Pak War 1971**. In a joint commitment to end the issues, the Governments of India and Pakistan pledged to resolve future disputes through peaceful, bilateral dialogue, with mutual respect for each other's sovereignty and territorial integrity.

Shimla Agreement Signing

The Shimla Agreement 1972 was formally signed by **Indira Gandhi, the then Prime Minister of India**, and **Zulfikar Ali Bhutto, who served as the President of Pakistan at the time and later became its Prime Minister**. The summit held in Shimla, the capital of Himachal Pradesh, was a crucial moment where both leaders engaged in bilateral discussions aimed at establishing peaceful relations and ensuring long-term stability in the region following the Indo-Pak War 1971.

Objectives of Shimla Agreement 1972

- India aimed to find a lasting solution to the Kashmir conflict and ensure that Pakistan would not involve third parties in discussions related to Kashmir.
- The Shimla Agreement 1972 was seen as a chance to reset India-Pakistan relations, with Pakistan acknowledging the new balance of power post the 1971 war.
- The Agreement aimed to achieve strategic goals without creating resentment in Pakistan.

Key Clauses of Shimla Agreement 1972

The Shimla Agreement 1972 includes clauses to normalise relations between India and Pakistan following the war, aligning with the principles and objectives of the United Nations Charter. Both nations committed to establish peaceful coexistence, mutual respect, and cooperation.

Diplomatic and Public Communication Measures

- Both governments agreed to take necessary steps to restrict hostile propaganda and instead promote information that would encourage friendly relations between the two countries.
- To rebuild mutual trust, efforts were to be made to restore communication channels such as postal services, telegraph links, air routes, and border check-posts.
- The agreement also encouraged initiatives to facilitate cross-border travel for the citizens of both nations, thereby enhancing people-to-people ties.

Economic, Scientific, Cultural Cooperation

- Both countries aimed to resume trade and economic collaboration, and extend cooperation into areas such as science and culture.
- Exchanges in academic knowledge and cultural heritage were seen as key tools to improve bilateral relations.

Military and Territorial Arrangements

- A central clause of the agreement required Indian and Pakistani forces to withdraw to their respective sides of the international border.
- The Line of Control (LoC) in Jammu and Kashmir, as established following the December 17, 1971 ceasefire, was to be respected by both sides without damage to the final settlement of the issue.
- Both nations pledged to refrain from the use of force or the threat thereof in any manner that would disturb the LoC.

Implementation and Future Dialogue

- The withdrawal of troops was to begin immediately after the agreement entered into force and was to be completed within 30 days.
- The agreement would be effective from the date when Instruments of Ratification were exchanged, in accordance with each country's constitutional processes.
- Regular diplomatic engagement was agreed upon, with representatives from both sides to meet periodically to discuss further approaches for

peace, including the release of prisoners of war (POWs), restoration of full diplomatic relations, and resolution of outstanding issues, particularly Jammu and Kashmir.

- It was also decided that heads of government from both nations would meet at mutually convenient times to continue the peace process.

9. 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.

1. General Knowledge	2. Law
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: (i) Science and Technology (ii) Communications and Space	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
3. CLAT 1. General Knowledge 2. A Guide for CLAT	

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